# TRANSFORMING THE DEFENSE DEPARTMENT: EXPLORING THE MERITS OF THE PROPOSED NATIONAL SECURITY PERSONNEL SYSTEM

## HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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# TRANSFORMING THE DEFENSE DEPARTMENT: EXPLORING THE MERITS OF THE PROPOSED NATIONAL SECURITY PERSONNEL SYSTEM

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**TUESDAY, APRIL 29, 2003**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION,
COMMITTEE ON GOVERNMENT REFORM,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Jo Ann Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis of Virginia, Murphy, Waxman, Norton, Davis of Illinois, Watson and Cooper.

Staff present: Chad Bungard, deputy staff director and senior counsel; Ronald Martinson, staff director; John Landers, professional staff member; Heea Vazirani-Fales and Vaughn Murphy, legislative counsels; Chris Barkley, clerk; Phil Barnett, minority chief counsel; Christopher Lu, minority deputy chief counsel; Tania Shand, minority professional staff member; Earley Green, minority chief clerk; Cecelia Morton, minority office manager; and Teresa Coufal, minority assistant clerk.

Mrs. DAVIS OF VIRGINIA. A quorum being present, the Subcommittee on Civil Service and Agency Organization will come to order.

Thank you all for joining us today. We are here to discuss the Defense Department's proposed National Security Personnel System, which is part of the larger Defense Transformation for the 21st Century Act. In terms of both size and scope, this personnel proposal, which affects nearly 700,000 civilian employees of the Pentagon, or about one-third of the Federal Government's non-postal civilian work-force, is among the most important matters that will come before this subcommittee this session.

I called this hearing to give the members of this subcommittee an opportunity to learn more about this legislation and to question the Defense Department and the other stakeholders about the implications of this proposal, and I want to get to our witnesses as quickly as possible.

Clearly, there are questions that are on everyone's mind, foremost among them being the issue of whether Congress should give the Defense Department flexibilities that exceed those granted to

the new Homeland Security Department just a few months ago. I know many of our witnesses also want to address that topic.

I begin this hearing with an open mind. We must find a way to recruit, reward and retain our most talented employees and to get the most out of the Federal work force. And the Defense Department, given its unique mission and the necessity for civilian employees to work hand in hand with the brave men and women who wear the uniform of our armed services, certainly has personnel needs that are different from the rest of the Federal Government. But as we all know, pay-for-performance will not work without a strong personnel management system, one that is understood and accepted by employees and their supervisors. I appreciate the Pentagon's decision to publish much of this information in the April 2 Federal Register, and I'm sure we will have questions dealing with these best practices in addition to the language of the legislation before us.

I want to thank all of our witnesses, but now I'd like to go to my ranking member, Mr. Danny Davis.

[The prepared statement of Hon. Jo Ann Davis follows:]

From the Office of
Congresswoman
Jo Ann Davis

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**Jo Ann Davis, Chairwoman**
**House Government Reform Subcommittee on Civil Service and Agency Organization**
**"Transforming the Defense Department:**
**Examining the Merits of the Proposed National Security Personnel System"**
**April 29, 2003**

Thank you all for joining us today. We are here to discuss the Defense Department's proposed National Security Personnel System, which is part of the larger "Defense Transformation for the 21st Century Act." In terms of both size and scope, this personnel proposal – which affects nearly 700,000 civilian employees of the Pentagon, or about one-third of the federal government's non-postal civilian workforce – is among the most important matters that will come before this Subcommittee this session.

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But, as we all know, pay-for-performance will not work without a strong personnel management system, one that is understood and accepted by employees and their supervisors. I appreciate the Pentagon's decision to publish much of this information in the April 2 Federal Register, and I'm sure we will have questions dealing with these "best practices," in addition to the language of the legislation before us.

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Mrs. DAVIS OF VIRGINIA. Do you have an opening statement, Danny?

Mr. DAVIS OF ILLINOIS. Thank you very much.

Madam Chairwoman, I, too, want to welcome the witnesses as we begin this session. We started this session working in a bipartisan manner to educate ourselves about how to best go about reforming the Civil Service. Since March 5, there have been four Civil Service-related hearings in which we have heard from over 30 witnesses and sat through hours and hours of testimony. What I've gleaned from the experts who took time out of their schedules to testify at these hearings is that performance management systems and employee input are imperative to any Civil Service reform proposal. This was crystallized for us at the joint House and Senate hearings on Civil Service reform where, on a bipartisan basis, we, Democrats and Republicans alike, applauded Chairman Voinovich when he stated in response to GAO testimony about the President's Human Capital Performance Fund that the importance of performance management systems that the worst thing that could happen is that you get started with this thing, and then it is a disaster, and everybody points to it and says, I told you so. It wouldn't work.

For those of us who've been through the mill, this is something you've really got to spend a lot of time in order to do it right. Here we are today at a rushed hearing, ignoring the advice of over 30 witnesses, and preparing to give the Department of Defense the authority to do what we were not willing to give the President the authority to do 3 weeks ago. If we're not going to spend the time to do it right, then why the hearings? Why the witnesses? Why the countless hours of testimony?

The legislative proposal that we're considering today and which is scheduled to be marked up on Thursday was delivered to Congress only 2½ weeks ago. In the human capital section of the legislative proposal, it says that DOD's proposal is based upon the Department's civilian human resources strategic plan. Just last month, GAO reviewed DOD's civilian human resources strategic plan and essentially declared it woefully inadequate. The GAO report stated, "the human capital strategic plans GAO reviewed for the most part lacked key elements found in fully developed plans. Most of the civilian human capital goals, objectives and initiatives were not explicitly aligned with the overarching mission of the organization. Consequently, DOD and the components cannot be sure that the strategic goals are properly focused on mission achievement."

And the report goes on and on. This weak foundation is what the legislative proposal is based on.

Are we moving this legislation because it is good government, or because it is politically expedient? DOD, by its own admission, stated in response to GAO's comments that we are obligated to point out that a significant portion of the review concentrated on strategic planning activities in the early stages of development. This is exactly the problem with moving this legislation so quickly. The proposal has no performance management system or safeguards to protect against abuse. And there was no employee input in the development of the proposal. This proposal will impact 700,000 civilian DOD employees, and employee representatives first saw this

legislative proposal earlier this month, about the same time DOD was briefing congressional staff on it.

My staff has reviewed the April 2 Federal Register notice on DOD's nine demonstration projects, which DOD says is the basis for their legislative proposal and in which they state provides the opportunity for employee comment. I do not consider responding to a Federal Register notice adequate employee input in the development of a plan, not to mention that what appeared in the Federal Register in no way resembles what is being considered by the subcommittee today.

In an article in Sunday's Washington Post, a spokesman for Chairman Tom Davis explained that we are rushing to hold this hearing and markup because, "the train is leaving the station." Mr. Davis feels like we either drive it or get run over by it. This train may be leaving the station, but, if the Government Reform Committee is to drive it, I'd rather do so down the track leading toward good government rather than political expediency. By the end of this week, we'll know which track this committee is on.

I welcome the witnesses, Madam Chairwoman. Thank you very much.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Davis.

And we are also joined the by the ranking member of the full committee Mr. Waxman.

Mr. Waxman, do you have an opening statement?

Mr. WAXMAN. I do. Thank you very much, Madam Chair. I'd like to thank you for holding this hearing. Without question the administration's proposal to rewrite rules for civilian employees of the Department of Defense is an important issue and one that merits careful consideration by our committee. That's why I was troubled to learn last week that the bill to exempt the Department from the Civil Service laws was to be rushed through the committee tomorrow, just 1 day after the introduction of the legislation. The markup has now been delayed 1 day. That's helpful, but it is still not the right way to consider a piece of legislation that will directly affect 700,000 civilian employees at the Department of Defense and indirectly affect 2 million other Federal employees.

At the Volcker Commission hearing last month. I read a quote from Tom Friedman, the columnist with the New York Times. Mr. Friedman's quote is worth keeping in mind as we consider reforming the Civil Service System. Mr. Friedman wrote, "Our Federal bureaucrats are to capitalism what the New York Police and Fire Departments were to September 11, the unsung guardians of America's civic religion, the religion that says if you work hard and play by the rules, you'll get rewarded, and you won't get ripped off. So much of America's moral authority to lead the world derives from the decency of our government and its bureaucrats and the example we set for others. They are things to be cherished, strengthened and praised every single day."

Unfortunately, the Bush administration has hardly done its part to cherish, strengthen and praise Federal employees. Since day 1 of this administration, there has been a relentless attack on the Civil Service. Federal jobs have been given to private contractors, who are often unsupervised and unable to perform the jobs as efficiently or effectively. Attempts have been made to slash annual pay

increases for Federal employees. Financial bonuses have been given to political appointees instead of career employees. And now we have an effort by the administration to completely strip Federal employees of basic Civil Service protections.

It's incredible that the group of employees the administration has chosen to target this time are Defense Department employees. These are the same employees who saw terrorists crash an airplane into their headquarters. These are the same employees who made enormous sacrifices to support the military effort in Iraq.

What's truly remarkable is the sweeping nature of the bill before us. It gives the Secretary of Defense a blank check to undo in whole or in part many of the Civil Service laws in the U.S. Code. These provisions have been adopted over the past century to ensure that our Federal Government did not become a patronage system.

This bill goes well beyond the flexibilities that Congress gave the Homeland Security Department last year. Among other things, this bill gives supervisors complete discretion to set salaries and allocate raises. It removes the statutory requirement that layoffs be based on performance and seniority, rather than favoritism. It allows DOD to require employees to work overtime or on holidays and weekends without any additional pay. It denies employees their current right to appeal unfair treatment to the Merit Systems Protection Board. And, it strips employees of their collective bargaining rights.

Now, the administration will say I've distorted what they're planning to do, but read their bill. After all, you've had it for 24 hours. Read that bill.

I would hope we would have order, Madam Chair.

Everything I've suggested is possible because this bill before us is a blank check. We don't know what the Defense Department is going to do. DOD is asking to be exempted from the Civil Service laws but isn't telling us what kind of personnel system it's going to adopt. Given the Bush administration's track record on Civil Service issues, there's no reason to think that DOD's new system will be a fair one. There's almost no reason to think that the new personnel system will be a good one.

Last month GAO issued a report summarizing its review of DOD's civilian strategic plan, presumably a blueprint for any personnel system that DOD might adopt. GAO found the plan to be completely lacking. That hardly inspires confidence for what DOD might do if we give them this enormous authority.

As I said at the full committee hearing last month, I believe that we should be considering Civil Service reforms, but this is not the way to do it. I urge my colleagues to slow down this runaway legislative train and give this bill more careful consideration.

Thank you, Madam Chair.

Mrs. DAVIS OF VIRGINIA. Thank you.

[The prepared statement of Hon. Henry A. Waxman follows:]

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INDEPENDENT

**Statement of Rep. Henry A. Waxman**
**Subcommittee on Civil Service and Agency Organization**
**Hearing on "Transforming the Defense Department: Exploring the Merits of the Proposed National Security Personnel System"**

**April 29, 2003**

Madam Chairwoman, I'd like to thank you for holding this hearing.

Without question, the Administration's proposal to rewrite the rules for civilian employees at the Department of Defense is an important issue and one that merits careful consideration by our Committee. That's why I was troubled to learn last week that the bill to exempt the Department from the civil service laws was to be rushed through the Committee tomorrow, just one day after the introduction of the legislation. The markup has now been delayed one day. That's helpful, but it's still not the right way to consider a piece of legislation that will directly affect almost 700,000 civilian employees at the Department of Defense and indirectly affect two million other federal employees.

At Volcker Commission hearing last month, I read a quote from Thomas Friedman, a columnist with the *New York Times*. Mr. Friedman's quote is worth keeping in mind, as we consider reforming the civil service system. Mr. Friedman wrote: -- Quote -- "[O]ur federal bureaucrats are to capitalism what the New York Police and Fire Departments were to 9/11 – the unsung guardians of America's civic religion, the religion that says if you work hard and play by the rules, you'll get rewarded and you won't get ripped off. . . . [S]o much of America's moral authority to lead the world derives from the decency of our government and its bureaucrats, and the example we set for others. . . . They are things to be cherished, strengthened and praised every single day."

Unfortunately, the Bush Administration has hardly done its part to "cherish, strengthen, and praise" federal employees. Since day one of this Administration, there has been a relentless attack on the civil service. Federal jobs have been given to private contractors who are often unsupervised and unable to perform the jobs as efficiently or effectively. Attempts have been made to slash annual pay increases for federal employees. Financial bonuses have been given to political appointees, instead of career employees.

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This bill goes well beyond the flexibilities that Congress gave the Homeland Security Department last year. Among other things, this bill:

- Gives supervisors complete discretion to set salaries and allocate raises;
- Removes the statutory requirement that layoffs be based on performance and seniority, rather than favoritsm;
- Allows DoD to require employees to work overtime or on holidays and weekends without any additional pay;
- Denies employees their current right to appeal unfair treatment to the Merit Systems Protection Board; and
- Strips employees of their collective bargaining rights.

The Administration will say that I've distorted what they're planning to do. But read their bill. Everything I've suggested is possible, because the bill before us is a blank check. We don't know what the Defense Department is going to do. DoD is asking to be exempted from the civil service laws but isn't telling us what kind of personnel system it's going to adopt.

Given the Bush Administration's track record on civil service issues, there's no reason to think that DoD's new system will be a fair one. There's also no reason to think the new personnel system will be a good one. Last month, GAO issued a report summarizing its review of DoD's civilian strategic plan – presumably a blueprint for any personnel system that DoD might adopt. GAO found the plan to be completely lacking. That hardly inspires confidence for what DoD might do if we give them this authority.

As I said at the full Committee hearing last month, I believe that we should be considering civil service reforms. But this is not the way to do it. I urge my colleagues to slow down this runaway legislative train and give this bill more careful consideration.

Thank you.

Mrs. DAVIS OF VIRGINIA. We will have order, please.

Thank you, Mr. Waxman.

Are there any other Members who wish to make an opening statement?

Ms. NORTON. If I may, Madam Chairwoman.

Mrs. DAVIS OF VIRGINIA. Ms. Holmes Norton.

Ms. NORTON. I appreciate this hearing, Madam Chairwoman; indeed I guess we ought to be grateful for this hearing. And if I may say so, Madam Chairwoman, I appreciate the careful way in which you laid out the agenda for the committee in the beginning of the session, and I recognize that you and Mr. Davis are under some pressure to move this bill in the way you are, and I regret that puts us all under pressure. I don't think this starts—this kind of fast track starts with this subcommittee or committee, but perhaps above your pay grade. But, the rest of us do have questions to ask, for example, why we are putting on a fast track huge changes unprecedented in 100 years for one-third of the civilian work force? We've got to ask the obvious question: What is the emergency? Because, nobody would move with this speed for this many Federal employees affecting this many operations of the Federal Government unless there were some palpable emergency.

Indeed I have to ask about the emergency in light of the fact that the DOD hasn't reformed itself yet. We are told that Mr. Rumsfeld wants the civilian part of the work force to be reformed. Well, should it be reformed before he's got in place the reforms he says he wants to make in the Department of Defense, especially since we are given security reasons for this action today?

I am not unsympathetic at all with necessary changes in the Department of Defense on both sides, military and civilian. In this region we lived through September 11. I think we'd have to be brain dead not to look at every part of the defense establishment after September 11 to see what should be changed. Moreover, I am particularly sympathetic with the notion that Mr. Rumsfeld espouses that he wants to move some of the support jobs now in the military to civilians, whether to contractors or to civilian employees, he says, because that would be less expensive. I say also because I do not think we can live through another major conflict where we snatch people out of their jobs in the Reserves and in the National Guard and send them abroad as we have with the consequences on their families and on their communities. All of this, it seems to me, should be on the table. But why should it be on the table with this speed, swept up so that it, in fact, gets no significant scrutiny?

Why are we ignoring the only precedent on the table, the big, fat Homeland Security Department model? Now, if you want to reform a big part of the work force, the first thing you would do, it seems to me, is reform a smaller part of the work force and see if that works—see what works and what doesn't. Whether it was intended or not, that's exactly what you might regard the Homeland Security Department, and yet, the ink is barely dry there, and this legislation goes beyond, in many respects, what the Homeland Security Department is allowed to do; this in spite of the fact that at a joint hearing with the Senate, the GAO testified that for pay performance alone, you had to have a credible and validated system

in place as far as GAO was concerned in order to avoid huge problems.

Moreover, I can't understand this fast track for another reason. Mr. Voinovich said at that joint hearing just a couple of weeks ago that bill wasn't going to go anywhere. He said the failure to have in place for—pay-for-performance, the credible system, meant that bill just wasn't going anywhere. He was the chairman of the Senate committee. Why do we rush things through the House, knowing full well that in this democracy it takes two to tango, and that the Senate, in effect, has already said this kind of reform needs to be slowed down until we have in place the predicates for reform?

One of the things I asked my colleagues to do is to ask themselves if a major business was to effect such a huge overhaul in its business, how would it do it? Would it, for example, bypass the only personnel experts on board? In this case the likelihood of bypassing OPM is great and, in fact, is allowed, and all for something vaguely called national security. Hey, wait a minute. We've lived through that word before. And one of the things we're not going to do is to allow that word to be impenetrable. National security should not be enough to throw up in the air the work force, yell out national security, and figure that everybody understands what you're doing. This is structural change of the government itself, and I believe you are putting the government at risk when you proceed recklessly without the kind of scrutiny one would expect even of a small part of the work force.

The waivers in almost half of the major chapters of section 5 that are allowed here are mind-blowing, that you could waive all the due process and appeal rights, all the collective bargaining rights. Well, what kind of government are you trying to create? In whose image? In part or in full, six other chapters that were not waivable in the Homeland Security Act are waivable here. You could do reductions in force not only setting aside tenure, but setting aside efficiency and performance rating? Well, then, how are you going to do the reduction in force? What standard are you going to use? It's not time on the job, it's not efficiency, and its not your performance rating. This sounds like a cruel joke, and I think that whatever is pressing it needs to have somebody press the other way.

My own experience in government with a very troubled agency, obviously a microagency compared to the Defense Department, several thousand employees at the Equal Employment Opportunity Commission, was, however, that I had to change the agency at least as much, and I would grant you more, than you are trying to change the DOD because it had to be changed from the bottom up, every system tossed out and put in place. And my own experience tells me you don't do that from a blueprint. You do it from experience and experimentation. You work on parts of the system, shake out the problems, and then you go to larger and larger parts of the system.

We had to rebuild that agency. We had to move all the lawyers and the investigators who were in different parts of the country together. We had to move it from an expense litigation-oriented system that produced few remedies to a system based more on mediation and settlement, where the remedies went up, and, whereas we had a dozen different agencies, we took three in different parts

of the country until we were sure that we were not creating a problem greater than the problem we are trying to solve.

And this morning I am going to want a guarantee that you are not doing precisely that: creating in our military establishment a bigger problem than the problem we are trying to solve, because if you are doing that, my friends, you are putting the U.S. Government at risk.

Thank you, Madam Chairwoman.

Mrs. DAVIS OF VIRGINIA. Please, let's keep order so we can get to our witnesses here.

Are there any other Members who would like to make an opening statement?

Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Madam Chairwoman. I will be very brief because I know others have covered my concerns.

But first I'd just like to emphasize again and question the need to move ahead at such a rapid pace on something that obviously will affect so many lives and will set potentially a precedent for other agencies. So, I see no reason why we should rush through something that will affect over 700,000 civilians at the Department of Defense, many of whom are my constituents. Congresswoman Eleanor Holmes Norton raised many of these issues, and I want to associate myself with her remarks.

I also question the need to move forward at this time until we've seen the results of the experiment that the Congress just enacted a short time ago with respect to the new Department of Homeland Security. And it seems to me we need to see how that process works, how the changes in the personnel system in that Department work before we start a wholesale reorganization of another department.

So I don't want to prolong this. I want to get to the witnesses. I want to thank you, Madam Chairwoman, for the opportunity to make an opening statement.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Van Hollen.

I think since so many have said it that I need to make a statement with regards to the expediency in which we had to hold this hearing. I regret that we had to do it so quickly; however, unfortunately, if you notice, it is not a stand-alone bill. We are having the hearing on portions of the bill that are being marked up in Armed Services next week, and in order to make sure that we had a hearing under what I felt was the jurisdiction for this matter, we had to do it very quickly this week. And I do appreciate each one of you showing up today to hear our witnesses.

I ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record, and that any answers to written questions provided by the witnesses also be included in the record. Without objection, it is so ordered.

I also ask unanimous consent that all exhibits, documents and other materials referred to by Members and witnesses may be included in the hearing record, and that all Members be permitted to revise and extend their remarks. Without objection, so ordered.

It is the subcommittee standard of practice to ask witnesses to testify under oath, so if you will, Mr. Blair and Dr. Chu, if you will both stand, please.

[Witnesses sworn.]

Mrs. DAVIS OF VIRGINIA. Let the record reflect that the witnesses have answered in the affirmative.

Our first panel is here to represent the administration, and we're fortunate to have Dr. David Chu, the Under Secretary of Defense for Personnel and Readiness. We also have Dan Blair, the Deputy Director of the Office of Personnel Management.

Dr. Chu made it back from England just in time to be with us this morning, so we're delighted that you are able to be here to testify. You are recognized first for 5 minutes, Dr. Chu.

**STATEMENTS OF DAVID S.C. CHU, UNDER SECRETARY FOR PERSONNEL AND READINESS, DEPARTMENT OF DEFENSE; AND DAN G. BLAIR, DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT**

Mr. CHU. Thank you very much, Madam Chairwoman. I very much appreciate the opportunity you have given the Department of Defense and the Office of Personnel Management to provide this testimony this morning and to explain the authority we'd like to seek from the Congress.

We also want to thank the Congress for its earlier actions in giving the Department of Defense significant demonstration authority to conduct experimentation in alternative personnel systems over the last 20 years. The Department of Defense, as some here may be aware, currently has nine such demonstration projects operating. They cover 30,000 employees and specifically respond to the issue that I think Mr. Owens is concerned with.

There is a substantial base of long-standing, practical evidence about the kinds of change we would propose to make. Indeed, the OPM has independently surveyed our personnel. Its findings are contained in the Summative Evaluation for 2002 that looks at the response of the employees themselves over the course of those demonstrations. What that evidence indicates is that employees are more satisfied and, therefore, more productive as a result of the changes that have been made. That's also true if you look at OPM's most recent survey of the entire Federal Government, and you look at the employees who are in the demonstration projects as opposed to all other employees, and again you will find a higher level of satisfaction in our work force.

It is for this reason that a year ago, over a year ago, in March 2002, this Department began a review of the lessons learned from the 20 years of demonstration projects we have been running. Those lessons, as you indicated, Madam Chairwoman, are summarized in the April 2 Register notice, because the intent of the Department is, in fact, to utilize the authority Congress has given us on a broader scale that will largely apply to our acquisition work force.

One conclusion you can reach from that review is not only do these demonstrations point the way ahead to a much more effective Civil Service for the future, but that we would like the authority to extend those practices to the entire Department of Defense, and

to learn from those areas where the demonstration authority did not quite reach the level we might need, and to propose the additions that we have recommended in this larger transformation bill.

The questions that you have raised this morning in this subcommittee go to why we want this, and why we want this at this particular juncture in history. I think there is a single word that summarizes our case for change, and this is transformation; that is, the need to reshape American military forces to meet the needs of the early 21st century, the needs that were driven home to us on September 11, the needs that were driven home to us in operations that have taken place since then. We recognize that people are at the heart of the ability of the Department of Defense to perform, and it is the quality of those people, the rules under which they operate, that are essential if we are going to succeed in the future.

We view this as one force, a force of uniformed personnel, Active and Reserve, and a force of civilians, both civil servants and contractors. It must be a force that is agile; it must be a force that is responsive to fast-paced, changing circumstances in the world outside the boundaries of the United States.

We believe we have a good set of civil servants to a large extent despite the rules under which they have to operate, not because of those rules. That is, I think, underscored by the results of the Brookings surveys of a variety of Federal agencies last year, which alone among the Federal Government pointed to the Department of Defense civilians as being more mission-oriented and more satisfied a year after the first Brookings surveys were done. You think about the rules under which this Department operates. They really go back in their intellectual history to the late 19th century. As some others have observed this morning, they are often over 100 years old in their origins. The U.S. Government was a very different creature in that period. It was largely an administrative set of processes for which civil servants were responsible. The modern Defense Department, of course, dates from the Second World War when the United States emerged on the world scene as a great power. That's a very different set of mission responsibilities, and it is to that different set of mission responsibilities that the powers sought in this legislation are directed.

We need to move perhaps as many as 320,000 military billets from uniformed status to civil status of one sort or another. One of the principle reasons they are in military status today is that's a much more flexible set of work rules than characterizes the Civil Service. We'd like to consider the Civil Service as an alternative. We would not only wish to think about contract employees as the direction we should go. Likewise, we will, over the next 10 to 15 years, have to hire a new generation of civil servants to replace the roughly half of our work force that in that period of time will retire. And above all, we would like to meet the demands of our own employees, which have been reiterated in survey after survey, that the reward systems in the Department of Defense, like in other Federal agencies, should better reflect the actual performance of the employees, not simply their longevity.

This is, as some of you have noted, a bill that is very much oriented along the lines of the homeland security bill the Congress en-

acted last year. It does contain some new elements. Most specifically, we would like to commit to and we would like the statute authority to undertake national bargaining with our unions on human resource issues. At the moment under current statutes, we must bargain every issue on a local level. Let me give you an example of what that produces.

The Congress has properly been upset at the abuse of travel and charge cards by Federal employees. We are trying to get the right to garnish the salaries of employees who do not pay their travel card bill. We have 1,366 locals in the Department of Defense. The last administration began the process of that bargaining. We still have 200 locals to go in finishing that task.

But there are also important provisions in here that deal with our ability to hire more experienced workers, older Americans, if you will, to hire experts and to hire more promptly. In a word, we are ready to proceed, Madam Chairwoman, if the Congress is willing to give us the authority.

We believe we need a strong Civil Service in the Department of Defense as a matter of national security. We have 20 years of demonstration experience that backs up the proposals here that have been summarized, as you noted, in our April 2 Federal Register notice. We have over a year of in-depth review of that experience. We are ready to meet the kinds of criteria that the Comptroller General would set out as necessary for a successful pay-for-performance system. We seek your help in making sure the Department of Defense Civil Service is a model for the Nation and a model for the world. Thank you.

Mrs. DAVIS OF VIRGINIA. Thank you, Dr. Chu.

[The prepared statement of Mr. Chu follows:]

Statement of
The Honorable David S. C. Chu
Under Secretary of Defense for Personnel and Readiness

Before the
Subcommittee on Civil Service and Agency Organization
Committee on Government Reform
U.S. House of Representatives

On
Proposed National Security Personnel System of "The Defense Transformation for the 21st Century Act"

April 29, 2003

Thank you for your invitation to discuss our legislative proposal for a National Security Personnel System in the Department of Defense for civilian employees. We look forward to working with the subcommittee and the Congress in considering this proposal.

As I have discussed our personnel transformation proposals with Members of Congress, Congressional staffs, union representatives and interested parties I am asked a number of key questions. Why is DoD in such a hurry for enactment of this proposal? Are we truly ready? Have we used the flexibilities that Congress has already granted us? Have we tested and validated the flexibilities that we want to expand across the Department? Will this system be fair as well as flexible? How confident are we that this new approach won't crash on takeoff? Shouldn't we wait to see what the Department of Homeland Security does first?

These are legitimate questions. We believe we have good answers to them, and an established process for gaining the confidence of our workforce, its employee representatives, and the Congress in moving forward on this proposal. The answers are not academic. They are based on the reality of actually testing personnel management flexibilities for over 20 years in this Department and one full year of Best Practices studies. The proposed National Security Personnel System legislation is general authority to make change. The Best Practices Initiative is our plan to expand tested personnel flexibilities throughout the Department of Defense. I will refer to it later in my remarks.

Ultimately, the validity, credibility, effectiveness, and fairness of a personnel management system depend not just on the words passed into law, printed in

regulation, or distributed in policy. Those are essential and critical. But credibility of a new way of doing business depends primarily on the ideas behind the words and the people who are responsible for implementing them.

What is the guiding principle of the National Security Personnel System, or NSPS as we call it? It is national security. Our military forces have achieved stunning results around the world because they have a system of personnel management that allows them to perform jointly with precision, and agility. The same cannot be said for the current civilian personnel management system, a system that must support a much more joint and agile military management system. Instead, we have a civilian personnel management system in DoD that is fragmented, lacks clear performance signals, and is slow at hiring and task management.

The necessity for a National Security Personnel System goes beyond the general critique of civil service procedures for the Department of Defense. I can best explain this through the words of Mr. Lou Gerstner, the former Chief Executive Office of IBM. In his book, *Who Says Elephants Can't Dance?*, he wrote "I wanted IBMers to think and act like long-term shareholders – to feel the pressure of the marketplace to deploy assets and forge strategies that create competitive advantage. The market, over time, represents a brutally honest evaluator of relative performance, and what I needed was a strong incentive for IBMers to look at their company from the outside in....Nothing, however, was more important to fostering a one-for-all-team environment than a common incentive compensation opportunity for large numbers of IBMers....I had to have all these people thinking as one cohesive unit....I needed to convince IBMers they were better off working as a singular enterprise – one team and not separate fiefdoms. If I could not do that, my entire strategy for turning around the company would fail."

I am not trying to draw an exact parallel between DoD and IBM challenges, workforces, and institutions. But there are some common issues. The key issue, as I see it, lies in one particular line from Mr. Gerstner: "I had to have all these people thinking as one cohesive unit." In the creation of a DoD National Security Personnel System, we are trying to create a system in which people can *think* as one cohesive unit, and then *act*. To think and act cohesively – as we have seen to a stunning degree in the performance of our joint (Army, Air Force, Navy, Marine Corps, and Coast Guard) and combined (American, British, and Australian) forces in Iraq – can literally mean the difference between life and death.

We talk about cohesiveness by using the term "total force." The total force is composed of uniformed personnel (active, reserve, and guard) as well as civilians (federal employees and contractors). Defense civilians touch the Department's

mission to some degree. Some are deployed forward in combat zones. Others walk the hallways of the Pentagon. But, unique in government, DoD civilians form an integral part of an organization that has a military function. Our civilians must complement and support the military around the world in every time zone, every day. This requires a cohesive management system, one that can act with agility.

Let me be clear that I am not saying that national security is presently at risk as a result of the rigidity of the current system of federal personnel management and the chaos of stovepiped personnel systems and authorities with DoD. Our military performance is without parallel and the Defense civilian support is unquestioned. What is wrong is that our civilian employees have to labor under a system of management that stunts opportunity, minimizes rewards, and provides little incentive for risk-taking. Things are not going right when you have the following situations:

- Managers at the Defense Logistics Agency's distribution center in Pennsylvania were forced to disapprove virtually all leave requests for a six-month period due to turmoil created by reduction-in-force actions.

- Supervisors at Fort Riley, Kansas, which has a medical mission, had to send mammography cases to local hospitals while the installation advertised for a radiologist and assisted the person through the recruitment process. The recruitment started in January and ended in August.

- In the Iraqi theater of operations, only 1,500 of the 9,000 civilians supporting the effort are Defense civilian employees. The rest are contractors. We should have the flexibility to identify, deploy, and sustain more of our civilian workforce in these operations, when necessary.

There are other examples. The rigidities of the current federal personnel management system are well documented by the Office of Personnel Management in its white paper "A Fresh Start for Federal Pay: The Case for Modernization" and by the National Commission on the Public Service (popularly known as the Volcker II Commission) in its January, 2003 report, "Urgent Business for America: Revitalizing the Federal Government for the 21st Century."

The OPM report states that the "government asks its agency leaders to face new and unprecedented management challenges using an antiquated system. Work level descriptions in law that date back more than 50 years are not meaningful for today's knowledge-driven organizations....(The system's)

prescribed procedures and practices effectively precludes agencies from tailoring pay programs to their specific missions and labor markets."

The Volcker Commission says that the goal of each agency must be the same: "a commitment to designing a personnel system that best supports its own mission." The report quotes the Director of the Office of Personnel Management, Kay Coles James, as saying "that continued reliance on this antiquated system is comparable to insisting that today's offices use carbon paper and manual typewriters." We could not agree more.

The Congress has recognized these shortcomings by advancing the cause of flexibility and competitiveness in DoD civilian human resources management. Congressional action paved the way twenty years ago for the groundbreaking work in pay banding at the Navy's China Lake facility. The Congress also enacted the first federal program of separation buyouts that avoids the human and economic toll of reduction in force, authorized critical personnel demonstration projects in the defense acquisition workforce and in defense laboratories and testing centers, provided flexibility in paying for academic degrees, and created scholarships to attract, advance, and keep those with information assurance skills. The Department has some 30,000 employees covered by nine personnel demonstration projects. These innovations and experimentations over many years have demonstrated that a more flexible and collaborative system of human resources management, providing greater opportunity for employees and more responsibility for managers, can lead to greater productivity and improved morale that are critical to mission support. And, finally, as you know, the Congress enacted legislation that provides governmentwide authorities for greater personnel management flexibility for the Department of Homeland Security.

As a result of the flexibilities that Congress gave the Department, the Office of Personnel Management reported the following results from an assessment of science and technology laboratory demonstration programs:

- "As a result of pay banding, the laboratories can offer higher (more competitive) starting salaries than is possible under the General Schedule (GS) system."
- "(M)anagers…who had used (categorical rating) felt that it had improved hiring timeliness…and...provided a larger pool of qualified candidates….There was no significant difference in the percentage of veterans hired under categorical rating and the "rule of three.""
- "(R)egression analyses show that performance is becoming an increasingly important predictor of pay over time in the demonstration labs…. (performance and contribution) has become the strongest predictor of pay…(and)…tenure is no longer significant."

The Department faces a chaos of competing personnel systems and authorities. We have not waited for legislation to address the problem. Changes in the characteristics of our workforce, the challenges we face in the national security arena, and the competitiveness of the marketplace for talent, demand a strategic approach to managing our valued employees. We have tried to take strategic steps to address the problems in our system of personnel management. We have done so through our Best Practices Initiative. We started this project more than one year ago. Its purpose was to boil down the best human resources management concepts and practices from those in and outside of the Department of Defense.

The work of the Best Practices Initiative has been accomplished through working groups and an executive panel that represent both headquarters and field personnel from the acquisition, laboratory, and human resources communities. It has been a challenging process as any of the participants can testify.

We are in the process of discussing the work of this initiative with labor as well. It may be asked: why did we not engage labor at the outset of the effort if we wished to include them in the process? The answer is that we believed that having a more fully developed proposal would facilitate and focus dialogue. Additionally, labor was involved in the implementation of all of our existing demonstration projects from which Best Practices emerged.

On April 2, the first Federal Register notice was published announcing our intent to expand these flexibilities within the Defense laboratory and testing center community. We plan a similar Federal Register notice with respect to the defense acquisition community in the near future. To implement flexibilities beyond those communities would require legislative authority – the kind of legislative authority we now seek.

Two urgent concerns drove this legislation. The first is that the current industrial age civil service system is not agile enough to help us fight the war on terrorism and transform the Department. The second is that fragmentation of authorities and practices within the Department is costly in terms of strategic focus, corporate awareness of personnel challenges, competitive recruitment, timely retention, departmental mobility, automation requirements, administrative support, and manpower. Underlying the need for change is the need to retain core civil service values, to continue to accommodate veterans' preference, and to respect labor bargaining. We seek to fold the innovative practices used in our various demonstration projects and alternative personnel systems into a more joint, flexible, and expanded plan of civilian human resources management. The Department cannot continue to operate effectively or efficiently with the current civilian personnel management authorities. The Department must have an

enterprise-wide approach to personnel management that is not fragmented functionally and still provides flexibility to meet diverse requirements. We now operate under nine titles of the United States Code, orchestrate nine personnel demonstration projects covering over 30,000 employees, manage over 50 different pay plans, and support several alternative personnel systems.

I would like to go into some detail about the Best Practices Initiative. For it is here that I believe we can demonstrate readiness to implement personnel management flexibilities on a larger scale and in a manner that is balanced and fair.

Best Practices seeks to energize performance by providing greater rewards for employees and more responsibility and accountability for managers in making performance decisions. It ensures that no employee is harmed while converting to the new system of management. The Best Practices Initiative covers three areas: compensation, recruitment, and performance management. It remains within the boundaries set by Congress in the flexibilities already granted the Department in terms of pay and recruitment. Under compensation, the proposal includes pay banding, pay for performance, and revamped annual bonus and salary calculations. Under recruitment, the proposal would refer more candidates than the current "rule of three" allows while honoring veterans' preference, simplifying appointing authorities, and providing flexibility in hiring from colleges. Under performance management, the system would link pay to performance, provide a standard methodology for calculating awards, and provide flexibility to managers in weighting the common performance factors.

Under the Best Practices Initiative, candidates for DoD employment would see faster hiring, faster processing, greater opportunity, and more accountability. Employees would see conversion into the system without harm, job changes simplified, appraisals more meaningful, and rewards greater. Finally, managers would see management rewarded with significant supervisory adjustments, the ability to move employees to job assignments necessary for the completion of their mission, and greater accountability for fairly and clearly assessing performance.

It is often said that the devil is in the details, that best intentions may be overcome by wrongheaded implementation. We welcome scrutiny of the details of our implementation. That is why we think it is particularly useful that we have recently published the Best Practices in the Federal Register. One of the comments made about our pay for performance system was that supervisors will be the big winners in all this, as they are guaranteed substantially higher salaries than those they supervise, regardless of the jobs of the non-supervisory staff. That is untrue. In fact, supervisory pay adjustments are not guaranteed. They are not certain – management has the flexibility to pay up to a specified percentage. A

rating review board, mandated by our Best Practices model, has the additional authority to recommend to higher level management that supervisory pay be reduced or eliminated where supervisors are not managing their employers properly.

The Best Practices Initiative only covers the functional communities where we already have authority in statute. This could include as many as 150,000 employees. As a matter of ensuring our future national security, we need the authority to extend these Best Practices to the entire Department of Defense, and to add to them based on the lessons we have learned. Mission shifts and organizational changes demand increased management flexibility. Recruiting at job fairs requires expedited hiring authority. Employees who perform well like pay for performance. Without these new authorities, we will not be able to hire the replacement generation of federal employees as the current generation retires. We will not be able to reward the best performers properly and thus will not be able to attract the strongest performers in the first place.

Let me now describe in more detail the provisions of our proposed system.

NSPS provides broad legislative authority for establishing a new civilian personnel management system that is like that for the Department of Homeland Security, tailored to DoD. DoD is not abandoning the civil service. The legislation simply adds a new chapter – 99 – to title 5. The proposal preserves the time-honored and time-tested civil service principles of competitive selection; fair and equitable treatment of employees; equal pay for work of equal value; effective training and education that results in better individual and organizational performance; and protection against arbitrary and capricious actions and against reprisals for whistleblowing. We continue to value and respect veterans' preference in staffing actions. Those protections are explicitly recognized in the legislation. And we continue to respect the role of labor bargaining.

In general, NSPS differs from the Department of Homeland Security provisions in the following ways. NSPS is explicit in assuring that the Department will bargain with labor over the new system, and that such bargaining would occur at the national level. It provides a waiver to jointly prescribed regulations where the Secretary certifies that a provision is essential to the national security, subject to the direction of the President. In addition, it provides additional flexibility in staffing, pay administration, and training. Finally, NSPS would authorize various other flexibilities. In general, a flexible NSPS would balance principles of accountability and collaboration. Permit me to summarize its principle provisions.

Accountability. The system developed must comply with provisions in current law relating to political activity, oath of office, access to criminal history records

for national security and other purposes, the Ethics in Government Act, and the Inspector General Act. The Department is committed to the principle that employees of the Department are entitled to fair treatment in any appeals they may bring relating to their employment and will consult with the Merit Systems Protection Board before issuing any regulations.

Collaboration. As with the DHS law, the proposed section 9902 would ensure that labor representatives are engaged in the planning, design, and implementation of any new personnel management system. As with the DHS law, the Department would be required to consult with labor union representatives for at least 30 days, mediate differences over a 30-day period, and notify Congress of those differences and the reasons for proceeding before implementation. At the same time, DoD would ensure that bargaining with labor occurs, but at the national level, in order to facilitate an efficient and effective dialogue.

We wish to focus attention on the fact that this flexibility, which allows us to waive the provisions of chapter 71 of title 5, United States Code, is the same flexibility afforded the Department of Homeland Security. We could have left out the provision for national level bargaining. But we felt it was critical to reassure our union colleagues, their leadership and membership, that we intend to continue to work with unions in a collaborative manner. And, we wish to make clear that there is no interest or intent in eliminating the role of local bargaining units to bargain over issues that are local in nature. Local bargaining units have and will continue to have a valuable role to play.

Separation and Retirement Incentives. Proposed section 9902 would provide authority for the Department to offer Voluntary Separation Incentive Pay (VSIP) for both workforce reductions and restructuring. As a complementary piece, the Department would have the authority to offer Voluntary Early Retirement Authority (VERA). The Department has had authority to offer VSIPs since 1992.

Provisions Relating to Reemployment. Proposed section 9902 allows for reemployed annuitants to retain their annuity when they are employed in the Department. This provision has been used since the September 11th attacks to bring back key employees who are needed to keep programs operating. (This is also a comparability issue with the current military annuitant authority.)

Contracting for Personal Services. Proposed section 9903 would permit DoD to contract for personal services in several critical areas, including critical staffing support in overseas posts when the State Department is unable to provide such support, such as direct support to Combatant Commanders, Joint Task Forces, the United States Southern Command's Joint Task Force Bravo, the Navy's Counter-Drug Forward Operating Location in El Salvador, and the United States European

Command's Military Liaison Teams working to normalize relations with former Soviet Union countries in Eastern Europe, as well as to provide greater flexibility to the Secretary of Defense in obtaining the services of experts and consultants.

Highly Qualified Experts. Proposed section 9904 would authorize DoD to hire highly qualified experts for up to five years, with the possibility of a one-year extension, and to prescribe the appropriate compensation program. It is consistent with the authority now available to the Defense Advanced Research Projects Agency, similar to programs in the Transportation Security Administration and a highly rated program of the Internal Revenue Service as reflected in a study by the IBM Endowment for the Business of Government, "Modernizing Human Resource Management in the Federal Government: The IRS Model."

Older Americans Employment. Proposed section 9905 would authorize the Secretary of Defense to hire American citizens 55 years of age and older to work for the Department of Defense for up to two years, without a reduction in any retirement benefits, to fill needs that are not otherwise met by civilian employees. This provision will allow the Department to employ a key segment of the American population.

Overseas Pay and Benefits. Proposed section 9906 would authorize DoD to align the allowances and benefits of certain employees outside the United States with those of the Foreign Service and the Central Intelligence Agency. The Defense Intelligence Agency already has this authority.

Conforming Amendments. Finally, the proposal would realign various civilian personnel demonstration projects with the National Security Personnel System by repealing their existing authorities, including the projects covering the Naval Weapons Center, China Lake, California and the Naval Ocean Systems Center, San Diego, California, defense science and engineering laboratories and centers, and the acquisition workforce demonstration project, as well as special hiring and pay authorities currently provided to the Defense Advanced Research Projects Agency and the Military Departments for scientists and engineers. To prevent any negative impact on the personnel covered by these projects during the transition to the DoD-wide human resources management system authorized by the section, the Secretary of Defense would authorize each of these projects to continue in place under the authority of chapter 99 until the new system was established and implemented.

Implementation of a National Security Personnel System will require months of coordination, communication, training, orientation, feedback, and adjustment. We will work with the various Defense Components to ensure that implementation moves on a timetable that serves their missions and is helpful to employees.

The proposal for a National Security Personnel System is a step toward the managerial flexibility envisioned in the President's Managerial Flexibility Act. NSPS is a pillar in the Secretary of Defense's efforts to transform the way we fight and manage. The Secretary has rightly stated, "as we prepare for the future, we must think differently and develop the kinds of forces and capabilities that can adapt quickly to new challenges and to unexpected circumstances. We must transform not only our armed forces, but also the Department that serves them by encouraging a culture of creativity and prudent risk-taking. We must promote an entrepreneurial approach to developing military capabilities, one that encourages people to be proactive, not reactive, and anticipates threats before they emerge."

Let me conclude with another passage from Mr. Gerstner's book:

"For much of my business, it has been dogma that small is beautiful and big is bad. The prevailing wisdom has been that small companies are fast, entrepreneurial, responsive, and effective. Large companies are slow, bureaucratic, unresponsive, and ineffective. That is pure nonsense. Breadth and depth allow for greater investment, greater risk taking, and longer patience for future payoffs. It isn't a question of whether elephants can prevail over ants. It's a question of whether a particular elephant can dance."

We know this particular elephant, DoD, dances very well on the battlefield. With the help of Congress, we will ensure that this particular elephant can also dance very well in the office network.

Thank you again for this opportunity to appear before you. I will be glad to answer any questions you may have.

Mrs. DAVIS OF VIRGINIA. Mr. Blair, no stranger to this committee, has already testified before us twice, and we really appreciate it, and we thank you for coming today, and you're recognized for 5 minutes.

Mr. BLAIR. Thank you, Madam Chair, Mr. Davis, members of the committee. Thank you for including me in today's testimony and list of witnesses. I feel particularly privileged to join my colleague Dr. Chu from the Department of Defense to talk about ways for the Department to reach even higher levels of performance for their civilian employees.

These past few weeks and months we've been awed by the performance of those who serve in the uniform of our Nation, and we cannot thank them enough for their sacrifices that they have made. And so those sacrifices serve as an especially fitting backdrop for our topic today, and that's the Department's more than 635,000 civilian employees, civil servants in the finest traditions of American public force. They are a far less visible, but no less important component of the Department's awesome total force. They, too, perform magnificently in support of our troops, and indeed many were actually deployed in the Gulf. And these dedicated, rarely acknowledged, and sometimes maligned public servants deserve our thanks as well. They actually delivered.

Today DOD seeks legislation to transform the way it manages its civilian employees as it confronts the challenges of the 21st century. In doing so, we believe the Department's proposals represent another effort to provide badly needed human resources flexibilities so that a critical agency with a crucial mission can deliver results and secure the Nation.

The proposal is patterned after the landmark Homeland Security Act. The bill is intended to afford the Defense Department wide latitude to design human resources system tailored to its needs. It allows the Department and OPM to work collaboratively with the major DOD unions and rewrite many of the rules that govern DOD's civilian employees. DOD will be able to take its already successful efforts at broadbanding and pay-for-performance and extend them throughout the Department.

We find this truly exciting, and DOD can lead the way at changing the conversation from what the Director of OPM Kay Coles James has called what my pay increase will be next year to what my—excuse me—from what the pay increase will be next year to what my pay increase will be. We look forward to continuing our partnership with DOD as they pursue further innovations, along with the opportunity to continuing creating systems that adapt to changing conditions while maintaining merit, and that is something OPM is committed to. We take our responsibility to work with DOD and establish a new system through joint regulation very seriously.

Again, thank you for this opportunity, and I will be happy to answer any questions.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Blair.

The first question I have is for both of you, and I'd like to hear from you, Director Blair, first after I ask the question.

Last summer and fall administration officials declared at that time merger of two existing agencies with different personnel rules

and labor agreements necessitated the extraordinary flexibilities they were seeking for the creation of a new department. They said the new human resources management system it would create could be a model for the rest of the government. That new system was supposed to be created with stakeholders' input and oversight by Congress.

We haven't even seen a sliver of a new model at DHS as of yet, and we are being presented with an argument from DOD that we must now authorize the administration to proceed on its own with even greater delegations from the Congress. You already have a fully formed Department at DOD, and you just prosecuted a very successful foreign military expedition with thousands of support staff, both employees and contractors.

Wouldn't it be wise for Congress to wait and to see how DHS makes use of these flexibilities before we make similar changes that affect an additional over 600,000 Federal employees? How do you justifiy this legislation coming at this time, and don't just—please don't tell me a matter of national security, unless you can back that up with specifics that show me how national security is currently being harmed by the provisions of Title 5, like the chapter on training. And, Director Blair I'd like to hear from you first.

Mr. BLAIR. Well, let's remember the entity we're talking about. Last summer we were talking about a new department which was going to be comprised of 22 different agencies and departments, over 108 different subcomponents thereof. It definitely needed flexibility in order to bring itself together, and we are in the process of bringing about the design. We're working collaboratively, as Congress intended, with our union partners in this process.

The DOD is different. Dr. Chu just referenced that DOD was born after World War II, and it has 20 years of demonstration project experience. It has extensive experience in pay banding and pay-for-performance. They are two entities, and I don't think it's necessary at this point to wait for one entity to be up and running before we pattern DOD's reform proposals after a new department—after the new ones who will be taking place at a new department.

Mrs. DAVIS OF VIRGINIA. Secretary Chu.

Mr. CHU. My turn?

Mrs. DAVIS OF VIRGINIA. Your turn.

Mr. CHU. Thank you, ma'am.

First, as you yourself emphasized, this is already a fully formed department. We do have, as my colleague Dan Blair underscored, significant experience in the issues that are at stake here. In fact, we've been in consultation with our colleagues in the Department of Homeland Security to share with them the lessons that we have learned in these earlier demonstrations.

I think I also want to emphasize that the Department of Defense has an extraordinary reach of experience in personnel management. We do, after all, manage, under the jurisdiction of the Armed Services Committee on which you sit, the military personnel systems, which are even larger in character. We have 1.4 million reservists, 1.3 million Active Duty individuals. And I think most observers agree that this is done with great success, as we've seen in the current operations, and this is a tribute, I think, in the end to

the excellence of personnel management, the experience we bring to the table in this regard. I do think we can help lead here.

We believe we need to move forward because the transformation process, as a matter of urgent military need, should go forward.

Mrs. DAVIS OF VIRGINIA. Thank you.

Dr. Chu, your proposal would allow the administration to write and rewrite a lot of Title 5's personnel programs. The general idea would be that DOD and OPM would work together on the new rules. The two agencies would have to agree.

Here's my concern: When the two agencies don't agree, the Secretary could overrule OPM or might not even consult with OPM, effectively eliminating the current checks and balance systems if the Secretary declares it's essential to national security to regulate unilaterally.

The Department of Homeland Security does not have this power. The NSPS proposal provides that if the Secretary certifies that an issuance or adjustment is essential to national security, which, by the way, is not defined in the act, the Secretary can waive the requirement that the regulations establishing or adjusting a human resources management system be issued jointly with OPM, subject to the direction of the President.

In my experience, conflict is an inherent feature of bureaucracy, and any official given a way out of that conflict will be sorely tempted to take it. National security is almost broad enough to be meaningless as a way to constrain the Secretary of Defense, and, after all, we are discussing a national security personnel system. So what constitutes "essential to the national security?" What does "certify" mean. I mean, there's some holes in here that I need clarified that I don't find in the legislation.

Mr. CHU. First, Madam Chairwoman, let me emphasize, we intend to consult with our OPM colleagues. We have already done so. And, in fact, as I would emphasize, much of the design of this system derives from OPM studies and OPM's reviews, including OPM surveys of our demonstration project. So we ground our efforts really in OPM's intellectual leadership over the last many years.

To this specific provision—I think there are three reasons for the provision. First, as you yourself hint in your question, there is the issue of governance. There is a question here, I think, of whom does the Congress hold responsible for national defense, and I think the answer to that question is the Secretary of Defense. And as all good organizational principles argue, he or she needs to be vested with the authority necessary to carry out that responsibility.

Second, as you suggest, there will be, as a matter of practicality, situations where we disagree, and I think good public administration does not leave you with a tie. You do need some kind of tiebreaker, and that's essentially what this provision provides.

And finally, I think we all recognize, including OPM, that one size does not fit all. OPM's responsibility, as we all appreciate, is to represent the many different agencies in the Federal Government. Others from time to time will have a different set of needs and a different set of requirements than the Department of Defense. And what this structure does, is to provide an equitable way for Defense to proceed in a way that responds to the military needs of the country.

National security waivers, as people on this committee are aware, are scattered throughout the U.S. Code as something that we provide as necessary to defend the Nation's interests.

Mrs. DAVIS OF VIRGINIA. I'm going to have to move on to my colleagues, but I have a lot more questions for you if they don't happen to ask them.

I am going to move on now to my ranking member, Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Madam Chairwoman.

Dr. Chu, there has been a tremendous amount of conversation in the last several years about transforming or reforming the Civil Service System. My question is when DOD thinks of reforming the Civil Service System, are we equating that with improving the Civil Service System; and if so, for whom?

Mr. CHU. Yes, sir. I think we are focused on improvements. We want to make it better because we recognize it needs to be better for the Department to succeed.

I think there are two important ways in which this legislation would facilitate improvement; the first, to make it possible to hire promptly. We are not going to succeed in replacing the current generation of civil servants, to say nothing of the additional slots that might transfer from the military to civil status under current hiring procedures. It takes this Department an average of 3 months to hire someone, and as a practical matter—and I understand that from Mr. Blair, that we are better than many agencies in that regard. As a practical matter if you go to a college job fair, and you are sitting at the table, as our people do, and say, it'll be 3 months before we can let you know, and your competitor at the next table says, we'll tell you tomorrow, you can guess which offer the talented young man or young woman is going to accept. So speed of hiring, alacrity of hiring, is a key feature of what we would like to improve.

Second, we have been convinced by the experience at China Lake and at other demonstrations that pay banding as the pay construct, as the job responsibility construct for our Civil Service servants, is the preferred way to go, and we would need the authority in this statute in order to get to that result. It would allow us to be more competitive in the marketplace, allow us to adjust job responsibilities promptly as circumstances change.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. Blair, Director Chu has talked about expediency and the rate at which we move. During a recent staff briefing with DOD, they stated that it was forced to contract out for Iraqi translators because OPM was slow to respond to their request to expedite hiring foreign translators as civil servants. Given the nature of the question, it should have received top priority. Do you know how long it took OPM to turn around DOD's request?

Mr. BLAIR. I don't know what your staff was told by other staff. I do know that the Director of the OPM received this request, and we turned it around in approximately 5 working days.

Mr. DAVIS OF ILLINOIS. And so 5 working days——

Mr. BLAIR. In 5 working days, and I think that for the record, it is important to note that the request was to hire—was for the ability to hire noncitizens, which is really an extraordinary request

in terms of—from a governmentwide perspective. And we take our roles from a governmentwide perspective very seriously. But once we got the request, we turned it around quickly and promptly, and that's what we would like to show for the record.

Mr. DAVIS OF ILLINOIS. In your opinion, was that sufficient turnaround time?

Mr. BLAIR. I think given the situation it really was sufficient turnaround time. I don't think we would want to be giving advice and guidance on the hiring of noncitizens when other citizens might be available or when we would want to—or especially with, given our heightened security circumstances, we want to make sure that you can exhaust those other available sources such as citizens or working in other flexibilities. So I think we turned it around quickly and promptly.

Mr. DAVIS OF ILLINOIS. Dr. Chu, you talked about best practices and using the experiences and lessons that we have learned. Does OPM have a performance management system that provides safeguards against abuse of the system?

Mr. CHU. I think you will see, sir, in the April 2 Federal Register notice the kind of safeguards we would employ. This would not be just up to the immediate supervisor in terms of rewards. In would be—first of all, there would be criteria that would have to be established. There would be a restriction in terms of the range, the rewards and the fraction of the population that could receive them. There would be a board to review the awards actually made.

So we believe that safeguards to ensure that this is done fairly and well are in place in our proposal. We also believe that we've got a track record over these many years of doing this in a way that, as the OPM surveys demonstrate, leads to greater, often substantially greater, employee satisfaction than was the situation before they were under this kind of system.

Mr. DAVIS. Under the new system, what would be the process of appealing personnel actions for employees?

Mr. CHU. The details of that depend, of course, on the issue that's involved. We have tried to spell that out in our Federal Register notice. In terms of pay changes, they would, as I indicated, be subject to review by a more senior board. It would not be simply the decision of the immediate supervisor. That supervisor would make recommendations to that board constrained by the criteria I have just described. But ultimately the board would be the final arbiter of the performance award.

Mr. DAVIS. Given the fact that we're talking about 700,000 employees, have you determined how many pay bands there would be and what spectrums they would cover?

Mr. CHU. Yes, sir. We would propose to create five broad career fields. Within each of those career fields there would be four pay ranges approximately paralleling what you would view as the case in any work force. Let's say there's an entry level, there's a journeyman, there's an expert level, there's a senior level. In essence, the specific numbers differ depending upon the career field, reflecting real market conditions, and that is, I think, one of the great strengths of pay banding. This allows us to be much more competitive in the marketplace, to offer the kind of salary we need to get the talent the government requires.

So we have thought that all out. The pay ranges range, of course, across the GS–1 or GM–1 through GS–15 levels that we're talking about today. We, in addition, would be explicit in offering those who take supervisory positions additional pay for the supervisory responsibilities, which would be tied explicitly to that responsibility. In other words, it's not a lifetime endowment. It comes with the post. If you step out of the post, then you would surrender the supervisory pay.

Mr. DAVIS OF ILLINOIS. I see my time is up, Madam Chairwoman. I've got additional questions.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Davis. We may try a second round when we finish here.

Mr. Murphy.

Mr. MURPHY. Thank you, Madam Chairwoman.

I want to first ask perhaps Secretary Chu, I was reading in a GAO report, and I'll quote a line here. It said, for the most part the civilian human capital plans in our review did not contain detailed information on the skills and competencies needed to successfully accomplish future missions.

And there's other criticisms the GAO report has. Can you comment on that? I mean, it seems to be describing that it's not really a clear plan in place, and so, therefore, how can one set up clear determinations of what's needed for employees?

Mr. CHU. Yes, sir, I'm delighted.

The GAO report has the flavor, if I may so characterize it, of many such reports that state the issue as, is the glass half empty or half full? And, I think the first thing to note about the GAO report, which some of your colleagues have also cited, is that it congratulates the Department for actually having such plans in the first place. It then goes on, as you and your colleague have noted, to suggest how we could strengthen those plans.

We do have in the Department of Defense an extraordinary effort to identify specific skills and needs for the Department now and in years going forward. If the desire is to incorporate that material, which is quite voluminous, into the plan itself, that is a step we can take. It exists, and if preference is to have it be formally part of the plan, that is an easy step to conclude.

Mr. MURPHY. OK. I have a couple of other questions I want to squeeze in my 5 minutes. One has to do with understanding, and you could probably go on for hours about this, but understanding how employees are currently evaluated so that there is fair and accurate information to help them do their jobs better or to move on to another career if that's better for them. And, how do you propose changes be made that could accurately reflect that so that it will work efficiently for them and then turn over to the pay bands?

Mr. CHU. I think we all recognize that one of the weaknesses of the current system is that most of the rewards in the system are the result of longevity, not the result of performance. And the intent in the system going forward, should Congress agree, is to place the emphasis on performance, to reward high performance. That's something our own employees, not only in the Defense, but also in our government, complained bitterly about, that we do not reward high-performing employees, and as we go out and try to hire young

Americans right out of school, it's one of the things that they criticize us for, that we are not seen as a high-performing organization.

The intent in the future would be to establish criteria against which to measure the individual employee's performance that puts a heavy burden on the supervisors to be proactive in thinking through carefully how does the agency mission translate into what this particular employee needs to do, and how do I be specific to the employee in the terms of what would constitute a good performance outcome for John Doe or Jane Smith. It will be incumbent on the supervisor to counsel employees during the course of the performance period as to how he or she is doing so that the employee can make continuous corrections, so that the interchange at the end of the year is not a surprise to the employee. And that's really the spirit that we want to bring to the system, that this really is a matter of continuous evaluation.

Mr. MURPHY. Do you know any forms or manuals already outlining some of those things of how employees are currently evaluated and how specific changes would compound?

Mr. CHU. We do, and I think the best ones to give you are for the demonstration projects which already are ongoing. We'd like to share the material with you.

Mr. MURPHY. I appreciate that another issue that's been spoken about is the concern that this does not become a patronage system.

Now, I understand the Department's need perhaps to look for experts in various fields, and sometimes that is very time sensitive; you need to get into that immediately. But there's the concern that's been raised about patronage. Can you address if you share that concern, or if not, how you would work to prevent that?

Mr. CHU. We believe deeply in the Civil Service principles of merit and that the most meritorious individual ought to get the post. It is important to be able to hire experts, so-called "experts" and "consultants," in the language of the legislation, also so-called "highly qualified experts" in a little different category. We are seeking greater latitude to do that than the current law permits.

Part of what we're seeking really is to deal with an issue that the current statutes complicate, and that is how we make these individuals subject to the ethics and the conflict-of-interest provisions of U.S. law without turning them into government employees.

Under current law, the only way we have to do that is to make them government employees. For part-time expertise, that's often not the way you ought to go, but we still want them to be subject to ethics and conflict-of-interest provisions and, hence, the language that's in here on that particular subject.

Mr. MURPHY. Those are some of those folks you would hire for like 5 years.

Mr. CHU. The real—the right to hire people for 5 years, including older Americans, as my staff unkindly puts it—the intent here really is to advantage us in getting experts and consultants with the right expertise who are subject to the ethics and conflict-of-interest provisions without making them government employees. The so-called "highly qualified experts" in the words of the statute would be people who would be government employees.

Mr. MURPHY. Thank you.

Mrs. DAVIS OF VIRGINIA. Mr. Waxman, we're delighted to have you here today so feel free to ask some questions.

Mr. WAXMAN. Thank you very much, Madam Chairwoman.

Mr. Chu, you moved through very quickly and glibly the criticisms of the General Accounting Office, but they're important because if you look at the bill itself, the bill says the new system would be based upon the Department's civilian human resources strategic plan. And that plan was evaluated by GAO, and GAO found it would lack the elements found in a fully developed plan. I want to ask you about some of the specific criticisms.

On page 15 of the GAO's March report, they found that the DOD plan did not show mission alignment, meaning that the plan did not clearly show how the civilian work force contributes to accomplishing an organization's overarching mission. In other words, they said DOD does not know how its employees will help the Department accomplish its goals. That's a pretty incredible criticism.

On page 16 of its report, GAO found that DOD's plan did not reflect a results-oriented approach to assessing progress toward mission achievement. In other words, DOD was more focused on process rather than results, and this is somewhat ironic since one of the purposes of this bill is to give DOD the ability to pay its employees based on performance and results.

On page 15 of its report, GAO found that the DOD plan did not contain sufficient data about work force availability and its work force needs. In other words, DOD does not know what it has and what it will need.

Finally, on page 22 of its report, GAO found that the DOD plan did not address how the civilian work force would be integrated with military personnel and contractors, and given the importance of all three groups to the war effort in Iraq, as well as the administration's desire to outsource more jobs, I find it remarkable that DOD has not figured out how to coordinate civilian, military and contractor personnel.

So what we have now is a request by GAO to endorse a strategic plan—a request by DOD to endorse a strategic plan that the experts at GAO found deficient; and I'm asking myself why we should rush to endorse a plan rejected by GAO. You were asked that question by my colleague, and you said, well, they made recommendations and we can accept those recommendations; but it does not seem like you've done that.

For example, GAO suggested that DOD try to make its plan more results oriented, more focused on future work force needs, yet DOD only partially concurred in this recommendation.

That seems like a sensible recommendation. Why didn't you accept it completely?

Mr. CHU. I think, Mr. Waxman, if everything you asserted were true, we would not have just won the war in Iraq. The Department of Defense has a clear——

Mr. WAXMAN. We won the war in Iraq without this legislation; is that not correct?

Mr. CHU. We won the war in Iraq with a total force comprised of our military and civil components. We want to be sure our civil component in the years ahead, those who are employees of the Gov-

ernment of the United States, are ready and able to do the kinds of things that those future challenges require.

Mr. WAXMAN. I asked you a specific question, and why aren't you more results oriented and more focused on the work force needs?

Mr. CHU. I think if any department is results oriented, it is the Department of Defense.

Now let me, if I may, take the specific GAO criticisms. Again, if I may start with the headline, the GAO report basically says the glass is half empty, while also very graciously praising us for completing such a plan, noting it's the first one we've done and that it's a major step forward.

Mr. WAXMAN. Mr. Chu, excuse me please. You can see there's a yellow light. We only have a limited time. What you're saying in effect is, it's half empty rather than half full. GAO's criticisms mean that your plan is quite deficient. They have made recommendations. I'd like to know why you haven't accepted their recommendations.

One was on more results oriented. The other was to integrate military and civilian work force and take into account the role of contractors. And, GAO recommended this, but DOD rejected it.

Now, I guess what I'm trying to find out is why we should be rushed to adopt a bill that would allow you to fundamentally rewrite the Civil Service laws based on a plan that GAO says is deficient; and, after they made recommendations to correct it, you still haven't accepted their recommendations.

Mr. CHU. I don't think I said that, Mr. Chairman. I don't think the record shows that. Let me, if I may, walk through the three specific points you raised.

First, should there be a greater mission orientation in the plan, should the mission be called out in the plan? We don't disagree. I think every single civilian understands what the mission is and how his or her duties align with that mission. The GAO asks for a very explicit plan. We're delighted to do that.

Second, the GAO asks for more inventory data in the plan. We have massive amounts of inventory data. They are stored in computer files. There is an issue of what you want to put in the plan, which is a set of directions, a set of goals. Whether you put all that detail in the plan, I think, is a matter of formatting and how you want to present the information. We're delighted to share that information. GAO knows we have that information. I think people in this committee know we have that information. It's all there.

Third, I think that we agree with GAO that we want to make the criteria for its evaluation as results oriented as one can. That becomes a matter of how you best do that in each individual case. That's one of the things that I think we've got some experience with. We're proud of what we do in that regard, and we welcome the encouragement to do more of it.

Mr. WAXMAN. Just one last comment I'd make to you: If you're going to rewrite your plan, I think we'd be better off waiting to see what the rewrite is going to produce before we adopt Civil Service law changes that give you all this latitude to make the system comply with the plan that we haven't seen in its rewrite form.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Waxman.

Ms. Norton.

Ms. NORTON. Thank you, Madam Chairwoman.

Mr. Blair, do you believe that what is being proposed here for DOD should be implemented for the entire civilian work force of the Federal Government?

Mr. BLAIR. I think there will be many lessons that we can learn for the rest of the Federal work force.

Ms. NORTON. Sorry?

Mr. BLAIR. There will be many lessons that we can learn that will be applicable for the rest of the Federal work force.

Ms. NORTON. You would not say that we ought to put these recommendations in that we should apply these proposals, rather, to the rest of the civilian work force? Would you?

Mr. BLAIR. I think we are moving from a "one size fits all" to specific, agency-tailored plans, and so I wouldn't want to apply what we're doing from one agency in total on another.

Ms. NORTON. I'm glad to hear that since we're invoking national security as the reason for this. I don't expect to see these proposals in parts of the government where that is not the reason given.

Mr. Chu, in reading your testimony, I was intrigued by your rather extensive quotation from Lou Gerstner, the former CEO of IBM, who essentially you accept his philosophies, one, it should be applied here; I can understand in some respects why—and you quote him saying, nothing, however, was more important to fostering a one-for-all team environment than a common incentive compensation opportunity for large numbers of IBMers. And I was intrigued further, therefore, by what might seem a small item that represents a larger attitude.

Why, in light of this notion that people respond to compensation, would you propose to eliminate the requirement of chapter 55 that employees be paid overtime for working on Sunday? How in the world is that going to provide the kind of compensation incentive that would make people glad to rush forward to work for DOD?

Mr. CHU. I'm glad to clarify this issue, Ms. Norton, because in fact the reason for the language that you see is because some people who work in the overtime periods you have described actually are worse off under the present system than they should be. So, the language we're seeking there is so we can be fair and just to all our employees.

Ms. NORTON. Explain how you're worse off in getting paid overtime for working on a Sunday.

Mr. CHU. Because the way these rules work in terms of what the rates are going to be, it turns out for some employees you're actually worse off than you should be if we are working with a more modern system here, and that's what we're trying to seek with this legislative change.

Ms. NORTON. What you are saying is, this employee would make as much as he makes today and more by working on Sundays; he'd lose nothing from working on Sundays?

Mr. CHU. We have cases now where you actually get reversals under the current rules that we are seeking to correct with this legislative language.

Ms. NORTON. You need to clarify exactly under what circumstances an employee loses his rights under the civilian law to be paid for working on Sunday. That's the kind of thing you can

imagine, the kind of cynicism that will breed in employees who see that's one of the proposals.

You say, Mr. Chu, in your testimony that there were higher levels of satisfaction in your experiments. Did those in your experiments lose their collective bargaining rights?

Mr. CHU. No, and there's no proposal here for anyone to lose his or her collective bargaining rights.

Ms. NORTON. But there certainly is a proposal to waive collective bargaining rights under some circumstances, sir.

Mr. CHU. The proposal is designed to facilitate bargaining at the national level. That is the proposal.

Ms. NORTON. I've no idea what that means. I sense that the proposal is rather clear that chapter 5 collective bargaining rights could, under some circumstances, be waived. Do you deny that?

Mr. CHU. We are seeking the way the law's constructed, and at this point we need, in order to get the national bargaining we need, to waive certain elements of the current language in Title 5.

Ms. NORTON. These folks in your experiments did not have those collective bargaining rights. Did they lose anywhere any of their due process and Civil Service rights in your experiment?

Mr. CHU. Not that I am aware of, ma'am.

Ms. NORTON. Since they did not lose what your proposal says might be lost, one has to wonder about the value of the experiment.

Again, the important point about the experiment is that it be a true experiment from which we can learn. I note that in there were apparently 70,000 employees eligible; only 30,000 decided to take part. Do you have any better statistics than that?

Mr. CHU. Ma'am, I think you misunderstand the way these demonstration projects work.

The employees don't get to select them, unfortunately, because many more would like to be part of them. It's an administrative decision how many employees are covered by a particular demonstration. Indeed, the point of the April 2 Federal Register notice is to expand the demonstration program, and we anticipate further Federal Register notices that would use authority Congress has given us on this point to enlarge the demonstration program perhaps to as many as 130,000 to 150,000 employees.

Ms. NORTON. Thank you, Madam Chairwoman. I see my time is up. Thank you.

Mrs. DAVIS OF VIRGINIA. Thank you, Ms. Norton.

Ms. Watson, did you have any questions?

Ms. WATSON. Thank you very much for an opportunity.

In reading, briefly, the GAO summary, I am concerned about moving employees around and performance based. Can you explain to us what guarantees an employee has in the position in which he or she would be assigned? With this broad-based authority given, who has the bottom line, so to speak? Does the employee have protections or can the employee be moved or can the salary be adjusted if there is a performance base?

That is vague and unclear, and my interest goes to protecting employees' rights. Can you respond, please?

Mr. CHU. Glad to.

The whole point is—I think we all appreciate that the pay-for-performance system is that pay changes should depend on perform-

ance, and that is the spirit in which such a system would be administered.

Ms. WATSON. Could you yield for just a second? "Depend on performance," is that going into the position or is that while the employee holds that position the salary, the pay could be adjusted? I'm not clear on how that would work.

Mr. CHU. Let me try to clarify if I can.

There would, of course, be—as there is in any organization, when an employee comes in, a salary set. Changes to that salary would be based on one of two circumstances. First, if the duties are enlarged, you could in a pay-for-performance system, which is a little different from the way it works today, add to the employee salary in a more expeditious manner than is currently possible.

Under the current system, you have to rewrite the job description, recompete the position, which actually leads to some employees declining to be considered for expanded responsibilities for fear they won't win in the next competition.

Second, language on pay-for-performance pays out how benefits of this kind would work. Pay would change based on the annual performance review, and that review would determine what the pay change was.

Under the kinds of safeguards we have described in our April 2 Federal Register notice, which includes establishing the criteria clearly advanced, it includes an individual to review the post-pay changes so it's not just the jurisdiction of the supervisor.

Ms. WATSON. So as a followup, what I hear you saying is that we can advance forward.

Can we also reduce the employee's pay at the end of the pay period or the end of the evaluation, and if so, is there no protection—if you are employed at a certain salary annually and at the end of the review your salary is reduced, is there any protection that employee has to maintain the level on which he or she was employed?

Mr. CHU. There is the opportunity in this system—if an employee has performed so badly that a salary reduction is appropriate, there is the opportunity for a limited salary reduction in the pay for performance approach that we would recommend. The employee, of course, has a right to appeal that decision. I think we all agree that is not something that should be usual, that there ought to have been truly something lacking in the employee's performance. In other words, I think we all agree that if an employee has performed badly, a salary reward is not appropriate.

Ms. WATSON. Well, I think that rather than moving so quickly, I join my colleagues here on my left that—I think that you should look very, very intently at the GAO recommendation before you bring back a final proposal, because I think that some of these vagaries need to be more specifically indicated in the provisions.

Thank you.

Mrs. DAVIS OF VIRGINIA. Mr. Cooper.

Mr. COOPER. I thank the Chair. I wish I had been able to attend the first part of the hearing, but I just got late notice that we would be considering a subject of this dramatic importance because it's not every day we try to change the work rules for 600,000 people around here.

May I ask the Chair, we're scheduling a markup for this, for this Thursday?

Mrs. DAVIS OF VIRGINIA. Yes, Mr. Cooper. What I said earlier, and I'm sorry you were not here, is that I regret very much we had to do this hearing so hastily, but I also sit on the Armed Services Committee, which is when I found out that the portions that we're having a hearing on today is actually in the bill that is being marked up in the Armed Services Committee.

We were able to get the authority to bring this before this committee, which is where I believe the jurisdiction lies for this part of the bill. It is not a stand-alone bill. It is the bill coming before the Hawks, and we're marking it up next week, which is why we quickly had to do this hearing. And I regret we had to do it, but I am, on the other hand, quite glad that we were able to do it.

Mr. COOPER. Well, I'm all for preserving committee jurisdiction, but I worry that it will be at terrific cost to the livelihoods of some 600,000 individuals, because it's hard for me to understand how this committee could possibly do an adequate job given the short time available. Most Members aren't even in town today.

Mrs. DAVIS OF VIRGINIA. If the gentleman would yield, whether we hold this hearing and whether we mark it up in Government Reform or not, it will be marked up in Armed Services next week. This is the only way that we will get the opportunity to have our voices heard.

Mr. WAXMAN. Will the gentleman yield?

Mr. COOPER. Yes.

Mr. WAXMAN. I don't quite buy that threat. If our committee told the Armed Services Committee, this is within our jurisdiction and they'd better stay out of it, I think that would carry some weight. What I see is the Armed Services Committee being used as an excuse, and this committee is rolling along with it.

I agree with you, this is major, major change. We ought to be carefully examining it before we make such a radical departure from 100 years of Civil Service law.

Mr. COOPER. To reclaim my time, I appreciate the gentleman's point. As a member of the minority, it's perhaps easier to be thinking of voting "no," but I would worry for the majority because y'all are apparently going to be obligated to vote "yes" and essentially rubber stamp these changes.

Mrs. DAVIS OF VIRGINIA. If the gentleman would yield, I would not assume anything.

Mr. COOPER. Well, I know it's perilous to assume, and I'll turn my attention to the witnesses. I'm one of these Democrats that's open to personnel policy changes as long as there's proven cause, as long as we have a reasonable likelihood that they will actually work.

I understand the gentleman from California made the point earlier, quite eloquently, that the Pentagon seems to be working quite well these days. In fact, it seems to have worked quite well for the last 10 or 20 years, and to consider such radical changes at this point on such a thin or nonexistent record worries me greatly.

I understand you want a copy of the homeland security changes that were made. Of course, it's way too early to judge the effectiveness of those changes. I understand also that we do not have a de-

tailed list of changes that you want to make, so essentially this committee will be asked to vote on a pig in a poke, a list of raw, discretionary policies that the Pentagon would like to make that essentially force us to give you a blank check, which is a very unusual situation for Congress.

Where is the detailed list of recommendation? It's my understanding you haven't even discussed these changes with some of the union groups that are most directly involved; is that correct?

Mr. CHU. Let me, sir, if I may, briefly summarize my testimony since, as you indicated, you were not here at that time.

First of all, this is an evidence-based set of changes. We have, as you are probably aware, about 20 years of experience with demonstration authority that Congress has given us. We have currently nine such demonstrations ongoing in the Department of Defense that cover 30,000 employees; that's the size of a small Cabinet department by itself.

We've spent more than the last year reviewing what we call the "best practices" coming out of those demonstrations to try to see if we could propose a cohesive system to apply to the Department as a whole. We believe we have reached that conclusion. The detail that you're asking for is there in the April 2 Federal Register notice that is built on the authority Congress has already given us to extend these best practices to our entire defense laboratory community.

So we believe there is considerable evidence. That evidence is done by others; you don't need to take our word for it. One of the things I would urge everyone to read is OPM's extensive report on the Department of Defense's use of these demonstration authorities. It has extensive survey material that covers the attitudes of our employees, which I think all of you properly are concerned with—what's going to be the reaction of the employees to this, is this something they would endorse; and I think what these surveys indicate is that after a transition period, which typically does take 1 to 3 years, there is a higher, often much higher, level of satisfaction on the part of the employee work force than was true before.

That's the record on which we want to build, sir.

Now, we cannot, however, under current law do that for the entire Department. We can reach 130,000 to 150,000 individuals in DOD under current law with these kinds of changes. We'd like the authority to reach the entire Department with these kind of changes. We'd be a more effective Department if we could do so.

In reviewing the history of these best practice demonstrations, we conclude there are some other things it would be constructive to have. One of them, we think, is national bargaining rights. The other is a series of rights that would allow us to hire more, particularly for young individuals just coming out of school. We think we need to compete with the private marketplace.

Mr. COOPER. I'll do my best to do my own work in the short time allowed. May I ask one more question?

There's an interesting book, hardback, that's called Boyd in the Marketplace. It refers to a David Chu in that book. Are you the same David Chu listed in that book?

Mr. CHU. Could you give me the title again? There's a wealthy David Chu in Hong Kong, but unfortunately I'm not he.

Mr. COOPER. This is Boyd, Air Force colonel, someone who's very interesting, strategist, somewhat of a maverick within the Pentagon, and he apparently testified on the same panel with you many times, and it refers in the book to a David Chu. I just wanted to confirm that was in fact you.

Mr. CHU. I'm not sure which book you're referring to, sir. Therefore, it may be me, but I don't want to be too assertive on that point.

Mr. COOPER. I'll check.

I thank the Chair.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Cooper.

And I'm going to beg the other witnesses' indulgence, but given the fact that we don't have the time to give you our questions in writing and get the answers back for the record, since we're marking this bill up on Thursday, I still have a lot of questions, and I believe my colleagues do as well; so if the other witnesses would bear with me, I would like to have the opportunity to ask some more questions of the first panel.

Dr. Chu, I hate to go back to you on this, but I don't think you answered me the first time when I talked about national security being broad enough to be meaningful, and I asked you to explain to me what constitutes "essential to the national security" and also what does "certify" mean. Can you give me any definite definition on those two?

Mr. CHU. "Certify," of course, means the Secretary has to reach a formal conclusion, so it has to be a finding on his part that there is national security issue here. It cannot just be one of the staff imagining a problem.

National security goes to issues in which the ability of our military forces to carry out their missions would be harmed in one way or another if we were to reach a result different from that which such mission might require. And so ultimately this is tied to the military responsibilities of the Department of Defense.

Mrs. DAVIS OF VIRGINIA. No disrespect, but I think that could also be very broad, but I'll take that for the moment.

And I think one of my colleagues may have alluded to this, but I respect the law and I think you do, too.

Mr. CHU. Yes, ma'am.

Mrs. DAVIS OF VIRGINIA. But you're asking Congress to give the administration the ability to waive the law in several important ways. You've asked us for authority to change the statutory rules that apply to almost 700,000 people—for instance, the law on overtime pay, the law on training, the law on nepotism, the law on allowances, and so on and so on. This grant of authority would be permanent.

And in addition to those that Congress gave DHS for only a limited period of time, I want those almost 700,000 people to have the protection of the law like everybody else and to abide by the law's obligation; and, due to that, that includes you and the Department of Defense. We need to know what is wrong specifically, not generally, with these laws that would justify the authority that you're wanting us to grant DOD, and in my opinion, the burden is on the administration to give us these specific answers.

Do you have them now or can you get them to me like yesterday?

Mr. CHU. Let me try, if I may, ma'am, a first-round answer to provide additional material that would be helpful this week in time for your deliberations.

Mrs. DAVIS OF VIRGINIA. Our markup is Thursday, so tomorrow.

Mr. CHU. We will get it for you. Most of the waivers in our proposal are focused on those sections of the law that basically make it impossible to have a pay-for-performance system. That's the heart of much of what is being waived, and in order to get there, given the structure of the Civil Service law, you have to waive those provisions.

That—I recognize this is a complex way of doing this business. It is, however, part of our effort to keep this whole package within Title 5, as opposed to starting with a clean sheet of paper and writing everything down again in the way that a different system might be administered.

So the waivers are there so that we can get to a pay-for-performance system; in order to get there, you need waivers from these parts of the Federal statute.

Mrs. DAVIS OF VIRGINIA. If you could get a little more specific than that, I would certainly appreciate it. The whole proposal is full of phrases like "sole," "exclusive," "unreviewable discretion," "ought to be given to the Secretary of Defense and anyone he or she may wish to delegate that authority to." Is there some kind of hidden meaning there that I'm not aware of, and/or does it mean that the Defense Department will be able to have the liberty to act unilaterally and without oversight and review by Congress and the courts of this country?

And, maybe I'm reading too much into that, but I've read the articles in the newspaper how this Secretary wants less oversight. Is that where we're going with this?

Mr. CHU. No, ma'am, that's not our intention. We always operate with oversight of the Congress. I think you know that.

These are intended to facilitate the administrative process of actually putting in place—the system involved in some of this is to deal with various Federal regulations and how those proceed, so that we can move expeditiously if Congress should decide to give us this authority.

Mrs. DAVIS OF VIRGINIA. I hope you can answer me, Director Blair, on this one honestly and forthrightly.

What is OPM's position on the desirability of your office having no role, no role at all, on a number of matters involving a huge segment of the Federal work force?

Mr. BLAIR. Well, I would disagree.

Mrs. DAVIS OF VIRGINIA. I would hope you don't give me, to, "coin a phrase" here, a rubber-stamp answer because you have to support the administration.

Mr. BLAIR. Well, I would argue that we do have a substantive role. If you look at the legislation itself, it says that the Secretary may in regulations prescribe jointly with the Director. That is a substantive role to have. It's our understanding that based on assurances from the Department of Defense, there's no intention to cut out OPM from exercising any strategic oversight role. And I think it's also important to note that granting managerial flexibility is not inconsistent with the applications of the merit system

principles, transpreference protections against prohibited personnel practices or whistle-blower protections.

In granting flexibility, you need to balance out the needs for extensive—for appropriate oversight and for a continuing role for the President's chief human capital officer, and that's the office of OPM.

Mrs. DAVIS OF VIRGINIA. But in case of national security, you would be overruled and taken out of the equation; and, as yet, I do not have a real, specific, clear explanation of national security. And I'm not sure you can give me one, Dr. Chu. That's not a slam to your explanation. I'm not sure you can give one that's not so broad that when you're talking about the Department of Defense that you could pretty much say anything's a matter of national security.

Mr. CHU. If I may, Madam Chairwoman, let me try to answer the question in the spirit in which you asked it.

We view ourselves as partners with OPM in constructing this new system. We have benefited enormously in terms of trying to think through what might be the best way to proceed. The several significant white papers that OPM has created over these last 2 years, they are terrific, they point the way ahead; and one of the things they hammer away at again and again is the need to tie more of compensation to performance.

That is a key part of this proposal. So we are building OPM's foundation. We want OPM to be our partner. We intend for OPM to be our partner. We recognize there will be situations where we're going to disagree and the provision that you are asking about would allow the Secretary of Defense to break the tie in that circumstance. I don't anticipate that's going to happen frequently, and I suspect it's going to be over rather narrow, specific issues.

Mrs. DAVIS OF VIRGINIA. Thank you, Dr. Chu. But again, I'm agreeing with my colleagues on the right here. We're doing this so quickly and so fast that I cannot say that I am real comfortable.

Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you, Madam Chairwoman. Let me, if I could, ask the question you just raised a little differently.

Mr. Blair, in today's Washington Post a spokesman for Director James stated, that "Director James absolutely supports the administration's DOD legislation." Then it goes on to say that a professor of public administration from the University of Southern California is quoted as saying that "OPM would be weakened to the point where it would have no central personnel coordination with much ability to facilitate cutting edge progress in the field."

Are you testifying that the position or the role of OPM will not be weakened with this legislative enactment?

Mr. BLAIR. No, I think it would be entirely inaccurate if we try to characterize his proposal as anything but what it is. It is a significant proposal. We're talking about creating an independent system for the Department of Defense. It's a system covering 635,000 employees.

Is it going to impact governmentwide? Of course it is. And I think that we need to be honest in our approach on that.

Does DOD make the case they need managerial flexibility? Absolutely, absolutely they do, and they have 20 years of experience—

in their demonstration projects, in pay banding, in pay for performance—making the case that they need managerial flexibility.

OPM's role is evolving, and we will—this will make our role harder, more difficult in terms of exercise of oversight. It might, but making our role more challenging is not a reason to deny the flexibility to the Department of Defense.

I think that Congress needs to carefully look at the proposal, evaluate it and make sure—I mean Dr. Chu's testimony quotes from the Volcker Commission, and that report recommended agencies having tailored systems, and we endorse that. But that presupposes continued OPM-OMB oversight and that's something we think is important, and we think that can be consistent with this legislation.

Mr. DAVIS OF ILLINOIS. So we're going to put DOD in a class by itself; I mean, we're going to set it aside, it looks like to me, and put it in a class of its own.

Let me ask you, Mr. Chu, in your testimony, you quoted from the Volcker Commission; and the Volcker Commission report also states that what is clear is that a new level of labor management discourse is necessary if we are to achieve any serious reforms in Civil Service. The commission believes that it is entirely possible to modernize the public service without jeopardizing the traditional and essential rights of public servants; engaged and mutually respectful labor relations should be a high priority.

You stated that you did not engage labor in the development of this legislation because the dialog with the unions would be more focused once the legislation was complete.

And given the circumstances, being marked up by Congress, do you consider the process you described in your testimony as "engaging labor management in mutually respectful dialog?"

Mr. CHU. Sir, I think we need to go back to the foundations of this proposal.

The demonstration projects, which are the basis of our recommendations, have had extensive employee—and I would emphasize "employee"; this is not just a matter of labor union input, but extensive employee input. We've also taken very seriously what our employees have told us through their survey responses, both the surveys that OPM has done of the demonstration projects, the surveys that OPM did of the entire Federal Government just published, independent surveys by institutions like Brookings', and others' language. We listened to what our employees had to say. We ourselves personally spent time with our employees to understand what is of greatest import to them.

So this is a complex process of trying to listen to all the different voices out there, to try to hear what they're telling us. And what they're telling us and what the young people of the United States are telling us in terms of considering a government job is, they want this to be a high performing organization.

Mr. DAVIS OF ILLINOIS. I think what you're telling us is that you have not chosen to listen to labor at all because you decided not to include them in the proposal until after it's done.

I think, listening before the fact is far more effective than after the fact, because trying to change it once it's been done and accepted becomes very difficult. And I appreciate your position, but I

think it would have been more effective if it had been done up front, rather than after the fact.

And I thank you, Madam Chairwoman.

Mr. CHU. If I may, Madam Chairwoman, we have listened—if I may emphasize, we have listened to our employees and labor, which is different from labor unions. It is employee input, employee reactions that are the foundation of trying to decide what's the best way to proceed.

Mrs. DAVIS OF VIRGINIA. I'm going now to our ranking member of the full committee, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Madam Chairwoman.

As I understand, the whole purpose of this bill is that you think there ought to be a way to waive a lot of the rule of Civil Service in order to have a performance-based Civil Service system working at the Defense Department. Is that what this is all about?

Mr. CHU. Sir, I think where we start from is that we need a more flexible, more agile personnel system than we have under the current rules under which we operate most of the Department. In order to get there and to keep the structure of the system within Title 5, you have the somewhat complex language which has been the subject of this morning's debate.

But what I would emphasize is, the purpose, the end point here is the kind of flexibility of the hiring speed, kind of rewards performance that are embodied in our April 2 Federal Register notice. That's the end point that the statutory changes are designed to facilitate.

Mr. WAXMAN. Do you see any reason why what you're asking for should not be given to every other department of the Federal Government? They all want the agility, the flexibility, to develop a system that will not in any way impede them from getting to the best performance possible. And to do that, they may think they also should be able to waive the provisions of the law that have been in force for many decades that have hamstrung them.

Maybe Mr. Blair should answer that question. Why shouldn't every Department have the power that DOD's going to get?

Mr. BLAIR. I think that DOD is seeking some certain flexibilities that could be applicable governmentwide. Again—I think Ms. Norton asked that same question earlier—that would be, we'd have the same system for DOD and applied governmentwide; and my answer was, I think we need to more narrowly tailor it.

As far as hiring flexibilities go, I think—I was going to say with regard to——

Mr. WAXMAN. Rather than getting into details of this, because we know some of the details, and rather than go through them, you have an overall scheme here that allows the Department of Defense to waive not only the personnel provisions that were granted to Homeland Security, but in addition to that, 12 major chapters of Title 5 that have been developed over the past century to prevent Civil Service from becoming a patronage system, such as a performance appraisal system, a pay raise position classification system, collective bargaining rights, due process and appeals rights.

And then DOD, beyond that, wants to waive six other chapters that are not waivable in Homeland Security, hiring, examination,

reduction in force, training, pay administration, allowances. Then they want to also have the ability to bring people back, so they don't lose their pension, but they can work for the government at the same time. You can hire relatives, all sorts of things like that. Why shouldn't we have that for homeland security? If you have a tie between the Secretary of Homeland Security and OPM, which is an unusual notion to tie, why should not the Secretary of Homeland Security trump the OPM?

Mr. BLAIR. As you know, with Homeland Security, that was an extensively debated bill that went through the legislative process; and the final bill represented the administration's interests as well as the congressional—Congress' interests. I would expect that this legislation is going to go through the same process.

Mr. WAXMAN. Well, I'm asking you your position as we go through the process. Why not extend to Homeland Security all the provisions that you're willing to give up to the Department of Defense?

Mr. BLAIR. At this point, we don't think Homeland Security is in need of those other—those additional flexibilities at this time, especially since we haven't designed the system for Homeland Security.

Mr. WAXMAN. GAO is arguing that the Department of Defense has not designed its performance standards yet, and therefore we ought to wait until it comes up with a game plan for how it's going to achieve those performance standards before we give them blank authority to go out and start waiving all these rules.

Now, Mr. Walker testified, I believe, that a vast majority of Federal agencies do not have the infrastructure in place in order to effectively and fairly move to a more performance-based compensation system. And this is what bothers me. We're moving not nearly as rapidly as we did with Homeland Security where, you say, we had a thorough consideration; here we're given at least 2 days.

Now, I was also concerned, Mr. Chu, about this question of scrutiny. We're trying to give as much scrutiny as we can, but the bill we're considering expressly states that any personnel regulations promulgated by DOD would be internal rules of the departmental procedure. That language appears to be intended to exempt the regulations from public notice and comment requirements of the Administrative Procedure Act and, in a sense, taking away any public scrutiny. If you really look at public scrutiny while you are exempting your regulations from notice and comment.

Mr. CHU. Most of these provisions, sir, are parallel provisions in the Homeland Security Act that you cited earlier.

Mr. WAXMAN. So you just modeling what you're doing on what they did?

Mr. CHU. The basics—as I testified, sir, the basic structure of this bill follows the structure of the Homeland Security bill. There are some provisions that go a bit further than the Homeland Security bill, as my colleague, Mr. Blair has emphasized, in order the try to tailor it to the specific circumstances of the Department of Defense.

Mr. WAXMAN. Well, I don't—I'd like to know why the Department of Defense needs to say that hiring relatives or political favorites is an appropriate practice.

Mr. CHU. I don't believe, sir, that's what we've said, as I've tried to emphasize.

Mr. WAXMAN. Well, if you have the ability to waive chapter 31 that prohibits the hiring of relatives and political favorites, that means you have the ability to do it. Why should be able to waive that rule, for example?

Mr. CHU. As I have tried to explain, sir, we have tried, just as Homeland Security did, rather than write a new title of the Federal Code, to keep it within Title 5. In order to keep it in Title 5, given the extraordinary accretion of provisions over the decades in that code.

Mr. WAXMAN. Homeland Security did not waive this provision; this is now Department of Defense. Why does Department of Defense need that, and, while I'm asking, why does Defense need waivers from the rules and chapter 75 relating to the due process rights for employees subject to suspensions, to motions for dismissal? Are you saying it's OK to arbitrarily discipline employees without giving them due process rights?

The Homeland Security agency does not have that power to do what you were to have the power to do. What's unique about you?

Mr. CHU. The need here, sir, is, if we're going to have a system that indeed rewards performance, you do have to change some of the things—these are parts of title 5, which make it impossible to get to the conclusion I think most observers believe we should reach. We could have started with a clean sheet of paper, it might be easier to see how the protections are carried forward; but we did try very hard to keep this within Title 5, that was the intent here, and to follow as closely as possible the Homeland Security template.

Mr. WAXMAN. My time is up. I thank you, Madam Chairwoman.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Waxman.

Mr. Murphy.

Mr. MURPHY. A quick question first. Do you anticipate any cost savings from this reorganization 1 year, 10 years out?

Mr. CHU. This is not a cost-driven proposition. It is an effects-driven proposition. It's an effort to make sure that we have the kind of civil servants we're going to need in this Department in the years ahead. I would hesitate to estimate whether this will cost slightly more or slightly less; it's not intended to cost a lot more, but neither is it the intent to save money.

Mr. MURPHY. Thank you.

And, Madam Chairwoman, just a request: I notice on pages 7, 8, 9 10 of this bill there's extensive comments on information being sent back to Congress after conferring with labor representatives and getting that back to us.

I would hope that you and subcommittee Chairman Davis would also make sure that's done very promptly with some details, allowing us to comment on these things instead of getting a report and not being able to comment.

And with that, I yield back the balance of my time back to you.

Mrs. DAVIS OF VIRGINIA. I just want to go back, and Director Blair, when you responded to one of my colleagues here, I wrote it down so I could quote you.

You said, "We need to carefully look and evaluate this proposal," and I think that's where the rub is on this whole thing. You know, you said that we've really fleshed out the Department of Homeland Security. Well, the Department of Homeland Security went through four or five or six different committees, and they had four or five or six or maybe even more hearings.

This is it, guys, for this particular part of your bill. This is the only hearing. This bill will be marked up on Thursday in Government Reform; and the markup in Armed Services, there's no hearing, and that's where I think the real rub is coming from with some of us here.

I know my problem with it is that there's just so many questions that I'm not anxious to run forward and vote for something when I just do not know what it's going to do to approximately 700,000 people.

And pay for performance, Mr. Blair, you and I had a little discussion about the horse and the cart and the carrot. And, I know that you've had demonstration projects, Dr. Chu, but still, as we discussed, you do not want to put that carrot in front of that horse if that cart ain't hooked up right, and that's the scary part of this.

Mr. Blair, the proposal allows the Department of Defense to hire any retiree, pay him or her their full salary in addition to the annuity paid by OPM. This basically gives DOD a free hand to offer retirees their full salary combined with full annuity with none of the strict limitations that are part of the current governmentwide statute.

Don't you think this is going to present some situations where retirement-eligible employees anywhere in the government would be able to acquire, effectively, a pay raise equal to the amount of their annuity, 50 to 80 percent of their salary, and would also provide DOD with a remarkable recruiting advantage for highly experienced talent in other agencies?

Not saying that DOD does not need the talent, and they do; trust me, I probably support defense more than any issue on Capitol Hill—and, Dr. Chu, you know that—but I don't want to be unfair, and that's where my concern is on this particular issue.

It does not sound like a good, sound public policy to me to give that to DOD and not other folks. And how does OPM feel about that?

Mr. BLAIR. Let us remember what the trend has been on this that we currently have the authority on a case-by-case basis to waive the offset to the salary for reemployment of annuitants. I think it was 3 years ago Congress allowed retired military to collect their full pension and work for the government; before that, it was subject to an offset. So this seems to be part of the continuum of recognizing that we need to bring people back into service who have worked for the government.

Mrs. DAVIS OF VIRGINIA. Why not make it governmentwide?

Mr. BLAIR. That's an interesting question, and I think at this point, we'd like to look to see how this proposal would work. Remember that OPM's a steward and has a fiduciary rule with regard to the Civil Service Retirement and Disability Trust Fund, and we carry out those responsibilities with quite a bit of gravity and we look at these proposals with a sharp eye to make sure that it's not

going to add—what we wouldn't want to do is add to the unfunded liabilities or create unintended consequences for what could be a very good and sound proposal.

I think that we want to see what kind of experience we have in this before we extend it governmentwide, but I would defer to my colleague for the specifics with regard to why his needs would be in the DOD work force in bringing back annuitants.

Mrs. DAVIS OF VIRGINIA. Is this going to affect the retirement fund?

Mr. BLAIR. It should not at this point other than you might have more people retiring early in order to get the salary.

Mrs. DAVIS OF VIRGINIA. I would.

Dr. Chu, do you have any comment?

Mr. CHU. I thank you, Madam Chairwoman. I'd hoped to speak to this.

First, as I think you do know, these would be term appointments, basically; it's not open-ended.

Second, just as my colleague Mr. Blair indicated, this is a power we've already been given regarding retired military personnel who can be rehired without damage to annuity; and I think the record will show we have been careful in using that power. We have not abused that power. We actually keep in my office special indicators about that power to be sure we're being careful about that, and we would continue to manage any additional authority Congress gave us in just the same manner.

Third, and here's really the reason we want to do this: As everyone has underscored in other hearings, we are, throughout the Federal Government, facing a human capital crisis in the sense that up to half of the Civil Service, really over the next 10 to 15 years, is going to retire. We have not hired that replacement generation, and we are very concerned in the Department of Defense about all the experience that's in the minds of those people who are now going to leave the work force and who might be willing, on a limited term basis, perhaps not full time, but part time, to come back and help us with that transition, to serve as the mentors for the young people we intend to hire to replace them, to serve as the experienced hands who really know how the system operates.

I'm reminded in this regard of what happened in the New York City subway system when John Lindsey let everybody retire who was a seasoned mechanic, and what happened is, 3 years later, subway performance plummeted because not everything was written down in the technical manual; it was in the heads of those experienced workers.

And what we want is the ability to reach those workers on a limited basis so we can benefit from their knowledge, benefit from their wisdom and ensure the future security of the United States.

Mrs. DAVIS OF VIRGINIA. I do not disagree with you on that, but I do want to be fair; that's my big concern here.

My time is up and I'm going to go to Ms. Norton.

Ms. NORTON. Thank you, Madam Chairwoman.

Mr. Chu, I note that one of the proposals in the bill would allow a waiver of the rules, Civil Service rules, that require that reductions in force have to be based on tenure or on event of service or efficiency performance ratings. None of those would be required if

this rule were waived. It sounds, I think, to the average person like the very definition of arbitrariness.

Some of us really wonder how in the world race, a tremendous problem of the Federal Government for the entire history of our country, not to mention gender, ethnicity and other discrimination, is going to be also blocked if in fact we waive virtually every basis for reduction in force you use today. If not these, what in the world will we use to decide who to eliminate from the Federal Government?

Mr. CHU. Thank you. I'm delighted to respond to this because I think there's a serious misunderstanding here.

The reason for the waiver is, we can in fact make performance the primary basis of sorting through our work force if that sometimes does happen.

Ms. NORTON. But you have a performance management system in place according to the GAO. How would you measure performance, sir?

Mr. CHU. I do not think that's quite what the GAO said.

Let me first, if I may, deal with the waiver issue. The intent here is in fact to deal with what so many critics of the Civil Service have noted, which is that reductions in force today are driven almost entirely by tenure. They are almost invariably not with respect to performance.

I think everyone agrees that is backward, the emphasis needs to be on performance first. That's the purpose of the waiver, so we can get to that.

Ms. NORTON. Of course, Mr. Chu, the reason for that, and all of us would agree that the way to lay off people in the world you're talking about would be by performance, so why do people go to tenure?

But you, of course, would have waiver of performance ratings, as well. But, why do people go to tenure? They go to tenure because in the 100 years of Civil Service nobody's been able to come up with anything other than arbitrary ways to otherwise lay off people.

I would be the first one—I have run a troubled agency; I have seen what tenure can do. But for the life of us, Mr. Chu, maybe you're smart enough, but nobody's been able to come up with a system that is objective and that would not result in arbitrariness.

I want to know what in your system would keep us from arbitrarily laying off people who had in fact shown good efficiency or had good performance ratings in place of others who perhaps had not, particularly in light of the fact you do not have any performance management systems in place now, according to the GAO.

Mr. CHU. I don't think that's what the GAO quite said. Let me go to your central concern, which is, can the Department of Defense be fair and performance oriented in any reduction in force. And let me point to the great historical experience in front of all of us which I personally lived through, and that is, we shrank the Armed Forces, the uniformed force of the United States, by several hundred thousand people in the early years of the 1990's. And we did it with a non-tenure system. We did it with a system that was performance oriented.

I think this is a department that does know how to construct the safeguards we need in this regard, that does know how to manage a reduction in force, that is performance oriented and has done so on a scale that far exceeds anything that's at stake in this particular piece of legislation.

Ms. NORTON. I just want the record to show what you say; that's not quite what GAO said.

At the same time, these projects relate, and related DOD efforts involving less than 10 percent of DOD's civilian work force in expanding these concepts to the entire Department will require significant effort and likely need to be implemented in phases over several years.

Let me ask you, and try to make a distinction between labor and labor unions—frankly, I would never have asked this question without your answer.

You said we have not talked to unions, but we have talked to labor. You've got to find out who labor is. Are you saying that the workers you talked to, the workers in these projects, were not in unions.

Mr. CHU. No, I'm not saying that, ma'am; and I do not think I quite said we haven't talked to labor unions. We have had discussions with labor unions on a variety of these issues.

Ms. NORTON. And you have consulted with labor unions in the way that the law now anticipates?

Mr. CHU. I believe the question that was asked is did we invite the labor unions to participate in the design phase; and the answer is no, we did not invite the labor unions to do that. We did extensively, through a variety of means, listen to what our employees had to say about the system.

Ms. NORTON. Including representatives of labor unions.

Mr. CHU. To the extent they are our employees, of course.

Ms. NORTON. So you did talk to labor unions who have been——

Mr. CHU. No, we did not. I'm not trying to be semantic about this.

Ms. NORTON. It sounds that way, sir. I just wanted to know if you talked with the people who've been elected by the employees to represent them in labor management consultations.

Mr. CHU. As I testified, we drew this up based on a wide range of materials. We did not, however, undertake a formal consultation with our unions over the design of the system. That's an issue——

Ms. NORTON. So the answer is no. And we ought to, you know, you ought to say that. You haven't talked, you haven't consulted with your labor unions, and there's no way to slither out of that except to say you haven't done it. And the fact is that you are making these kinds of wholesale changes in your work force, and you expect them to be accepted and carried out by a willing work force. You must not have read closely the very private—the very private employer treatises you refer to in your testimony, because one of the reasons that American business succeeds, even when it did not have trade unions, is its understanding of the need to get work out of the only people who can do it, which is the people who work for you.

I just want to say one thing before I close out, Madam Chairwoman, and that is about the notion about no notice and comment.

The notion that we would attempt to do—that—the hubris, the outrage of attempting to affect this kind of large change without notice and comment is so reckless, so irresponsible, as to be completely unbelievable. When I came to the Equal Employment Opportunity Commission, it had interpreted the law to mean that it didn't have to under the APA do notice and comment. But I knew that I could protect myself best by, in fact, putting everything I was going to put into regulations out there to comment. Comments tell you—you can ignore 90 or 100 percent of them, but they tell you things you don't already know. The people who were most appreciative of my putting EOC under the APA was the business community, because they got to tell me things about how business has to operate in—under a law which requires equal employment opportunity, and whether or not what I was suggesting was practical or whether it was simply going to blow up in my face.

And, if I may say, about the worst thing in these proposals is this language which says we don't have to talk to anybody but ourselves; we don't have to talk to the Congress, we don't have to talk to the public, and we need only to gather in a room by ourselves. That is the way they do things in authoritarian societies. They don't do things that way in open democratic societies. And, that one section ought to be reason enough to turn back this proposal.

Thank you, Madam Chairwoman.

Mrs. DAVIS OF VIRGINIA. Can we have order, please? Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Madam Chairwoman. I do think what you gentlemen, what the administration's asking us to do here is extraordinary.

Mr. Chu, you mentioned the underlying purpose of this was to create more flexibility and agility. And those are great—they're great buzzwords. I mean, who can be against flexibility and agility, except when you turn to think about what exactly that means in practice? I mean, we have ethics rules that govern the Congress. It would make it a more flexible place if we got rid of them. Rules are in place to provide greater fairness. Rules are in place to protect, as Mr. Waxman said, against nepotism and political favoritism. So, no doubt about it,WE can give you greater flexibility and greater agility by throwing out all the rules and letting you do whatever you want. That doesn't mean you have a system that's more fair and a system that protects the American public. In fact, what this would allow, would it not, is any new Secretary of Defense could come in, you've given the power to the Secretary of Defense to rewrite the rules. Wouldn't that be allowed under this legislation?

Mr. CHU. This legislation does not really envisage the frequent rewriting of the rules.

Mr. VAN HOLLEN. Mr. Chu, let me just interrupt. I'm not asking what it envisions. I'm asking if that would be allowable under this legislation. If we pass it, doesn't it give the next Secretary of Defense the authority to essentially come in and create whatever new system they want to create?

Mr. CHU. This does give the Secretary of Defense flexibility, much as the country has given him flexibility on a wide variety of other issues. It is not without its safeguards. I think there are

plenty of procedural safeguards there, both in the administrative practice of the Federal Government and in the statutory language that is proposed. So I think there's plenty of opportunity—there's plenty of oversight opportunity for the Congress, which really is ultimately the chance to dialog with the American public about what's the best way to proceed.

Mr. VAN HOLLEN. Well part of what—part of the rules that exist today are the result of that dialog between the American public over a period of time. That's how they got there and that's why you're seeking to change them. And those were put in place over a long period of time. You're asking them to overturn them in a short period of time.

Let me just say I think one of the best measures probably is the performance of the Department of Defense as an institution, and both of you gentlemen have said that you consider it one force; that the military force together with the civilian force, one supporting the other, and they've done an excellent job. And I, as I think—as I understand the chairman of the committee said earlier, I think what we saw in the prosecution of this war in the Gulf is probably the best test of performance.

So, I do find the timing here a little strange, having gone through what by any measure, whether people supported the war, were against the war, or wanted to do it later, everyone agrees that the American military forces and the support that they received from the civilians at the Department of Defense was exemplary. So, I find it strange that at this particular point you'd be coming in and saying we need to change it.

Let me just ask—I would like to ask Mr. Blair a question because I thought we also had a great hearing between the House and the Senate committees, just a short period of time where we reviewed this whole question of pay-for-performance and review. And at that time, one of the key things that was raised by GAO and was raised by others was that in the Federal Government we do not have in place in many agencies a system now that we could use to, say, provide a measure against which we want to improve in terms of these performance systems. And, I asked Mr. Blair during that hearing and his testimony from that time, on page 7, we asked him to point out a couple of Federal agencies that had done well in terms of developing successful performance expectations of managers and strategic plans and mission objectives. The Department of Defense wasn't on that list. I mean, the two agencies he said made some progress in these areas were the Department of Energy and the Department of Labor. So I guess I'd ask you, Mr. Blair, why, if we talked about—we've talked about pilot projects, we talked about beginning small and seeing how it worked—and the two agencies you identified were not, you know, did not include the Department of Defense—why, if we want to really get going on this and get our sea legs, why would we start with one of the biggest Federal agencies in the United States Government?

Mr. BLAIR. Well, let's remember, that wasn't an exhaustive list.

Mr. VAN HOLLEN. I asked you, Mr. Blair, at that time, based on your testimony, for examples and you did not provide any others.

Mr. BLAIR. I provided those two examples and we can provide more. But that was not an exhaustive list. And keep in mind that

DOD does have 20 years of experience in pay banding which inherently has performance factors in it, along with other pay-for-performance fact—experimentation that have been going on in the Department. You come to a point where you realize it's no longer worth demonstrating; it's worth implementing, and if it's good for one component within the Department it may be good to spread it not only department-wide but governmentwide as well.

Mr. VAN HOLLEN. Mr. Chu, I'd like—I mean, I think you raised a point that I think all Members would agree on with respect to the importance of maintaining the expertise and the knowledge that we've accumulated over the years. And my question to you is, I'm sure that we can think of a way to safeguard that information to provide a mechanism where the Defense Department can retain the accumulated knowledge of its employees without the kind of wholesale immediate changes that we're talking about today. I mean, I'm sure that given your experience, if you were tasked with addressing that issue specifically, you would be able to identify ways of doing that without the wholesale changes you're talking about. And I wonder if you have any idea specifically on those issues how we could address those.

Mr. CHU. I think, sir, indeed the provision on what my staff keeps calling "older Americans,' is a narrowly targeted provision to deal with this question of human capital and the great human capital shift that is about to occur, and so it is a term appointment. There is a limit to how long an individual could hold this appointment. It mirrors the decision by the Congress several years ago, as Mr. Blair testified, to allow military annuitants to work for the Federal Government without damage to their annuity.

I think what we envisage, frankly, is that these will often be part-time situations. They are opportunities for us to keep as mentors, as guides for the new generations, great figures of the present generation.

Mr. VAN HOLLEN. Thank you, Madam Chairwoman.

Mr. OSE. Thank you, Mr. Van Hollen. And you gentlemen have been very patient, as have our other witnesses. I want to thank you, but I do want——

Mr. COOPER. Would the Chair allow me?

Mrs. DAVIS OF VIRGINIA. Oh, I'm sorry. I thought you left. Mr. Cooper, I didn't see you come back.

Mr. COOPER. It's just like a bad dream.

Mrs. DAVIS OF VIRGINIA. No, you're fine. I just didn't notice you when you came back. I apologize.

Mr. COOPER. I'm pretty moderate and I think I'm slow to anger, but this is a truly amazing hearing. I tried to review the testimony, the OPM testimony. It was actually fairly easy to review. And, I almost wondered, since it was so thin, why OPM bothered to submit it. I read the Washington Post this morning, and one critic called OPM a toothless chihuahua. I think we've heard the toothless chihuahua try to bark in that testimony.

I wonder if you're so willing to cede what one-third of your jurisdiction—why you don't resign in protest or why you don't, you know, have something more significant to say at a historic moment like this. And, by the way, where is the Director? You know, what is OPM there for? Maybe we should just go whole hog and repeal

OPM. You know, it is amazing to me to see so little response from OPM.

Mr. BLAIR. I think you've asked several questions that we could discuss for several hours. Let me start—it almost promotes a visceral reaction on my part when you say that where are we—I'll tell you where we are. This proposal should surprise no one. We've been talking about Civil Service reform for 20 years. We've been talking, we've seen over the past decade, agency by agency, first the banking agencies, then FAA, IRS, Homeland Security, all seeking flexibility from our current rigid rules. And every time they come up, people act surprised and say, we don't—you know, what's happening here?

I'll tell you what's happening here is that when we operate under 100-year-old rules, agencies no longer can adequately—not adequately; agencies chafe and find ways of going around and circumventing—not circumventing, but find ways of operating within the system that was not designed for the 21st century. So at OPM——

Mr. COOPER. If I can reclaim my time. I'm afraid the Chair has me on a very short leash. I might be of the canine variety, too. But we had very little notice of this. I think it was submitted to the committee April 10. I traveled with the Chair of the full committee for 3 days during the recess. He at no point mentioned this was going on. I am a studious person. I do try to do my homework. This is an appalling procedure.

As for Mr. Chu, as I say, I do try to do my homework and the Boyd book—and I realize that's just one reference; that book pretty systematically questions the credibility of a David Chu of the Pentagon who is—and this is a quick cite here, head of programs and policy at DOD. Would that be this Mr. Chu? You testified, I believe, either concurrently with a Mr. Spinney and a Mr. Boyd repeatedly, and you always denounced their testimony as historical and irrelevant, at least according to this one book. Now the book suggests that, sir, you were serious and systematically in error.

Mr. CHU. I think you are referring then to Colonel John Boyd, and you're referring in fact to my tenure as Director and later Assistant Secretary of Defense for Program Analysis Evaluation. I think that tenure gives the lie to the accusations Mr. Boyd makes, but Mr. Boyd obviously is a partisan to that battle. And yes, I did question the assertions that he and his colleagues were making.

Mr. COOPER. The conclusion of this book just—and I don't have the page number so excuse me: Boyd and Spinney were at the heart of the Pentagon reform effort that got squelched in large part by Chu.

So at least to some folks on this committee who are trying to do their homework, your credibility is in doubt at least on some Pentagon reform issues. Perhaps you're a genuine reformer on this issue. I hope so. I look forward to the full committee having the time to seriously look at this proposal. But if you have, in fact, been working on it for a long period of time, for us to be presented with it April 10 and be expected to vote on it, finally, forever, by what, May 1, this is a seriously flawed process if you believe in due process. And that's what some of us are wondering on this side, whether you believe in fair process for your own employees. And that's

a serious allegation, but this is a serious time when a proposal of this magnitude is brought up and expected to be rammed down our throats in short order.

That is not fair play. That is not what this country is supposed to be about, especially in view of the magnificent performance of the Pentagon and its troops working in a coordinated fashion in this most recent conflict and in most all recent conflicts. It's a seriously challenging time and I—it's little wonder there are so few members of the majority attending this hearing. They're embarrassed to be here and see this kangaroo court process go on. And I'm not a severe partisan. I've often voted with Republicans on issues. I'm not particularly close to organized labor. But this is appalling. And you are party to it again.

So, as I do my homework, hopefully, I will see other references to David Chu, but this is not right. And, I hope that we will see greater fairness and hopefully a more lenient schedule on the part of this committee, because again you're buying jurisdiction for this committee at the cost of this committee becoming a rubber stamp for an unfair process.

I thank the Chair.

Mr. CHU. Could I respond, Madam Chairwoman?

Mrs. DAVIS OF VIRGINIA. Yes, you may.

Mr. CHU. I think I would like to reassure you, sir, about the schedule. The schedule is not just one of weeks or months. As my colleague Mr. Blair has testified, it is a schedule of years. We are not the first to reach these conclusions, either within the Federal Government or outside it. The Volcker Commission, chaired by one of the most distinguished public servants this country has ever seen, has reached similar conclusions. We are in the spirit of those proposals.

Mr. COOPER. Has he endorsed your reform effort? You're using Chairman Volcker's name. Has he endorsed your legislation?

Mr. CHU. We have not asked him for endorsement but we have——

Mr. COOPER. Don't use his name unless you know you have his support.

Mr. CHU. I believe, sir, a fair reading of his report would indicate that this proposal is in the spirit of his report. And that is——

Mr. COOPER. Well, that's for him to judge, not you.

Mr. CHU. It's for all of us.

Mr. COOPER. If you want to be fair.

Mr. CHU. It's for all of us to judge. And what I want to emphasize is, as Mr. Blair has testified, this is the culmination of a long series of events in which the entire Federal Government wants to move forward. Our challenge is not just whether we won the last war. Our challenge is whether we'll win the next war, and that's why we need these powers.

Mr. COOPER. If this is the culmination of a long series of efforts, why are we given so little notice? I've attended every briefing I think the Pentagon's had. I've appreciated the meetings with Secretary Rumsfeld. He's done many things wonderfully well. But this was not mentioned in any form in which we could study it or chew on it or learn about it and we have duties as representatives of the American people to try to do the right thing, and to have orderly

procedures here so that we're not members of a kangaroo court expected to rubber-stamp whatever the latest administration whim is.

If you thought this proposal could stand the light of scrutiny, you would give the American people a full and fair opportunity to examine it and to do the right thing. But, you are systematically denying the American people that opportunity. Let's have hearings. Let's have the sort of scrutiny that other proposals have gone through, such as the homeland security proposal. But, this is not going to be eligible to receive that sort of scrutiny. You want to do this as quickly and as silently and as stealthily as possible. And, that leaves us with the only alternative, hoping and praying you're doing the right thing.

Mr. CHU. Sir, if I may respond.

Mrs. DAVIS OF VIRGINIA. OK. And the gentleman's time has expired but we'll let Dr. Chu respond.

Mr. CHU. I'll try to do so briefly, Madam Chairwoman. Thank you for the chance. The Secretary has been quite public in speaking to this issue for many months, about the need for reform. We are not trying to do this secretly or silently as you suggest. We are open about this. I have met with all manner of representatives of the public in terms of explaining why we need change and what kind of change we need. We welcome the scrutiny that you want to give this proposal. We think it is an excellent proposal and we need your assistance.

Thank you, sir.

Mrs. DAVIS OF VIRGINIA. I think Director Blair would like to say something.

Mr. BLAIR. Thank you, Madam Chair. Regarding the article in today's Post, if for argument's sake you wanted to accept the premise that—and I emphasize for argument's sake, you want to accept the premise that the purpose behind this is to get out from OPM rules, I think that argues against a toothless chihuahua approach that you just mentioned; that if in fact the purpose behind this is to get out of OPM, get out from under any kind of OPM oversight, it's because we exercise such oversight diligently. Now, I don't buy that proposal. I don't buy the proposal or the purpose behind that is to necessarily get out from OPM. I think the purpose is to—that the Defense Department truly believes that they need to have the autonomy to operate more efficiently.

That said, however, there is a role for OPM and the role for OPM is one that will be decided by this committee. And so I would argue that any type of legislative changes they go through do go through a process and you have the opportunity, and you have your input on that.

Mrs. DAVIS OF VIRGINIA. Thank you, Director Blair.

Dr. Chu, you prompted me to say something here and I'm just going to have to say it. No. 1, I think you can see that we all on this, I believe, that are here today are very concerned about the speed in which this has had to go through. And quite frankly, it's my understanding when I found out about it, that was going through Armed Services under Title 10 to bypass the jurisdiction of this committee. Now, I don't know if that was true or not. But you just said that you welcome the scrutiny of this change through

this committee. That said, would you be willing to pull it out of the DOD authorization bill and let it be a stand-alone bill and let us scrutinize it?

Mr. CHU. Ma'am that's not my decision to make.

Mrs. DAVIS OF VIRGINIA. Could you ask the Secretary?

Mr. CHU. Delighted to ma'am. I don't—I think we all know Mr. Rumsfeld. The same 3 weeks that Mr. Cooper cited, the 3 weeks it took our troops to get from the Kuwait border to Baghdad, he is not someone who is patient with a long, indecisive process. He is eager for the opportunity to reshape this Department in the way I think we all agree the country needs.

And that's the purpose of this legislation. It is, as you indicated, a much larger package, covers a whole variety of issues, including management and military personnel, which is a classic Title 10 issue. So, my expectation is the Secretary will press us all to consider moving forward. It's ultimately your question here in the Congress whether you're prepared to move forward. But we welcome——

Mrs. DAVIS OF VIRGINIA. Well, with all due respect, putting it on the DOD authorization bill does not give it the scrutiny that it needs because, as you know, those of us in Armed Services are looking at helping the military and the defense of our country. And it will probably fly through. But I'll see what I can do to try and fix it before it gets there, if that's possible.

I do appreciate both of you coming, and your patience, and thank you very much.

Mr. CHU. Thank you ma'am for the opportunity.

Mr. BLAIR. Thank you very much.

Mrs. DAVIS OF VIRGINIA. Mr. Comptroller General, I very much apologize to you for having to wait so long. Again, Mr. Comptroller General thank you so much. You know the drill.

[Witness sworn.]

Mrs. DAVIS OF VIRGINIA. Let the record reflect that the witness has answered in the affirmative and I'm just going to let you begin.

**STATEMENT OF DAVID M. WALKER, COMPTROLLER GENERAL OF THE UNITED STATES, U.S. GENERAL ACCOUNTING OFFICE**

Mr. WALKER. Thank you, Madam Chair, Mr. Davis, Ranking Member Davis, other members of the subcommittee that are here, I appreciate the opportunity to appear before you today to provide some observations regarding the Department of Defense's proposed National Security Personnel System which is included as part of the Defense Transformation for the 21st Century Act of 2003.

Madam Chairwoman, I'd ask that my entire statement be included into the record and I'll summarize key portions please.

Mrs. DAVIS OF VIRGINIA. So ordered.

Mr. WALKER. Thank you. The proposed Defense Transformation Act of the 21st Century represents a substantive legislative proposal that has both significant precedent-setting implications for the Federal Government and OPM, along with far-reaching implications for the way that DOD is managed. DOD's legislative initiative would, among other things, provide for major changes in civilian and military human management practices, make important adjustments to the DOD acquisition process, affect DOD's organiza-

tional structure, and change DOD's reporting requirements to Congress.

As per your request and Ranking Member Davis's request I will focus on the civilian personnel aspects. Many of the basic principles underlying DOD's civilian human capital proposals have merit and deserve serious consideration. The Federal personnel system is clearly broken in critical respects, designed for a time and work force of an earlier era, and not able to meet the needs and challenges of our current rapidly changing and knowledge-based environment.

DOD's proposal recognizes that, as GAO has stated and the experiences of other leading public sector organizations here and abroad have found, strategic human capital management must be the centerpiece of any serious government transformation effort. At the same time, we have a number of serious concerns regarding DOD's proposal that Congress should consider. Human capital reforms at DOD obviously have important implications for national security.

At the same time, given the massive size of DOD and the nature and scope of changes that are being considered, DOD's proposal also has important precedent-setting implications for the Federal human capital management area, in general, and OPM, in particular. As a result, DOD's proposal should be considered in these contexts. After all, DOD employs almost 700,000 civilian employees, making it the second largest civilian employer after the Postal Service.

As a result, the critical questions that in our view need to be asked include: Should DOD and/or other agencies be granted broad-based exemptions from existing law, and, if so, on what basis? And whether they have the institutional infrastructure in place to make effective use of the new authorities? This institutional infrastructure includes, at a minimum, a human capital planning process that integrates the agency's human capital policy strategies and programs with its program goals and mission and desired outcomes, the capability to effectively develop and implement a new human capital system, and, importantly, a set of adequate safeguards, including reasonable transparency and appropriate accountability mechanisms to ensure the fair, effective, and credible implementation and application of any new system.

Many of DOD's proposals are based on the Department of Homeland Security bill. However, unlike the legislation creating DHS, the Defense Transformation for the 21st Century Act would allow the Secretary of Defense to waive the requirement for joint issuance of regulations if in his or her judgment, it is, quote, essential to the national security, which is not defined in the act. While the act specifies a number of key provisions of Title 5 that would not be altered or waived, including those concerning veterans' hiring preference, merit protections, and safeguards against discrimination and prohibitive personnel practices, the act nonetheless would in substance provide the Secretary of Defense with significant independent authority to develop a separate and largely autonomous human capital system for DOD. DOD states that it needs a human capital management system that provides new and increased flexibility in the way it manages and assesses and compensates its employees.

As you know, there is growing agreement on the need to better link individual pay to performance. Establishing such linkages is essential if we expect to maximize the performance and assure the accountability of government for the benefit of the American people. As a result, from a conceptual standpoint, we strongly support the need to expand broadbanding approach and pay-for-performance based systems in the Federal Government. However, moving too quickly or prematurely at DOD or elsewhere can significantly raise the risk of doing it wrong. This could also serve to severely set back the legitimate need to move to a more performance and results-based system for the Federal Government as a whole.

Thus, while it is imperative that we take steps to better link employee pay to performance across the Federal Government, how it is done, when it is done, and the basis under which it is done can make all the difference in whether or not such efforts are successful.

In our view, the key need is to modernize performance management systems in executive agencies so that they are capable of adequately supporting more performance-based pay and other personnel decisions. Unfortunately, based on GAO's past work, most Federal personnel appraisal systems, including most of DOD's systems, are not designed to support a meaningful performance-based system at the present time. The bottom line is that in order to receive any additional performance-based pay flexibility for broad-based employee groups, in our view, agencies should have to demonstrate that they have modern, effective, credible and, as appropriate, validated performance management systems in place with adequate safeguards, including reasonable transparency and appropriate accountability mechanisms to ensure fairness and prevent politicization and abuse.

More specifically, Congress should consider establishing statutory safeguards that an agency must have to put in place before it could implement broadbanding on more performance pay authority.

At the request of Congressman Danny Davis, we developed a list of initial safeguards for consideration by the Congress that we believe would provide reasonable flexibility while incorporating appropriate safeguards to prevent abuse. We would ask that you seriously consider them.

In my view, Madam Chair, the effort to develop such safeguards could and should be part of broad-based expanded pay-for-performance authority under which a whole agency, DOD and otherwise, and or employee groups, could adopt broadbanding and move to a more pay-for-performance oriented system if certain conditions are met in advance.

Specifically, the agency would have to demonstrate and OPM would have to certify that a modern, effective, credible, and, as appropriate, validated performance management system with appropriate safeguards, including reasonable transparency and appropriate accountability mechanisms, is in place to support more performance-based pay and related personnel decisions before the agency could implement the new system; in other words, a broad base of authority that could cover DOD and other government agencies with these safeguards, where agencies would have to demonstrate in advance to the satisfaction of OPM that they have the

systems and controls in place; and when they do, they can move forward. Not just DOD, anybody. But you would have these standard safeguards that Congress would determine as being adequate to protect the interests of employees and to prevent abuse.

In this regard, we believe that the OPM should consider adopting class exemption approaches and should be required to act on individual certifications within prescribed timeframes, say 30 to 60 days. This approach would allow for a broader-based yet more conceptually consistent approach in this critical area. It would also facilitate a phased implementation approach throughout government and it would promote high-performing organizations throughout government in ways that would provide reasonable flexibility to management but incorporate adequate safeguards to prevent abuse of employees. Both are of critical importance. One without the other is not acceptable.

Congress should also consider establishing a governmentwide fund whereby agencies, based on a sound business case, could apply for funds to modernize their performance management systems and ensure that those systems have adequate safeguards to prevent abuse. This approach would serve as a positive step to promote high-performing organizations throughout the Federal Government while avoiding further fragmentation within the executive branch in the critical human capital area.

Madam Chair, that represents a summary of my statement. I would be more than happy to answer any questions that you or the other members of the subcommittee may have. Thank you.

[The prepared statement of Mr. Walker follows:]

United States General Accounting Office

GAO

Testimony
Before the Subcommittee on Civil Service and Agency Organization, Committee on Government Reform, House of Representatives

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# DEFENSE TRANSFORMATION

# Preliminary Observations on DOD's Proposed Civilian Personnel Reforms

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

GAO-03-717T

April 29, 2003

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# Highlights

Highlights of GAO-03-717T, testimony before the Subcommittee on Civil Service and Agency Organization, Committee on Government Reform, House of Representatives

# DEFENSE TRANSFORMATION

## Preliminary Observations on DOD's Proposed Civilian Personnel Reforms

### Why GAO Did This Study

DOD is in the midst of a major transformation effort including a number of initiatives to transform its forces and improve its business operations. DOD's legislative initiative would provide for major changes in the civilian and military human capital management, make major adjustments in the DOD acquisition process, affect DOD's organization structure, and change DOD's reporting requirements to Congress, among other things.

DOD's proposed National Security Personnel System (NSPS) would provide for wide-ranging changes in DOD's civilian personnel pay and performance management, collective bargaining, rightsizing, and a variety of other human capital areas. The NSPS would enable DOD to develop and implement a consistent DOD-wide civilian personnel system.

This testimony provides GAO's preliminary observations on aspects of DOD's legislative proposal to make changes to its civilian personnel system and poses critical questions that need to be considered.

www.gao.gov/cgi-bin/getrpt?GAO-03-717T.

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

### What GAO Found

Many of the basic principles underlying DOD's civilian human capital proposals have merit and deserve serious consideration. The federal personnel system is clearly broken in critical respects—designed for a time and workforce of an earlier era and not able to meet the needs and challenges of our current rapidly changing and knowledge-based environment. DOD's proposal recognizes that, as GAO has stated and the experiences of leading public sector organizations here and abroad have found strategic human capital management must be the centerpiece of any serious government transformation effort.

More generally, from a conceptual standpoint, GAO strongly supports the need to expand broad banding and pay for performance-based systems in the federal government. However, moving too quickly or prematurely at DOD or elsewhere, can significantly raise the risk of doing it wrong. This could also serve to severely set back the legitimate need to move to a more performance and results- based system for the federal government as a whole. Thus, while it is imperative that we take steps to better link employee pay and other personnel decisions to performance across the federal government, how it is done, when it is done, and the basis on which it is done, can make all the difference in whether or not we are successful. In our view, one key need is to modernize performance management systems in executive agencies so that they are capable of supporting more performance-based pay and other personnel decisions. Unfortunately, based on GAO's past work, most existing federal performance appraisal systems, including a vast majority of DOD's systems, are not currently designed to support a meaningful performance-based pay system.

The critical questions to consider are: should DOD and/or other agencies be granted broad-based exemptions from existing law, and if so, on what basis; and whether they have the institutional infrastructure in place to make effective use of the new authorities. This institutional infrastructure includes, at a minimum, a human capital planning process that integrates the agency's human capital policies, strategies, and programs with its program goals and mission, and desired outcomes; the capabilities to effectively develop and implement a new human capital system; and, importantly, a set of adequate safeguards, including reasonable transparency and appropriate accountability mechanisms to ensure the fair, effective, and credible implementation of a new system.

In our view, Congress should consider providing governmentwide broad banding and pay for performance authorities that DOD and other federal agencies can use provided they can demonstrate that they have a performance management system in place that meets certain statutory standards, which can be certified to by a qualified and independent party, such as OPM, within prescribed timeframes. Congress should also consider establishing a governmentwide fund whereby agencies, based on a sound business case, could apply for funding to modernize their performance management systems and ensure that those systems have adequate safeguards to prevent abuse. This approach would serve as a positive step to promote high-performing organizations throughout the federal government while avoiding fragmentation within the executive branch in the critical human capital area.

Chairwoman Davis, Mr. Davis, and Members of the Subcommittee:

It is a pleasure to appear before you today to provide our preliminary observations on the Department of Defense's (DOD) proposed National Security Personnel System (NSPS) included as part of the Defense Transformation for the 21st Century Act of 2003. As you know, DOD is in the midst of a major transformation and it has undertaken a number of related initiatives to transform its forces and fundamentally improve its business operations. As part of DOD's transformation process, the Secretary of Defense and senior civilian and military leaders have committed to adopt a capabilities-based approach to acquisition planning and to improve the linkage between overall strategy and individual investments. At the same time, DOD has embarked on a series of efforts to achieve strategic savings and improve its business processes, including financial management, support infrastructure reforms to include base closures, information technology modernization, logistics reengineering, and strategic human capital management. In that regard, I am pleased to serve as an observer to the Defense Business Practice Implementation Board. Notwithstanding these ongoing efforts, GAO has reported a range of DOD challenges for many years. In addition, DOD also is covered by several of GAO's governmentwide high-risk areas, including the area of strategic human capital management.

The proposed Defense Transformation for the 21st Century Act of 2003 represents a substantive legislative proposal that has both significant precedent-setting implications for the government and far-reaching implications on the way DOD is managed. Specifically, the critical questions are whether DOD and/or other agencies should be granted broad-based exemptions from existing law, and if so, on what basis; and do agencies have the institutional infrastructure in place to make effective use of the new authorities they are seeking. DOD's legislative initiative would, among other things, provide for major changes in civilian and military human capital management, make important adjustments to the DOD acquisition process, affect DOD's organization structure, and change DOD's reporting requirements to Congress.

As a starting point, and as agreed with the Subcommittee, today I will provide our preliminary observations on DOD's legislative proposal to make changes to its civilian personnel system. The proposed NSPS would provide for wide-ranging changes in DOD's civilian personnel pay and performance management, collective bargaining, rightsizing, and a variety of other human capital areas. The NSPS would enable DOD to develop and implement a consistent, DOD-wide civilian personnel system bringing

together the many disparate systems that exist today. The proposal, while providing a section-by-section analysis, does not provide an adequate justification given the significance of the proposed changes. In addition, it is my understanding that a document containing a fully developed justification for the proposed changes is not available. At the same time, it our understanding that DOD's current thinking is that NSPS will be based on the work done by DOD's Human Resources Best Practices Task Force. The Task Force reviewed federal personnel demonstration projects and selected alternative personnel systems to identify practices that it considered promising for a DOD civilian human resources strategy. These practices were outlined in a April 2, 2003, *Federal Register* notice asking for comment on DOD's plan to integrate all of its current science and technology reinvention laboratory demonstration projects under a single human capital framework consistent with the best practices DOD identified.[1]

Many of the basic principles underlying DOD's civilian human capital proposals have merit and deserve serious consideration. The federal personnel system is clearly broken in critical respects—designed for a time and workforce of an earlier era and not able to meet the needs and challenges of our current rapidly changing and knowledge-based environment. DOD's proposal recognizes that, as GAO has stated and the experiences of leading public sector organizations here and abroad have found, strategic human capital management must be the centerpiece of any serious government transformation effort.

Human capital reforms at DOD obviously have important implications for national security. However, given the massive size of DOD and the nature and scope of the changes that are being considered, DOD's proposal also has important precedent-setting implications for federal human capital management generally and should also be considered in that context. The critical questions raised are should DOD and/or other agencies be granted broad-based exemptions from existing law, and if so, on what basis; and whether they have the institutional infrastructure in place to make effective use of the new authorities. This institutional infrastructure includes, at a minimum, a human capital planning process that integrates the agency's human capital policies, strategies, and programs with its program goals and mission, and desired outcomes; the capabilities to effectively develop and implement a new human capital system; and

[1]68 *Fed. Reg.* 16,119-16,142 (2003).

importantly a set of adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, to ensure the fair, effective, and credible implementation and application of a new system.

Consistent with this view, we have long held that the first step toward meeting the government's human capital challenges is for agency leaders to identify and make use of all the appropriate administrative authorities available to them to manage their people for results, undertaken as part of and consistent with proven change management practices. Much of the authority agency leaders need to manage human capital strategically is already available under current laws and regulations. This includes the ability to develop modern, effective, and credible performance management systems that would support more performance-based pay decisions. The second step is for policymakers to pursue incremental legislative reforms to give agencies additional tools and flexibilities to hire, manage, and retain the human capital they need, particularly in critical occupations. The third step is for all interested parties to work together to identify, based in part on the experiences of the incremental reforms and demonstration projects, the kinds of comprehensive legislative reforms in the human capital area that should be enacted over time, taking into account the extent to which existing approaches make sense in the current and future operating environment.[2]

## Observations on Selected Provisions of the Proposed NSPS

With almost 700,000 civilian employees on its payroll, DOD is the second largest federal employer of civilians in the nation, after the Postal Service. Defense civilian personnel, among other things, develop policy, provide intelligence, manage finances, and acquire and maintain weapon systems. Given the current global war on terrorism, the role of DOD's civilian workforce is expanding, such as participation in combat support functions that free military personnel to focus on warfighting duties for which they are uniquely qualified. Civilian personnel are also key to maintaining DOD's institutional knowledge because of frequent rotations of military personnel. However, since the end of the Cold War, the civilian workforce has undergone substantial change, due primarily to downsizing, base realignments and closures, competitive sourcing initiatives, and DOD's changing missions. For example, between fiscal years 1989 and 2002, DOD

[2]U.S. General Accounting Office, *Human Capital: Building on the Current Momentum to Address High-Risk Issues*, GAO-03-637T (Washington, D.C.: April 8, 2003).

reduced its civilian workforce by about 38 percent, with an additional reduction of about 55,000 personnel proposed through fiscal year 2007. Some DOD officials have expressed concern about a possible shortfall of critical skills because downsizing has resulted in a significant imbalance in the shape, skills, and experience of its civilian workforce while more than 50 percent of the civilian workforce will become eligible to retire in the next 5 years. As a result, the orderly transfer of DOD's institutional knowledge is at risk.

These factors, coupled with the Secretary of Defense's significant transformation initiatives, make it imperative for DOD to strategically manage its civilian workforce based on a total force perspective which includes civilian personnel as well as active duty and reserve military personnel and contractor personnel. This strategic management approach will enable DOD to accomplish its mission by putting the right people in the right place at the right time and at a reasonable cost.

NSPS is intended to be a major component of DOD's efforts to more strategically manage its workforce and respond to current and emerging challenges. This morning I will highlight several of the key provisions of NSPS that in our view are most in need of close scrutiny as Congress considers the DOD proposal.

## Providing the Wide-Ranging Authority to Design a New Civilian Personnel System

The DOD proposal would allow the Secretary of Defense to jointly prescribe regulations with the Director of the Office of Personnel Management (OPM) to establish a flexible and contemporary human resources management system for DOD—NSPS. The joint issuance of regulations is similar to that set forth in the Homeland Security Act of 2002[3] between the Secretary of Homeland Security and the Director of OPM for the development of the Department of Homeland Security (DHS) human resources management system. However, unlike the legislation creating DHS, the Defense Transformation for the 21st Century Act would allow the Secretary of Defense to waive the requirement for joint issuance of regulations if, in his or her judgment, it is "essential to the national security"—which is not defined in the act. While the act specifies a number of key provisions of Title 5 that shall not be altered or waived, including those concerning veterans' preference, merit protections, and safeguards against discrimination and prohibited personnel practices, the

[3]Pub. L. No. 107-296, Nov. 25, 2002.

act nonetheless would, in substance, provide the Secretary of Defense with significant independent authority to develop a separate and largely autonomous human capital system for DOD.

The DOD proposal also has significant potential implications for governmentwide human capital policies and procedures and for OPM as the President's agent and advisor for human capital matters and overseer of federal human capital management activities.[4] In essence, the act would allow for the development of a personnel system for the second largest segment of the federal workforce that is not necessarily within the control or even direct influence of OPM. To strike a better balance between reasonable management flexibility and the need for a reasonable degree of consistency and adequate safeguards to prevent abuse throughout the government, Congress should consider making these provisions of the Defense Transformation for the 21st Century Act consistent with the Homeland Security Act of 2002, or at a minimum, providing some statutory guidance on what would constitute a situation "essential to the national security" that would warrant the Secretary of Defense to act independently of the Director of OPM.

## Implementing Pay Reform and Performance Management

DOD states that it needs a human capital management system that provides new and increased flexibility in the way it assesses and compensates its employees, and toward that end, we understand that in implementing NSPS DOD plans to strengthen its performance appraisal systems and implement pay banding approaches as core components of any new DOD human capital system. We have a long and successful experience in using pay banding with our analyst staff as a result of the GAO Personnel Act of 1980. Certain DOD components have had a number of years of experience with pay banding through OPM's personnel demonstration projects, authorized by the Civil Service Reform Act of 1978, to test and introduce beneficial change in governmentwide human resources management systems. For example, in 1980, the Navy personnel demonstration project, commonly referred to as the China Lake demonstration project, implemented a number of reforms including pay banding and a pay for performance system. More recently, the Civilian Acquisition Workforce personnel demonstration project (AcqDemo) was

[4]We discuss OPM's human capital leadership role in our report: *Major Management Challenges and Program Risks: Office of Personnel Management*, GAO-03-115 (Washington, D.C.: January 2003).

implemented in 1999 and created a pay banding system that covers part of its civilian acquisition, technology, and logistics workforce.[5] The expected results of AcqDemo's pay banding system include increased flexibility to assign employees as well as increased pay potential and satisfaction with advancement for employees. According to agency officials, an evaluation to OPM on AcqDemo's progress is scheduled to be available this June. Lastly, DOD's science and technology reinvention laboratory demonstration projects all implemented some form of pay banding and pay for performance. OPM reports that these reinvention laboratory demonstration projects have been able to offer more competitive starting salaries. Additionally some labs' turnover experience was significantly lower among highly-rated employees and higher among employees with lower ratings.[6] DOD's demonstration projects clearly provide helpful insights and valuable lessons learned in connection with broad banding and pay for performance efforts. At the same time these projects and related DOD efforts involve less than 10 percent of DOD's civilian workforce and expanding these concepts to the entire department will require significant effort and likely need to be implemented in phases over several years.

As you know, there is growing agreement on the need to better link individual pay to performance. Establishing such linkages is essential if we expect to maximize the performance and assure the accountability of the federal government for the benefit of the American people. As a result, from a conceptual standpoint, we strongly support the need to expand broad banding approaches and pay for performance-based systems in the federal government. However, moving too quickly or prematurely at DOD or elsewhere can significantly raise the risk of doing it wrong. This could also serve to severely set back the legitimate need to move to a more performance and results-based system for the federal government as a whole. Thus, while it is imperative that we take steps to better link employee pay to performance across the federal government, how it is done, when it is done, and the basis on which it is done can make all the difference in whether or not such efforts are successful. In our view, one key need is to modernize performance management systems in executive agencies so that they are capable of adequately supporting more

[5]U.S. General Accounting Office, *Acquisition Workforce: Status of Agency Efforts to Address Future Needs*, GAO-03-55 (Washington, D.C.: Dec. 18, 2002).

[6]U.S. Office of Personnel Management, *2002 Summative Evaluation: DOD S&T Reinvention Laboratory Demonstration Program* (Washington, D.C.: August 2002).

performance-based pay and other personnel decisions. Unfortunately, based on GAO's past work, most existing federal performance appraisal systems, including a vast majority of DOD's systems, are not designed to support a meaningful performance-based pay system.

The bottom line is that in order to receive any additional performance-based pay flexibility for broad based employee groups, agencies should have to demonstrate that they have modern, effective, credible, and, as appropriate, validated performance management systems in place with adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, to ensure fairness and prevent politicalization and abuse.

At your request Madam Chairwoman, and that of Senator Voinovich, we identified key practices leading public sector organizations both here in the United States and abroad have used in their performance management systems to link organizational goals to individual performance and create a "line of sight" between an individual's activities and organizational results.[7] These practices can help agencies develop and implement performance management systems with the attributes necessary to effectively support pay for performance.

More specifically, Congress should consider establishing statutory standards that an agency must have in place before it can implement broad banding or a more performanced-based pay program. As the request of Congressman Danny Davis, we developed an initial list of possible safeguards to help ensure that any additional flexibility Congress may grant for expanding pay for performance management systems in the government are fair, effective, and credible. We provided an initial list to Congressman Davis late last week. This initial list of safeguards was developed based on our extensive body of work looking at the performance management practices used by leading public sector organizations both in the United States and in other countries as well as our own experiences at GAO in implementing a modern performance management system for our own staff. We believe that the following could provide a starting point for developing a set of statutory safeguards in

[7]U.S. General Accounting Office, *Results-Oriented Cultures: Creating a Clear Linkage between Individual Performance and Organizational Success*, GAO-03-488 (Washington, D.C.: Mar. 14, 2003).

connection with any additional efforts to expand pay for performance systems.

- Assure that the agency's performance management systems (1) link to the agency's strategic plan, related goals, and desired outcomes, and (2) result in meaningful distinctions in individual employee performance. This should include consideration of critical competencies and achievement of concrete results.
- Involve employees, their representatives, and other stakeholders in the design of the system, including having employees directly involved in validating any related competencies, as appropriate.
- Assure that certain predecisional internal safeguards exist to help achieve the consistency, equity, nondiscrimination, and nonpoliticization of the performance management process (e.g., independent reasonableness reviews by Human Capital Offices and/or Offices of Opportunity and Inclusiveness or their equivalent in connection with the establishment and implementation of a performance appraisal system, as well as reviews of performance rating decisions, pay determinations, and promotion actions before they are finalized to ensure that they are merit-based; internal grievance processes to address employee complaints; and pay panels whose membership is predominately made up of career officials who would consider the results of the performance appraisal process and other information in connection with final pay decisions).
- Assure reasonable transparency and appropriate accountability mechanisms in connection with the results of the performance management process (e.g., publish overall results of performance management and pay decisions while protecting individual confidentiality, and report periodically on internal assessments and employee survey results).

The above items should help serve as a starting point for Congress to consider in crafting possible statutory safeguards for executive agencies' performance management systems. OPM would then issue guidance implementing the legislatively defined safeguards. The effort to develop such safeguards could be part of a broad-based expanded pay for performance authority under which whole agencies and/or employee groups could adopt broad-banding and move to more pay for performance oriented systems if certain conditions are met. Specifically, the agency would have to demonstrate, and OPM would have to certify, that a modern, effective, credible, and, as appropriate, validated performance management system with adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, is in place to support more performance-based pay and related personnel decisions before the agency could implement a new system. In this regard OPM

should consider adopting class exemption approaches and OPM should be required to act on any individual certifications within prescribed time frames (e.g., 30-60 days). This approach would allow for a broader-based yet more conceptually consistent approach in this critical area. It would also facilitate a phased-implementation approach throughout government. The list is not intended to cover all the attributes of a modern, results-oriented performance management system. Rather, the items on the list cover possible safeguards for performance management systems to help ensure those systems are fair, effective, and credible.

Congress should also consider establishing a governmentwide fund whereby agencies, based on a sound business case, could apply for funds to modernize their performance management systems and ensure those systems have adequate safeguards to prevent abuse. This approach would serve as a positive step to promote high-performing organizations throughout the federal government while avoiding fragmentation within the executive branch in the critical human capital area.

## Establishing Senior Executive Service Pay and Performance Management

The Senior Executive Service (SES) needs to lead the way in the federal government's effort to better link pay to performance. We have reported that there are significant opportunities to strengthen efforts to hold senior executives accountable for results.[8] In particular, more progress is needed in explicitly linking senior executive expectations for performance to results-oriented organizational goals and desired outcomes, fostering the necessary collaboration both within and across organizational boundaries to achieve results, and demonstrating a commitment to lead and facilitate change. These expectations for senior executives will be critical to keep agencies focused on transforming their cultures to be more results-oriented, less hierarchical, more integrated, and externally focused and thereby be better positioned to respond to emerging internal and external challenges, improve their performance, and assure their accountability.

Given the state of agencies' performance management systems, Congress should consider starting federal results-oriented pay reform with the SES. In that regard and similar to the Homeland Security Act, the proposed NSPS would increase the current total allowable annual compensation limit for senior executives up to the Vice President's total annual

[8]U.S. General Accounting Office, *Results-Oriented Cultures: Using Balanced Expectations to Manage Senior Executive Performance*, GAO-02-966 (Washington, D.C.: Sept. 27, 2002).

compensation. However, the Homeland Security Act provides that OPM, with the concurrence of the Office of Management and Budget, certify that agencies have performance appraisal systems that, as designed and applied, make meaningful distinctions based on relative performance. NSPS does not include such a certification provision. Congress should consider requiring OPM to certify that the DOD SES performance management system makes meaningful distinctions in performance and employs the other practices used by leading organizations to develop effective performance management systems that I mentioned earlier, before DOD could increase the annual compensation limit for senior executives.[9]

## Employees and Employee Organizations Involvement in Creating NSPS

The proposed Defense Transformation for the 21st Century Act includes provisions intended to ensure collaboration with employee representatives in the planning, development, and implementation of a human resources management system. For example, employee representatives are to be given the opportunity to review and make recommendations on the proposed NSPS. The Secretary of Defense and the Director of OPM are to provide employee representatives with a written description of the proposed system, give these representatives at least 30 calendar days to review and make recommendations on the proposal, and fully and fairly consider each recommendation. DOD may immediately implement the parts of the proposed system that did not receive recommendations or those recommendations they chose to accept from the employee representatives. While these provisions are designed to help assure that employees and their authorized representatives play a meaningful role on the design and implementation of any new human capital system, DOD does not have a good track record in reaching out to key stakeholders. In fact, it is my understanding that neither DOD employees nor their authorized representatives played a meaningful role in connection with the design of the legislative proposal that is the subject of this hearing.

For the recommendations from the employee representatives that the Secretary and the Director do not accept, the Secretary and the Director are to notify Congress and meet and confer with employee representatives in an attempt to reach agreement on how to proceed with these recommendations. If an agreement has not been reached after 30 days, and the Secretary determines that further consultation with employee

[9]GAO-03-488.

representatives will not produce agreement, the Secretary may implement any or all parts of the proposal, including any modifications made in response to the recommendations. The Secretary is to notify Congress of the implementation of any part of the proposal, any changes made to the proposal as a result of recommendations from the employee representatives, and the reasons why implementation is appropriate.

Although the procedures called for in the DOD proposal are similar to those enacted in the Homeland Security Act, the latter states explicitly the intent of Congress on the importance for employees to be allowed to participate in a meaningful way in the creation of any human resources management system affecting them. To underscore the importance that Congress places on employee involvement in the development and implementation of NSPS, Congress should consider including similar language as that found in the Homeland Security Act.

More generally, and aside from the specific statutory provisions on consultation, the active involvement of employees will be critical to the success of NSPS. We have reported that the involvement of employees both directly and indirectly is crucial to the success of new initiatives, including implementing a pay for performance system.[10] High-performing organizations have found that actively involving employees and stakeholders, such as unions or other employee associations when developing results-oriented performance management systems helps improve employees' confidence and belief in the fairness of the system and increases their understanding and ownership of organizational goals and objectives. This involvement must be early, active, and continuing if employees are to gain a sense of understanding and ownership for the changes that are being made.

## Attracting Key Talent

The legislation has a number of provisions designed to give DOD flexibility to help obtain key critical talent. Specifically, it allows DOD greater flexibility to (1) augment the use of temporary appointment authorities, (2) hire experts and consultants and pay them special rates, (3) define benefits for overseas employees, and (4) enter into personal services contracts for experts and consultants for national security missions,

[10]U.S. General Accounting Office, *Insights for U.S. Agencies from Other Countries' Performance Management Initiatives*, GAO-02-862 (Washington, D.C.: Aug. 2, 2002) and *Human Capital: Practices That Empowered and Involved Employees*, GAO-01-1070 (Washington, D.C.: Sept. 14, 2001).

including for service outside of the United States. Specifically, the Secretary would have the authority to establish a program to attract highly qualified experts in needed occupations with the flexibility to establish the rate of pay, eligibility for additional payments, and terms of the appointment. These authorities give DOD considerable flexibility to obtain and compensate individuals and exempt them from several provisions of current law. While we have strongly endorsed providing agencies with additional tools and flexibilities to attract and retain needed talent, the broad exemption from some existing ethics and other personnel authorities without prescribed limits on their use raises some concern. Accordingly, Congress should consider placing numerical or percentage limitations on the use of these provisions or otherwise specifically outline basic safeguards to ensure such provisions are used appropriately.

## Rightsizing and Organizational Alignment

The proposed Defense Transformation for the 21st Century Act would provide the Secretary with a number of broad authorities related to rightsizing and organizational alignment. These include authorizing the Secretary to restructure or reduce the workforce by establishing programs using voluntary early retirement eligibility and separation payments, or both. In addition, the Secretary would be allowed to appoint U.S. citizens who are at least 55 years of age to the excepted service for a period of 2 years, with a possible 2-year extension, subject only to certain provisions preventing displacement of current employees. The proposal also provides that annuitants who receive an annuity from the Civil Service Retirement and Disability Fund and become employed in a position within the Department of Defense shall continue to receive their unreduced annuity. This and selected other NSPS provisions will clearly have incremental budget implications for which we have not seen any related cost estimate. Furthermore, this and other selected NSPS provisions would create an unlevel playing field for experienced talent within the civilian workforce.

Authorities such as voluntary early retirements have proven to be effective tools in strategically managing the shape of the workforce. I have exercised the authority that Congress granted me to offer voluntary early retirements in GAO in both fiscal years 2002 and 2003 as one element of our strategy to shape the GAO workforce. However, given DOD's past efforts in using existing rightsizing tools, there is reason to be concerned that DOD may struggle to effectively manage additional authorities that may be provided. While DOD has used existing authorities in the past to mitigate the adverse effects of force reductions, the approach to reductions was not oriented toward strategically shaping the makeup of the workforce. We have previously reported that the net effect of lack of

attention to workforce shaping is a civilian workforce that is not balanced by age or experience, which risks the orderly transfer of institutional knowledge.[11] DOD thus may be challenged in using new authorities in a cohesive, integrated way that supports achieving mission results, absent a comprehensive and integrated human capital strategy and workforce plan.

In the past, OPM has managed its authority to reemploy an annuitant with no reduction in annuity on a case-by-case basis. The NSPS proposal, which broadly grants such treatment, raises basic questions about the intent and design of the federal benefits or total compensation of federal employees and obviates the importance of establishing an effective DOD partnership with OPM in prescribing the use of this authority. As noted previously, providing such authority only to DOD would provide DOD a competitive advantage in the market place that would place other agencies at a disadvantage. It would also involve incremental costs that have yet to be estimated. Flexible approaches to shaping the workforce, such as 2-year excepted service appointments, may be helpful in avoiding long-term commitments for short-term requirements, addressing transition gaps, and smoothing outsourcing strategies. At the same time, these authorities represent tools that are not effective on their own, rather they are elements that need to be developed into an effective strategy and aligned with program goals and missions.

The legislation could also allow DOD to revise Reduction-in-Force (RIF) rules to place greater emphasis on an employee's performance. DOD has indicated that it will be considering for application DOD-wide, personnel practices that were identified in the April 2, 2003, *Federal Register* notice. This notice describes revised RIF procedures that change the order in which employees would be retained under a RIF order. Specifically, employees could be placed on a retention list in the following order: type of employment (i.e., permanent, temporary), level of performance, and veterans' preference eligibility (disabled veterans will be given additional priority), which we note would reduce the order in which veterans' preference is currently provided. While we conceptually support revised RIF procedures that involve much greater consideration of an employee's performance, as I pointed out above, agencies must have modern, effective and credible performance management systems in place to properly implement such authorities.

[11]U.S. General Accounting Office, *Strategic Approach Should Guide DOD Civilian Workforce Management*, GAO/T-GGD/NSIAD-00-120 (Washington, D.C.: Mar. 9, 2000).

## Establishing Employee Appeals Procedures

The proposed NSPS would allow the Secretary, after consultation with the Merit Systems Protection Board (MSPB), to prescribe regulations providing fair treatment in any appeals brought by DOD employees relating to their employment. The proposal states that the appeals procedures shall ensure due process protections and expeditious handling, to the maximum extent possible. In this regard, the proposal provides that presently applicable appeals procedures should only be modified insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving DOD employees. This provision is substantially the same as a similar provision in the Homeland Security Act of 2002 allowing DHS to prescribe regulations for employee appeals related to their employment. As required of the Secretary of DHS, the Secretary of Defense would be required to consult with MSPB prior to issuing regulations. However, neither the Homeland Security Act nor the proposed legislation expressly requires that employee appeals be heard and decided by the MSPB. There is also no express provision for judicial review of decisions regarding employee appeals decisions.

Given the transparency of the federal system dispute resolution and its attendant case law, the rights and obligations of the various parties involved is well developed. It is critical that any due process changes that are implemented after consultation with MSPB result in dispute resolution processes that are not only fair and efficient but, as importantly, minimize any possible perception of unfairness.

## Building the Institutional Infrastructure Needed to Support NSPS

The critical need for an institutional infrastructure to develop and support change has been a consistent theme raised throughout the observations I have been providing on some of the specific aspects of the proposed NSPS. This institutional infrastructure includes, at a minimum, a human capital planning process that integrates the department's human capital policies, strategies, and programs with DOD's mission, goals, and desired outcomes; the capabilities to effectively develop and implement a new human capital system; and a set of adequate safeguards, including reasonable transparency and appropriate accountability mechanisms to ensure the fair and merit-based implementation and application of a new system. Quite simply, in the absence of the right institutional infrastructure, granting additional human capital authorities will provide little advantage and could actually end up doing damage if the new flexibilities are not implemented properly. Our work looking at DOD's strategic human capital planning efforts and our work looking across the federal government at the use of human capital flexibilities and related

human capital efforts underscores the critical steps that DOD needs to take to properly develop and effectively implement any new personnel authorities.

## Strategic Human Capital Planning at DOD

Our work here and abroad has consistently demonstrated that leading organizations align their human capital approaches, policies, strategies, and programs with their mission and programmatic goals. Human capital plans that are aligned with mission and program goals integrate the achievement of human capital objectives with the agency's strategic and program goals. Careful and thoughtful human capital planning efforts are critical to making intelligent competitive sourcing decisions. The Commercial Activities Panel, which I was privileged to chair, called for federal sourcing policy to be "consistent with human capital practices designed to attract, motivate, retain, and reward a high performing workforce" and highlighted a number of human capital approaches to help achieve that objective.[12]

In April 2002, DOD published a strategic plan for civilian personnel.[13] However, as we reported in March 2003,[14] top-level leadership at the department and the component levels has not until recently been extensively involved in strategic planning for civilian personnel; however, civilian personnel issues appear to be a higher priority for top-level leaders today than in the past. Although DOD began downsizing its civilian workforce more than a decade ago, top-level leadership has not, until recently, developed and directed reforms to improve planning for civilian personnel. With the exception of the Army and the Air Force, neither the department nor the components in our March review had developed

[12]Commercial Activities Panel, *Improving the Sourcing Decisions of the Government* (Washington, D.C.: April 2002).

[13]*Civilian Human Resources Strategic Plan 2002-2008*. At this time, DOD also published two strategic plans for military personnel (one addressing military personnel priorities and one addressing quality of life issues for service members and their families). In a December 2002 report (*Military Personnel: Oversight Process Needed to Help Maintain Momentum of DOD's Strategic Human Capital Planning*, GAO-03-237), we addressed aspects of the two plans concerning benefits for active duty military personnel, noting that the plans were incomplete and that DOD needed a process to oversee the plans' implementation.

[14]U.S. General Accounting Office, *DOD Personnel: DOD Actions Needed to Strengthen Civilian Human Capital Strategic Planning and Integration with Military Personnel and Sourcing Decisions*, GAO-03-475 (Washington, D C.: Mar. 28, 2003) and *DOD Personnel: DOD Comments on GAO's Report on DOD's Civilian Human Capital Strategic Planning*, GAO-03-690R (Washington, D.C.: Apr. 18, 2003).

strategic plans to address challenges affecting the civilian workforce until 2001 or 2002, which is indicative of civilian personnel issues being an emerging priority.

In addition, we reported that top-level leaders in the Air Force, the Marine Corps, the Defense Contract Management Agency, and the Defense Finance and Accounting Service have been or are working in partnership with their civilian human capital professionals to develop and implement civilian strategic plans; such partnership is increasing in the Army and not as evident in the Navy. Moreover, DOD's issuance of its departmentwide civilian human capital plan begins to lay a foundation for strategically addressing civilian human capital issues; however, DOD has not provided guidance on aligning the component-level plans with the department-level plan to obtain a coordinated focus to carry out the Secretary of Defense's transformation initiatives in an effective manner. High-level leadership attention is critical to developing and directing reforms because, without the overarching perspective of such leaders as Chief Operating Officers and the Chief Human Capital Officers, reforms may not be sufficiently focused on mission accomplishment, and without their support, reforms may not receive the resources needed for successful implementation. We have previously reported that the concept of a Chief Operating Officer (COO) could offer the leadership to help elevate attention on key management issues and transformational change, integrate these various efforts, and institutionalize accountability for addressing management issues and leading transformational change both within and between administrations.[15] In our view, DOD is a prime candidate to adopt this COO concept. In addition, if Congress provides DOD with many of the flexibilities it is seeking under the NSPS, the basis for adding a COO position at DOD would be even stronger.

Despite the progress that has been made recently, the DOD human capital strategic plans we reviewed, for the most part, were not fully aligned with the overall mission of the department or respective components, results oriented, or based on data about the future civilian workforce. For example, the goals and objectives contained in strategic plans for civilian personnel were not explicitly aligned with the overarching missions of the respective organizations. Consequently, it is difficult to determine whether

[15]U.S. General Accounting Office, *Highlights of a GAO Roundtable: The Chief Operating Officer Concept: A Potential Strategy To Address Federal Governance Challenges*, GAO-03-192SP (Washington, D.C.: Oct. 4, 2002).

DOD's and the components' strategic goals are properly focused on mission achievement. In addition, none of the plans contained results-oriented performance measures that could provide meaningful data critical to measuring the results of their civilian human capital initiatives (i.e., programs, policies, and processes). Thus, DOD and the components cannot gauge the extent to which their human capital initiatives contribute to achieving their organizations' mission. Also, for the most part, the civilian human capital plans in our review did not contain detailed information on the skills and competencies needed to successfully accomplish future missions. Without information about what is needed in the future workforce, it is unclear if DOD and its components are designing and funding initiatives that are efficient and effective in accomplishing the mission, and ultimately contributing to force readiness.

Lastly, the DOD civilian strategic plans we reviewed did not address how the civilian workforce will be integrated with their military counterparts or with sourcing initiatives. At the department level, the strategic plan for civilian personnel was prepared separately from corresponding plans for military personnel and not integrated to form a seamless and comprehensive strategy and did not address how DOD plans to link its human capital initiatives with its sourcing plans, such as efforts to outsource non-core responsibilities. For the most part, at the component level, the plans set goals to integrate planning for the total workforce, to include civilian, military, and contractor personnel. The Air Force and the Army, in particular, have begun to integrate their strategic planning efforts for civilian and military personnel, also taking contractor responsibilities into consideration. Without integrated planning, goals for shaping and deploying civilian, military, and contractor personnel may not be consistent with and support each other. Consequently, DOD and its components may not have the workforce with the skills and competencies needed to accomplish tasks critical to assuring readiness and achieving mission success.

In our March report we recommended, among other things, that DOD improve future revisions and updates to the departmentwide strategic human capital plan by more explicitly aligning its elements with DOD's overarching mission, including performance measures, and focusing on future workforce needs. DOD only partially concurred with our recommendation, and, as explanation, stated that the recommendation did not recognize the involvement in and impact of DOD's Quadrennial Defense Review on the development of the departmentwide plan. We also recommended that DOD develop a departmentwide human capital strategic plan that integrates both military and civilian workforces and

takes into account contractor roles and sourcing initiatives. DOD did not concur with this recommendation stating that it has both a military and civilian plan, and the use of contractors is just another tool to accomplish the mission, not a separate workforce with separate needs to manage. The intent of our recommendation is not to say that DOD has a direct responsibility to manage contractor employees, but rather to recognize that strategic planning for the civilian workforce should be undertaken in the context of the total force—civilian, military, and contractors—since the three workforces need to perform their responsibilities in a seamless manner to accomplish DOD's mission. In commenting on our recommendations, the Under Secretary of Defense for Personnel and Readiness stated that DOD is in the early stages of its strategic planning efforts. We recognize this and believe that our recommendations represent opportunities that exist to strengthen its developing planning efforts.

## The Capabilities Needed to Effectively Develop and Implement Human Capital Flexibilities

Our work has identified a set of key practices that appear to be central to the effective use of human capital authorities. These practices, which are shown in figure 1, center on effective planning and targeted investments, involvement and training, and accountability and cultural change.[16]

[16] U.S. General Accounting Office, *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, GAO-03-2 (Washington, D.C.: Dec. 6, 2002).

**Figure 1: Key Practices for Effective Use of Human Capital Flexibilities**

| | |
|---|---|
| **Plan strategically and make targeted investments** | • Obtain agency leadership commitment<br>• Determine agency workforce needs using fact-based analysis<br>• Develop strategies that employ appropriate flexibilities to meet workforce needs<br>• Make appropriate funding available |
| **Ensure stakeholder input in developing policies and procedures** | • Engage the human capital office<br>• Engage agency managers and supervisors<br>• Involve employees and unions<br>• Use input to establish clear, documented, and transparent policies and procedures |
| **Educate managers and employees on the availability and use of flexibilities** | • Train human capital staff<br>• Educate agency managers and supervisors on existence and use of flexibilities<br>• Inform employees of procedures and rights |
| **Streamline and improve administrative processes** | • Ascertain the source of existing requirements<br>• Reevaluate administrative approval processes for greater efficiency<br>• Replicate proven successes of others |
| **Build transparency and accountability into the system** | • Delegate authority to use flexibilities to appropriate levels within the agency<br>• Hold managers and supervisors directly accountable<br>• Apply policies and procedures consistently |
| **Change the organizational culture** | • Ensure involvement of senior human capital managers in key decision-making processes<br>• Encourage greater acceptance of prudent risk taking and organizational change<br>• Recognize differences in individual job performance and competencies |

Source: GAO.

Congress should consider the extent to which an agency is capable of employing these practices before additional human capital flexibilities are implemented. In the context of NSPS, Congress should consider whether and to what extent DOD is using those practices.

## Adequate Safeguards, Reasonable Transparency, and Appropriate Accountability

I have discussed throughout my statement today the importance of moving to a new human capital system which provides reasonable management flexibility along with adequate safeguards, reasonable transparency, and appropriate accountability mechanisms to prevent abuse of employees. In addition to the suggestions made above, Congress should consider requiring DOD to fully track and periodically report on its performance. This requirement would be fully consistent with those contained in our

calendar year 2000 human capital legislation, which required us to comprehensively assess our use of the authorities granted to us under the act.[17] More generally, Congress should consider requiring DOD to undertake evaluations that are broadly modeled on the evaluation requirements of OPM's personnel demonstration program. Under the demonstration project authority, agencies must evaluate and periodically report on results, implementation of the demonstration project, cost and benefits, impacts on veterans and other EEO groups, adherence to merit principles, and extent to which the lessons from the project can be applied elsewhere, including governmentwide. This evaluation and reporting requirement would facilitate congressional oversight of NSPS, allow for any mid-course corrections in its implementation, and serve as a tool for documenting best practices and sharing lessons learned with employees, stakeholders, other federal agencies, and the public. DOD has stated that it would continue its evaluation of the science and technology reinvention laboratory demonstration projects when they are integrated under a single human capital framework.

## Concluding Observations

In summary, DOD's civilian human capital proposals raise several critical questions. Should DOD and/or other federal agencies be granted broad-based exemptions from existing law, and if so, on what basis? Does DOD have the institutional infrastructure in place to make effective use of the new authorities? This institutional infrastructure includes, at a minimum, a human capital planning process that integrates the agency's human capital policies, strategies, and programs with its program goals and mission, and desired outcomes; the capabilities to effectively develop and implement a new human capital system; and a set of adequate safeguards, including reasonable transparency and appropriate accountability mechanisms to ensure the fair, effective, and credible implementation and application of a new system.

Many of the basic principles underlying DOD's civilian human capital proposals have merit and deserve the serious consideration they are receiving here today and will no doubt be received by others in the coming

[17]Our October 2000 legislation gave us tools to realign our workforce in light of mission needs and overall budgetary constraints; correct skills imbalances; and reduce high-grade, managerial, or supervisory positions without reducing the overall number of GAO employees. This legislation allowed us to create a technical and scientific career track at a compensation level consistent to the SES. It also allowed us to give greater consideration to performance and employee skills and knowledge in any RIF actions.

weeks and months. However, the same critical questions should be posed to the DOD proposal. Should DOD and/or other federal agencies be granted broad-based exemptions from existing law, and if so, on what basis? In addition, Congress and DOD should carefully assess the degree to which DOD has the institutional infrastructure in place to make effective use the new authorities it is seeking. Our work has shown that while progress has been and is being made, additional efforts are needed by DOD to integrate its human capital planning process with the department's program goals and mission. The practices that have been shown to be critical to the effective use of flexibilities provide a validated roadmap for DOD and Congress to consider. Finally, as I have pointed out in several key areas, Congress should consider, if the authorities are granted, establishing additional safeguards to ensure the fair, merit-based, transparent, and accountable implementation and application of NSPS.

In our view, Congress should consider providing governmentwide broad banding and pay for performance authorities that DOD and other federal agencies can use provided they can demonstrate that they have a performance management system in place that meets certain statutory standards, which can be certified to by a qualified and independent party, such as OPM. Congress should also consider establishing a governmentwide fund whereby agencies, based on a sound business case, could apply for funds to modernize their performance management systems and ensure that those systems have adequate safeguards to prevent abuse. This would serve as a positive step to promote high-performing organizations throughout the federal government while avoiding further fragmentation within the executive branch in the critical human capital area.

This morning, I have offered some preliminary observations on some aspects of the proposal. However, these preliminary observations have not included some serious concerns I have with other sections of the proposed legislation that go beyond the civilian personnel proposal. My observations have included suggestions for how Congress can help DOD effectively address its human capital challenges and ensure that NSPS is designed and implemented in an effective, efficient, and fair manner that meets the current and future needs of DOD, its employees, and the American people. Human capital reforms at DOD obviously have important implications for national security and precedent-setting implications for governmentwide human capital management. Given the massive size of DOD and the magnitude of the nature and scope of the changes that are being considered, such reform at DOD also has important precedent-setting

implications for federal human capital management generally and should be considered in that context.

We look forward to continuing to support Congress and work with DOD in addressing the vital transformation challenges it faces. Madam Chairwoman and Mr. Davis, this concludes my prepared statement. I would be pleased to respond to any questions that you may have.

## Contacts and Acknowledgments

For further information on human capital issues at DOD, please contact Derek Stewart, Director, Defense Capabilities and Management on (202) 512-5559 or at stewartd@gao.gov. For further information on governmentwide human capital issues, please contact J. Christopher Mihm, Director, Strategic Issues, on (202) 512-6806 or at mihmj@gao.gov. Individuals making key contributions to this testimony included William Doherty, Clifton G. Douglas, Jr., Christine Fossett, Bruce Goddard, Judith Kordahl, Janice Lichty, Bob Lilly, Lisa Shames, Ellen Rubin, Edward H. Stephenson, Jr., Tiffany Tanner, Marti Tracy, and Michael Volpe.

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Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Walker, and again we really appreciate your patience.

I'm going to start with my ranking member, Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Madam Chairwoman.

Mr. Walker, I want to thank you for your testimony and also thank you for your cooperation. Last week you did in fact send plea, a letter outlining a list of possible safeguards to help ensure that agencies that are granted waivers from Title 5 have performance management systems in place that are indeed fair and equitable.

You mentioned in your testimony that DOD has not had a good track record reaching out to stakeholders such as employee groups. In your opinion, what is the potential for abuse if safeguards are not put in place to ensure fair and transparent personnel systems?

Mr. WALKER. I believe very strongly that the Federal Government needs to move to a more modern human capital system which incorporates pay-for-performance principles to a much greater extent than today. I also believe that how it's done, whether it's done, and on what basis it's done, matters. The process is critically important.

I believe that DOD has involved employees in the past in connection with demonstration projects. They have actively involved them. And you have to in order to design and implement it. But they represent less than 5 percent of their work force at the present point in time. And this would give authority for 100 percent of their work force. And I believe it is important to involve labor as well as employees who aren't represented by a union in the process up front.

Mr. DAVIS OF ILLINOIS. Do you think that these safeguards would have a tendency to be more of a help to agencies than a hindrance?

Mr. WALKER. My personal view is that they're important that they be in place in order to maximize the chance for success and to minimize the possibility of abuse.

Mr. DAVIS OF ILLINOIS. That would suggest to me that it's going to be helpful. I mean, we want systems that are going to provide not only protection but also provide efficiency and effectiveness, and you need morale, you need all of those things that become factors in productivity and the implementation of work plans. And so I would take that to mean that this is actually going to be helpful to the agencies rather than harmful.

In his testimony, Mr. Chu stated that DOD did not engage labor in the development of its legislative human capital proposals because the dialog with the unions would be more focused when the legislation was completed. Do you feel that's an acceptable method for ensuring employee input as we try and create the most responsive and effective system that we could have?

Mr. WALKER. I think, obviously, management at DOD had to decide how they wanted to proceed in this regard. I wouldn't have done it that way.

Mr. DAVIS OF ILLINOIS. Madam Chairwoman, I don't have any other questions.

Mrs. DAVIS OF VIRGINIA. Thank you. Mr. Waxman.

Mr. WAXMAN. Thank you very much. Mr. Walker, I am pleased to see you. In the past, you've consistently talked about the need for greater accountability measures, checks and balances, if you will, to be instituted at Federal agencies before greater flexibilities are given to them. For instance, you told Senator Voinovich at a joint House/Senate hearing last month, I believe, "a vast majority of the Federal agencies do not have the infrastructure in place in order to effectively and fairly move to a more performance-based compensation structure." In your opinion, does DOD have the necessary systems in place to manage the hiring and pay flexibilities that it is seeking?

Mr. WALKER. No, I think they have the framework that they want to implement, but it's not in place.

Mr. WAXMAN. In fact, when GAO reviewed DOD's strategic plan for civilians last month, GAO found a lot of problems with the plan; isn't that correct?

Mr. WALKER. It was, as was said before, we had concerns that we expressed. You could say it's half empty or half full, but half is half.

Mr. WAXMAN. Well, has DOD made sufficient corrections to its plan to suggest that it could design a personnel system that will both treat employees fairly and allow the Department to perform its mission effectively and efficiently?

Mr. WALKER. I believe it is possible for DOD to design and implement systems based upon the demonstration projects that can be successful. However, there's a fundamental philosophical difference here. In my view, I believe in the Missouri principle: Show me.

We're talking about something that is very significant here, and I personally believe it would be better if Congress provided broad-based authority with specific statutory safeguards that either DOD or anybody in the executive branch could come forth—if they could demonstrate to OPM that they satisfy these safeguards, I think that would be the preferred approach.

Mr. WAXMAN. Well, if you take the Missouri approach and you look at DOD's past record, it's not very comforting in my view, because GAO has criticized DOD for its poor bookkeeping, nothing in terms of management problems, nothing the Department—noting that the Department lacks fundamental control and management oversight in its handling of money. In 2001 you gave the Department a D-plus grade on economy and efficiency. DOD had over $1 trillion worth of transactions that were unaccounted for last year, and we've all heard about the misuse of government travel cards at DOD and news articles have even compared the Pentagon to another Enron when it comes to financial management. Given all these recent management problems in DOD, why should Congress trust DOD to be able to devise, implement, and plan a completely new personnel system?

Mr. WALKER. Mr. Waxman, I believe that DOD has the right conceptual framework, that intellectually they want to do the right thing, and that Dr. Chu and Secretary Rumsfeld and others are dedicated to transforming the Department, and that human capital transformation is a key part and pay-for-performance is an important sub-element.

However, I go back to what I said. I believe it would be vastly preferable to be able to take a governmentwide approach that allows DOD and other executive branch agencies to move forth with broadbanding and pay-for-performance if they meet a set of statutory safeguards in advance before they implement. I believe that would be the prudent way to go.

Mr. WAXMAN. What do you think about the idea, as a previous witness—you may not have been here to hear him, but he argued that if there's a conflict between DOD and OPM, to break the tie, DOD wins. Do you think that personnel decisions ought to be decided by the agencies if there is a disagreement with OPM if the head of the agency feels it's national security, or should they go to the President or someone in the White House to resolve it?

Mr. WALKER. Well, in most mechanisms that I've seen, including GAO records access, I might add, these types of certifications are done by the President of the United States or the Director of OMB rather than a party who has a vested interest in the outcome. That's not intended to reflect one way or the other on specific individuals. I have tremendous respect for Secretary Rumsfeld and Dave Chu and others.

Mr. WAXMAN. No, it's certainly not a personal issue. But how would you distinguish DOD getting extraordinary flexibility and powers to waive the Civil Service laws and then not give it to Homeland Security to the same extent, or Department of Transportation, or any other agency at the Federal Government where they can argue their functions are important, in fact their functions are important for the national economy and national security? Shouldn't Civil Service laws apply the same across the board?

Mr. WALKER. My view, Mr. Waxman, is that it would be vastly preferable to have a set of statutory safeguards that could apply to every department and agency, DOD and others, where when people can come forth with a business case to say we want to do this, we meet these safeguards, we've got the system in place, therefore, OPM, give us the authority to implement, that's I believe the appropriate approach.

Mr. WAXMAN. Thank you very much. Thank you, Madam Chair.

Mrs. DAVIS OF VIRGINIA. Thank you. Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you. Thank you, Madam Chairwoman.

Thank you, Mr. Walker, for being here. I just want to thank you for your testimony, and I appreciate your guidance as to your recommendations how to proceed here, because we did, as has been said already, have this hearing just a short time ago where we discussed a lot of these issues, and I think the recommendations you're making today I sensed were part of the consensus that was emerging out of that discussion, which is that these agencies, including DOD, currently have all the authority they need today, at least to demonstrate, to bring their personnel evaluation systems up to the point where they can say to the Congress or ask—we can ask GAO to review and say have you gotten to the point where you can appropriately move on to the next step? I mean, there's nothing barring DOD today from taking those steps internally to reach that point, is there?

Mr. WALKER. No. I think it is possible to achieve broad-based consensus with this centrist framework that you referred to.

Mr. VAN HOLLEN. Right. I mean, so I—again, and your testimony reflects this so I'm not going to prolong the point, but I do think that your suggestion that we move very cautiously in this area, I think is well taken, and I just don't understand the reason to move forward on the kind of timetable that we're being asked to move forward, especially whether the greatest performance results from the last couple of months suggest that things don't need—it's not urgent that we make any kind of overhaul that we're talking about. Thank you for your testimony.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Walker. I do have a question or two, and maybe I should have asked this one to DOD as well. But I kept them long enough. What would be the harm in granting DOD the same guidelines, safeguards, flexibilities, what have you, that we gave to the Department of Homeland Security? And couldn't DOD function just as well, or more efficiently and effectively, with those guidelines as well as the—as opposed to the far-reaching ones that they've asked for in their proposal.

Mr. WALKER. Well, they're asking for many of the things that the Department of Homeland Security got, plus some additional authorities, and, in some cases, without the safeguards that apply to DHS. Obviously, that's one of the options you could decide to adopt. My personal view is that it would be preferable to take a governmentwide approach and have a consistent set of safeguards that could apply throughout government. Otherwise we're in danger of further balkanizing the government. I think there are certain principles that should apply universally.

At the same point in time DOD, DHS, GAO, and others ought to be able to design their systems for their missions for their work forces, so it's not a one-size-fits-all approach. But certain principles have no boundaries. Certain principles are timeless, and I think Congress has a role to play in determining what those are.

Mrs. DAVIS OF VIRGINIA. You and I have had that discussion, and you know I totally agree with you, and I wish we could do that. But trying to fix something that's here now, and like somebody said down there, the train's left the station, so we're going to try and fix it before it gets too far out of bounds.

Going back to what I think Mr. Davis—or it might have been Mr. Waxman, I'm not sure—asked you about involving the labor unions. If you had to—and I'm going to put on you the spot here.

Mr. WALKER. It's been done before, Madam Chair.

Mrs. DAVIS OF VIRGINIA. If you had to rate what DOD did with the labor unions on a scale of 1 to 10, how effectively do you believe DOD has involved employer representation in their efforts to expand their pay-for-performance management system?

Mr. WALKER. For this proposal?

Mrs. DAVIS OF VIRGINIA. Yes.

Mr. WALKER. Less than 50/50. Not very good. It would be less than 5. I don't know enough to be able to give it an actual grade. But it would clearly be less than 5 on a scale of 10.

Mrs. DAVIS OF VIRGINIA. And you and I have had that discussion, too, that a lot of times it's the perception, and if you do the discussions up front maybe you don't have as much opposition when you get to the table.

I really appreciate you coming, and I think, you know, you've already answered my questions in the past and I totally agree with you. I wish we could do something on a standard governmentwide basis. I don't have it down as well as you do. You say it so well. You've said it so much. And maybe 1 day we'll listen. But thank you, Mr. Walker, for coming.

I'm going to ask if my colleagues have any more questions to ask of you. And I do appreciate you taking the time.

Mr. WALKER. Thank you. Take care.

Mrs. DAVIS OF VIRGINIA. If the third panel would come forward, and if you'd just remain standing while I administer the oath. It is the subcommittee's standard practice to ask witnesses to testify under oath, and if you'll raise your right hands.

[Witnesses sworn.]

Mrs. DAVIS OF VIRGINIA. Let the record reflect that the witnesses have answered in the affirmative. And you may be seated. The witnesses will now be recognized for opening statements. We will ask you to summarize your testimony in 5 minutes and any fuller statement you may wish to make will be included in the record.

I'd like to welcome Bobby Harnage, president of the American Federation of Government Employees; also Jerry Shaw, general counsel, Senior Executives Association. Thank you both for being here today, and thank you both for your patience for having to sit and wait so long. But I think you understand this is an important issue, and given this is the only hearing we're going to have, we wanted to hash it out as much as possible.

Mr. Harnage, I'm going to recognize you first for 5 minutes.

## STATEMENTS OF BOBBY L. HARNAGE, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO; AND G. JERRY SHAW, GENERAL COUNSEL, SENIOR EXECUTIVES ASSOCIATION

Mr. HARNAGE. Thank you, Madam Chairwoman, and majority Member Davis, members of the subcommittee, for the opportunity to testify today. I understand that my written testimony will be entered into the record, and so I have a few comments that I would like to make concerning DOD's proposal for total and unilateral and unchecked authority to impose an entirely new personnel system upon the Department's 640,000 employees every time a Defense Secretary decides to do so.

AFGE represents over 200,000 civilian DOD employees. We have worked around the clock with total dedication, maintaining, repairing, and loading equipment and preparing our troops; loading them and their weapons on the tanks, aircraft, warships. And they have barely come up for air and find that the Pentagon has now declared war on them.

Madam Chairwoman, I'm most impressed by the knowledge not only expressed here by the Chair, but also by the members of the committee concerning the subject and what has been a very short period of time to become familiar with it. You've asked very good questions, very pointed questions, questions that I could not have written better had I tried. So I want to make one plea with you in addition to the testimony that I'll give this morning.

First, I too recognize the arrogance of this legislation. It's unprecedented. This is a bully moving through Congress, and it should not be allowed to operate that way. I appreciate your request of Dr. Chu that he consider withdrawing the legislation from the civil—from the Armed Services and allow it to properly come before this committee which has jurisdiction. And I would encourage you and your colleagues to ask the rest of the Representatives in the House to take the same position, that this legislation should not be allowed to be moved in the manner in which it's being moved and the precedent that it is setting. It may be their turn next.

So I appreciate your recognition of protecting the institution of this great body. They should not be allowed to get away with this. It's a trend-setter. They'll certainly be encouraged to do it even more often in the future if allowed here.

But this proposal does not ask you to vote on new personnel systems for the Department. It asks you to hand over your authority for approving new employee personnel systems to each successive Secretary of Defense. This proposal does not ask you to vote on a new pay-for-performance system for the Department. It asks you to hand over your authority for approving the pay system for 654,000 Federal employees to each successive Secretary of Defense. This proposal does not ask you to vote on taking away Federal employees' rights to due process so they can appeal decisions they feel have been based on discrimination or cases of political coercion. It asks to you hand over your authority to keep or take away such rights to each successive Secretary of Defense. And the list goes on.

You will hear lots of disinformation and this operation erodes the Civil Service campaign. The worst will be that the legislation gives DOD the freedom to link pay to performance so that (a), DOD won't have to contract out everything that isn't nailed down, and (b), DOD will finally be able to achieve its mission by making sure that high performance is at last rewarded. Neither of these rationales is true. The not-so-veiled threat that if they don't get the power they demand they'll simply privatize everything is an important admission that contracting out has never had anything to do with saving money or improving efficiency. It's about moving money and jobs to political favorites and cronies, and giving each successive Secretary of Defense total unchecked authority to hire and fire whomever he wants; promote and demote whomever he wants; schedule and pay overtime, or schedule and fail to pay overtime to whomever he wants; allow collective bargaining or disallow collective bargaining to whomever he wants; is also about power to move money and jobs to the political cronies.

AFGE testified before this subcommittee 4 weeks ago about the perils of pay-for-performance. Expert opinions is unanimous that individualized pay-for-performance schemes, if they make any effort whatsoever to be fair and based on measurable factors, eat up an enormous amount of managerial resources and make everyone unhappy. They do not improve productivity and they do not accomplish organizational goals.

Madam Chairwoman, I think the question has been asked: Why haven't these people worked with us over the last year since March 2002 to develop this and come before you with a complete package rather than a blank check? And I, too, am confused. I thought I

represented the employees of DOD. I didn't know the employer did. I've been elected; I wasn't appointed by a political appointment.

To say that they've talked with labor is misleading, and also say they talked to the employees. I am labor. The employees are the people that I represent. And, the arrogance of this Pentagon to not only try to say that they speak for the employees, the employees have already voted. That's not so. But for them to also say that they will decide where collective bargaining will be and at what level and to what extent, rather than the employees having the opportunity to vote on it—I have recognition at agency levels, I have it with DFAS, I have it with DECA, DLA, with all of those within the Department of Defense. But the employees voted for that. But this employer wants to say it will make that decision for employees.

Why the Right to Work for Less Committee and the Chamber of Commerce aren't upset about those two proposals I fail to understand. But this is total arrogance and it should be stopped. It should not be allowed.

And thank you very much for the opportunity for this testimony and I'll be glad to answer any questions you have.

Mrs. DAVIS OF VIRGINIA. Thank you Mr. Harnage.

[The prepared statement of Mr. Harnage follows:]

STATEMENT BY

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

BEFORE

THE SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIIZATION
HOUSE GOVERNMENT REFORM COMMITTEE

REGARDING

DOD'S PROPOSALS FOR ITS CIVILIAN WORKFORCE

ON

APRIL 29, 2003

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

Madam Chairman and Members of the Subcommittee: My name is Bobby L. Harnage, Sr. and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 600,000 federal employees our union represents, including 200,000 civilian employees of the Department of Defense (DoD), I thank you for the opportunity to testify today on the legislative proposals submitted by DoD.

AFGE strongly opposes this legislation on the grounds that it erases decades of social progress in employment standards, punishes a workforce that has just made a crucial and extraordinary contribution to our victory in Operation Enduring Freedom, and takes away from Congress and affected employees the opportunity they now possess to have a voice in crafting and approving the personnel and other systems of the Department of Defense. Today, no one owns the Department of Defense – it is a public institution, supported by U.S. taxpayers and administered by a Secretary of Defense appointed by an elected President, and overseen and regulated by the U.S. Congress. If this legislation is enacted, each individual Secretary of Defense, in cooperation with each President, will effectively own the Department of Defense as if it were a private concern. The Congress will have relinquished its oversight and legislative role with regard to approximately 654,000 government personnel.

DoD's "shock and awe" strategy, designed to stun and confuse its opponents, has been wrongly applied to the legislative arena in this proposal. The yet-to-be

introduced legislation, and the public pronouncements relative to its rationale from high-ranking Pentagon officials upon its unveiling, have made me wonder whether its authors were under the impression that Saddam had won, rather than the Coalition troops. I could not understand why the Defense Department was poor mouthing its own effectiveness at the same time that it had just won a resounding victory in Iraq. I still cannot.

Can today's Pentagon officials honestly believe that the Defense Department is mired in failure, and that granting sweeping new authorities to every Secretary of Defense is what is necessary for it to succeed? The civilian employees of DoD represented by AFGE have been working around the clock for months supporting and maintaining both troops and weapons, loading materials and combat forces onto ships, aircraft, and tanks; or in many cases serving on active duty. They are justly proud of their contribution, and are devastated to learn that Pentagon leaders intend to reward this effort with Operation Erode the Civil Service, to be followed by Operation Fait Accompli.

We are at a loss to identify a serious or true rationale for this legislation. Over the past 12 years, DoD has achieved BRAC, services realignment, the creation of several agencies, including:

- Defense Logistics Agency (DLA),
- Defense Finance and Administration Service (DFAS)
- Defense Commissary Agency (DeCA)

- Defense Printing Agency (DPA)
- Defense Contract Audit Agency (DCAA)
- Defense Contract Management Agency (DCMA)
- National Imagery and Mapping Agency (NIMA)
- Defense Information Systems Agency (DISA)

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

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

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

But nothing in the proposal would begin to solve any of those problems; instead, it would take away from Congress not only the opportunity, but also the responsibility for addressing them, and likely result in making each of those problems worse. I believe that there are solutions to these problems on which AFGE and Pentagon leaders could agree. There is nothing to explain why our union's repeated overtures to the Administration have been spurned. I stand ready to work together with Pentagon leaders and Members of Congress on constructive solutions to any problems the current personnel system poses with regard to this nation's security. Unfortunately, the proposal being considered today was composed entirely without input or consultation with DoD's largest employee organization.

**Description of DoD's Legislative Proposal**

What does the proposal do to civilian defense employees? The Act would amend current subpart I of part III of title 5, by adding chapter 99 establishing a new Department of Defense National Security Personnel System. With some notable

exceptions, these provisions are consistent with the analogous provisions in the previously enacted Homeland Security Act.

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

The proposal specifies that any regulations established thereby are considered "internal rules of departmental procedure" consistent with 5 U.S.C. §553. That section comprises the Administrative Procedure Act ("APA") "notice and comment" requirements and expressly excludes from its scope "matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts," or to "interpretive rules, general statements of policy or rules of agency organization, procedures or practice." Consequently, any rules promulgated pursuant to the proposed 5 U.S.C. §9902(a) are likely to be deemed excluded from the notice and comment requirements of §553 regardless of the explicit exclusion noted here.

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

Ch. 41: Training

Ch. 55: Pay Administration (Including backpay, severance pay)

Ch. 59: Allowances (Uniform, Housing, Post differentials)

In addition, almost all of the following chapters of title 5 would be waivable:

Ch. 31: Authority for Employment

Ch. 33: Examination, Selection, and Placement, and

Ch. 35: Retention Preference, Restoration, and Reemployment

The proposal, like Homeland Security, authorizes Defense Secretaries to waive the following critical chapters:

Ch. 43: Performance appraisal system

Ch. 51: Position Classification

Ch. 53: Pay rates and systems (GS/WG/grade and pay retention)

Ch. 71: Collective Bargaining rights

Ch. 75: Due process

Ch. 77: Appeal rights/judicial review

With regard to collective bargaining, the DoD proposal is highly misleading and disingenuous. Although it ostensibly ensures the right of employees to organize and bargain collectively, while concomitantly making the exercise of that right explicitly subject to any limitations provided in the proposal as well as those exclusions from coverage and limitation on negotiability established pursuant to law. The restrictions contemplated by the proposal are substantial. For example, instead of bargaining, the proposal primarily talks in terms of "collaboration." Moreover, it stipulates that the Secretary may disregard levels of recognition and undertake, at his discretion, to engage in collaborative activities at any organizational level above the level of recognition. To the extent that the proposal does address "bargaining," it provides that the Secretary may undertake "at his sole and exclusive discretion" to bargain without regard to the level of exclusive recognition. Any agreement negotiated pursuant to this authority supersedes all other agreements "except as otherwise determined by the Secretary" and is not subject to further negotiation except as provided by the Secretary.

The remaining content of the proposal is directed at hiring contract personnel, with the exception of hiring "older Americans" which is plainly intended to permit reemployment of retired military without any diminution to pension currently imposed on so-called "double dippers."

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

Chapter 51 describes the current classification system and requires that different pay levels for different jobs be based on the principle of "equal pay for substantially equal work." New systems designed by successive Secretaries of Defense would not have to adhere to that standard. Jobs which are graded similarly today on the basis of that principle might therefore be treated completely differently when various and successive new systems are put into place by each new Secretary of Defense. Granting these authorities to each new Secretary of

Defense with regard to classification raises serious concern, as the current standards go a long way toward preventing federal pay discrimination on the basis of race, gender, or ethnicity.

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

Waiving chapters 75 and 77 will put in jeopardy DoD employees' due process and appellate rights. While non-union private sector workers have no legal right to appeal suspensions, demotions, or dismissals from their jobs, federal workers have these legal rights for very important reasons. In addition to being the right thing to do, because their employer is the U.S. government, the guarantor and enforcer of American citizens' due process rights, the bar is higher than for private firms whose obligations are different. Thus chapter 75 sets up a system for management to suspend, demote, or dismiss employees, but provides employees with the ability to appeal these actions to the Merit Systems Protection Board (MSPB) if there is evidence that the actions were motivated by factors other than performance, including racial or other prejudice, political views,

or union status. Under this chapter, DoD employees are eligible for advance written notice of the disciplinary action, a reasonable time to respond, representation by an attorney, and a written decision by DoD listing the specific reasons for the disciplinary action. Any Secretary of Defense could eliminate these protections under the proposal.

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

Current law, as set forth in chapter 71 of title 5, allows DoD employees to organize into labor unions and pursue union representation through the process of collective bargaining with management over some conditions of employment. Giving each Secretary of Defense the authority to waive some or all of chapter 71

eliminates a very important part of the checks and balances that hold managers and political appointees accountable. Waiving chapter 71 would allow any Secretary of Defense to create new personnel systems without any formal give-and-take with the affected employees' elected representatives.

In addition, the proposal would allow any Secretary of Defense to direct the department to bypass local unions' bargaining rights. It eliminates the process by which disputes between employee representatives and management are resolved. Today, labor-management impasses are sent to the Federal Services Impasses Panel (FSIP), a seven-member board appointed by the President, which acts as a biding arbitrator on all disputes. The legislation would prohibit any bargaining or negotiability impasses, no matter how routine or unrelated to national security, from going to the FSIP, the Federal Labor Relations Authority, or any third party outside DoD. This is unprecedented and any Secretary of Defense who decides to exercise this authority would render the entire collective bargaining process a sham.

One of the most shocking authorities DoD is seeking for its Defense Secretaries is in the power to waive chapters 31 and 33 of title 5. This effectively grants the authority to hire relatives, while simultaneously eliminating requirements for merit-based testing for positions in the competitive service. Supervisors would be able to hire and promote their cronies, their relatives, and their political favorites if any Secretary of Defense decides to exercise this authority. Can it

possibly be the case that Pentagon officials believe that prohibitions on hiring brothers-in-law and members of only certain political parties has prevented DoD from achieving its mission?

The DoD proposal would eliminate the requirement that reductions-in-force (RIF) be conducted according to procedures set out in chapter 35. These procedures assure that RIFs are conducted on the basis of employment status and length of service as well as efficiency or performance ratings. On what basis would supervisors select individuals for RIFS without the constraints described in chapter 35's procedures? No one knows and no one will know since each Secretary of Defense would have the authority to write and rewrite RIF rules if the proposal were enacted. Indeed, every time DoD conducted a RIF, the rules could change. The proposal would allow supervisors to decide who will be the victim of a RIF on the basis of favoritism rather than performance merit, seniority, and employment status.

Again it must be asked – beyond rhetorical homilies about flexibility--why is this authority being sought? DoD downsized by several hundred thousand civilians at the end of the Cold War without apparent loss of mission effectiveness or capacity, and the burden is on DoD to explain the need for this authority outside Congressional review.

Another shocking and dangerous waiver authority is sought in the legislation with regard to chapter 55, which covers pay Administration. This chapter addresses numerous issues ranging from overtime and compensatory time calculations, firefighter pay, Sunday and holiday pay, dual status pay for National Guard and Reserve technicians, jury duty pay, severance pay, and back pay due to personnel actions found to have been unjustified. Likewise, the proposal seeks to give Defense Secretaries the authority to waive chapter 59 which covers everything from uniform allowances to danger pay to duty at remote worksites. By waiving these two chapters, each new Secretary of Defense would have the power to turn back the clock on the last several decades of progressive legislation on matters crucial to the economic security of federal employees and their families.

**What the Current Administration Might Do With the New Authorities**

DoD reveals in the Section by Section Analysis attached to the proposal a preview of what *this* Defense Secretary might decide to do with his sweeping new powers. However, again it must be noted that the authorities granted to Secretaries of Defense could easily mean a thorough upheaval in personnel practices each time a new individual takes over at the Pentagon, all without the input or approval of either Congress or the affected employees. That is, if the current Secretary were to resign or be replaced as a result of a new election, everything he created under this proposal could be repealed and a whole new

personnel system put in place. Nevertheless, neither this Secretary of Defense nor any subsequent one would need to gain Congressional approval for changing DoD's personnel system if the proposal is enacted.

Indeed, the proposal merely instructs current and future Secretaries of Defense to create personnel systems that are "flexible" and "contemporary." There is a curious paradox in the Section by Section analysis and the promotional remarks that have been made by high-ranking DoD officials who have tried to create a rationale for this legislation. In the Section by Section analysis, the current situation at DoD is described as a "fragmented" system governed by "multiple titles of the United States Code," and "nine demonstration projects covering 30,000 employees, 50 different pay systems, and several alternative personnel systems." When officials are explaining the need for vast and unchecked new authorities, however, they describe the current system as "rigid," "antiquated," and preventive of success. But how could a rigid system spawn so much fragmentation? How could a rigid system allow nine demonstration projects and 50 pay systems? How could a rigid system result in so many alternative personnel systems?

And, it is important to remember that all of this "fragmentation" has been accomplished at the request of DoD. What innovation or alternative or fragmentation does DoD hope to create that they cannot, and more important what problem do they hope to solve that they have not solved with these varied

and flexible alternatives? Pentagon officials must be asked to answer these questions substantively, with something more than bromides about flexibility.

A particularly chilling sentence in the Sectional analysis reads: "Consistent with the Secretary's broad authority to manage military personnel, the Secretary also would exercise broad authority to manage DoD civilian personnel, subject to the direction of the President, provided he certifies that such authority would be essential to the national security." It is difficult to interpret that sentence in a way that would quiet concerns that there might no longer be any distinction between the terms of civilian employment in DoD, and the terms of service for uniformed personnel.

The military "employment" system is in fact a relevant point to consider in the context of the authorities requested in this legislation. AFGE does not dispute the need for a personnel system to manage uniformed service members that grants enormous authority up the chain of command. The nation's defense necessitates a military personnel system that is capable of responding to the demands of an ever-changing national security and battlefield environment. However, to allow each Secretary of Defense the same broad authority to manage the civilian workforce as he has in managing military personnel would be a mistake.

Military personnel management, and the need for a broad authority to manage the uniformed services, is the result of a unique set of demographic, sociological, mission, operational, environmental and cultural imperatives. These unique factors in turn necessitate a unique personnel management system.

The military personnel system is driven by the needs of the battlefield. Recruitment, promotion, career development and assignment, training, disciplinary matters, skills, and retention policies and priorities reflect the needs and unique challenges associated with managing uniformed personnel whose sole purpose is to serve a battlefield mission. Consequently, the force resulting from this personnel system is different from that in the civilian workforce. The military force is younger than the general population. It is intentionally more transient than the general workforce. It operates under a unique legal code (the Uniform Code of Military Justice), and by design, the individuals working in this environment perform a greater number of jobs employing a greater variety of job skills than their civilian federal counterparts. Because of the unique hardships and dangers associated with a military career, the military personnel management system attempts to provide its own singular incentives in order to maintain morale and assist in retention.

The civilian defense workforce exists to support those who serve in direct military capacity for the nation's defense. Unlike their uniformed teammates, the civilian DoD workforce is shaped and governed by a complex, yet effective,

infrastructure of federal statutes, laws, policies and regulations. The purpose of this infrastructure is to ensure that a stable and qualified workforce is recruited, compensated and retained to support the service department's and separate defense agencies' missions. Under the infrastructure which governs the federal defense workforce there is no premium placed on "career broadening assignments or transfers." The federal workforce is stationary, in place, reliable and ready at a moment's notice to serve and perform such missions as they may be assigned. While the military system through its assignment and promotions policies such as "up or out" accepts transition and personnel turbulence as the routine cost of doing business. The civilian personnel management system on the other hand places a greater premium on personnel stability, continuity, developing and maintaining organizational knowledge and experience. In like manner, the military system through its training policies and career broadening tours, reflects the battlefield's need for redundancy and multi-skilled performance in a chaotic and confusing environment. The civilian system emphasizes the management of workers performing a single, unique mission essential skill in a stable work environment working in support and in tandem with their military counterparts.

In making the comparison between the two personnel systems I am not saying one system is superior to the other. What I am saying is quite the opposite. While these two management systems are dynamically different and result from dramatically different needs. They – under the current arrangement - are

complementary and create a healthy symbiosis. Work has continued whether there was a war, Watergate, impeachment, or Congressional stalemate. There can be no military tyrants with our current system. The two different personnel management systems have created an armed force and workforce that has always been there to serve our nation well – and if allowed, will continue to be there for us in the future.

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

AFGE has testified recently on the question of whether individualized pay for performance is a wise choice for the federal pay system governing the entire Executive Branch. The critique and caution we offered in that context is equally relevant to the Department of Defense. Although the proposal specifically does not ask Congress to approve a new pay system or a new personnel system, but instead asks Congress to relinquish this authority to successive Secretaries of Defense, this Secretary has let it be known that something along the lines of the Navy's China Lake Demonstration Project Pay for Performance Plan might be used as a model for the pay system the current Administration intends to impose.

The question of whether the China Lake Plan is a worthy successor to the General Schedule for DoD or any other agency is one useful way to consider how the authorities in the legislation might be used or abused. It is always more productive to compare systems that are real, rather than compare fantasized

perfect models of pay for performance with the easily-maligned real systems. Thus, I will discuss briefly the General Schedule, since it too deserves an accurate description so that proposed alternatives are not considered or evaluated against an easily dismissed or derided "straw dog."

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

**Flexibility in Times of Peace**

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

- special pay rates for certain occupations
- critical pay authority

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

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

The basic structure of the General Schedule is a 15-grade matrix with ten steps per grade. Movement within a grade or between grades depends upon the satisfactory performance of job duties and assignments over time. That is, an

employee becomes eligible for what is known as a "step" increase each year for the first three years, and then every two or three years thereafter up to the tenth step. *Whether or not an employee is granted a step increase depends upon performance (specifically, they must be found to have achieved "an acceptable level of competence").* If performance is found to be especially good, managers have the authority to award "quality step increases" as an additional incentive. If performance is found to be below expectations, the step increase can be withheld, and proper steps can be taken either to discipline the employee, demote the employee, and give him an opportunity to improve.

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

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

Unfortunately, neither the Clinton nor the George W. Bush administration has been willing to comply with FEPCA, and although some small progress has been made as a result of Congressional action, on average federal salaries continue to lag private sector salaries by about 22%. The Clinton administration cited, variously, budget difficulties and undisclosed "methodological" objections as its reasons for failing to provide the salary adjustments called for under FEPCA. The current administration ignores the system altogether, and for FY04 has proposed allocation of a fund with 0.5% of salaries to be allocated via managerial discretion. Meanwhile, the coming retirement wave, which was fully anticipated in 1990 and is particularly acute in DoD because of the downsizing of more than

200,000 jobs in that decade, has turned into a full-fledged human capital crisis, as the stubborn refusal to implement the locality pay system which was designed to improve recruitment and retention of the next generation of federal employees continues.

One of the rationales that will be repeated endlessly as DoD officials push for unfettered authorities will be the importance of their being able to act decisively in emergencies involving national security risks or incidents. They may claim, wrongly, that today they lack the authority to abrogate collective bargaining agreements in such cases, or move and direct or terminate personnel easily and expeditiously because of obstacles set forth in title 5. In fact, no such obstacles exist either in law or in collective bargaining agreements.

**Flexibility in Times of Emergency**

The current federal sector labor law provides that "nothing shall affect the authority of any management official of any agency...to take whatever actions may be necessary to carry out the agency mission during emergencies."(5 U.S.C.§7601(a)(2)(D)). Thus it is already within the sole discretion of the Secretary of Defense in times of heightened alert to take any emergency action, even those that might be expressly and directly inconsistent with existing labor agreements. In our 70 years of experience, as the largest union representing civilian workers in Defense, we do not know of one instance, in times of

heightened security, where there has been any labor dispute over the Secretary's emergency authority to reassign, transfer, or deploy any worker to any assignment for any security reason. *In other words, the current labor law gives the Secretary of Defense, in the context of personnel actions, all the flexibility he needs when he determines that he needs it.*

Barely one month ago, OPM Director Kay Coles James sent the heads of all Executive Departments and Agencies a memorandum (dated March 17) describing "Level Orange Emergency Human Resources Management (HRM) Authorities that had been put into use. There were two lists of flexibilities: one set required OPM approval prior to implementation, and the other did not. Among the "Existing Authorities" that agencies were invited to exercise without OPM approval were excepted service appointments of up to 60 days, emergency SES appointments, re-employment of annuitants, and competitive service appointments of up to 120 days without regard to CTAP, ICTAP, or RPL requirements. Further, biweekly caps could be lifted for premium pay up to annual limits.

Employees could be excused from work for needed emergency law enforcement, relief, or recovery efforts; telework arrangements can be approved. Employees could be furloughed without advance notice or any opportunity to respond, and more. With OPM approval, agencies have been authorized to make excepted service temporary appointments, waive dual compensation restrictions for re-

employed annuitants, and waive buyout repayment requirements, among other authorities. These authorities are flexibility itself, and AFGE is glad that DoD has access to them in emergency situations. No group is more concerned or more supportive of measures that truly advance our nation's security than DoD's civilian federal workforce.

**China Lake**

The Navy's China Lake plan started out as a demonstration project under title 6 of the Civil Service Reform Act. It was initiated in 1980, modified in 1987, expanded in 1990, extended indefinitely in 1994 (made into a "permanent" alternative personnel system), and expanded again in 1995. The employees covered by the China Lake plan are approximately 10,000 scientists, engineers, technicians, technical specialists, and administrative and clerical staff—a workforce that is not typical of any government agency, or even a minority of work units in any one agency.

Although the China Lake plan is often referred to as a model for pay for performance, the rationale given to OPM at its inception, and to Congress in its progress reports, was to improve the competitiveness of salaries for scientists and engineers. Nevertheless, the China Lake model is a performance-based pay system that differs from the General Schedule in terms of its classification of jobs

into pay bands that are broader than the grades and steps in the GS matrix. Thus it is often called a broadbanding system.

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

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

It is worth describing at length the mechanics of the China Lake pay for performance system, apart from its equally elaborate classification system. I do this in part to show how China Lake's design may be appropriate to some

scientists and engineers, but not to all federal employees since many are in occupations and workplaces that place extreme or even total limitations on creativity, individual initiative, or individualized performance. I also include this description to show that administrative ease is not one of pay for performance's virtues if the pay for performance system attempts to build in safeguards that limit the role of bias, favoritism and prejudice, as has been attempted at China Lake.

Instead of the General Schedule's 15 grades, China Lake has five career paths grouped according to occupational field. The five occupational fields are Scientists/Engineers/Senior Staff, Technicians, Technical Specialists, Administrative Specialists, and General Personnel. Each career path has classification and pay levels under the broadband concept that are directly comparable to groupings of the General Schedule. Within each career path are included many types of jobs under an occupational heading. Each job has its own career ladder that ends at a specific and different point along the path. Each broad band encompasses at least two GS grades. The China Lake plan describes itself as being "anchored" to the General Schedule as a "reality check." For those keeping count, the China Lake broadband has at least as many salary possibilities as the General Schedule, and at most as many as 107,000, since salaries can really be anywhere between the General Schedule's minimum or maximum.

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

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

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

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

The rationales offered by proponents of pay for performance in the federal government have generally fallen under one of four headings: improving productivity, improving recruitment prospects, improving retention, and punishing poor performers. Perhaps the most misleading rationale offered by advocates of pay for performance is that its use has been widespread in the private sector. Those who attempt to provide a more substantive argument say they support pay for performance because it provides both positive and negative incentives that will determine the amount of effort federal workers put forward. Advocates of pay for performance wisely demur on the question of whether pay for performance by itself is a strategy that solves the problem of the relative inferiority of federal salaries compared to large public and private sector employers. That is to say, when pay for performance is referred to as complying

with the government's longstanding principle of private sector comparability, what they seem to mean is comparability in *system design*, and not comparability in salary levels.

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

Although individualized merit pay gained prominence in the private sector over the course of the 1990's, there is good reason to discount the relevance of this experience for the federal government as an employer. Merit based contingent pay for private sector employees over the decade just past was largely in the form of stock options and profit-sharing, according to BLS data. The corporations that adopted these pay practices may have done so in hope of creating a sense among their employees that their own self interest was identical

to the corporation's, at least with regard to movements in the firm's stock price and bottom line. However, we have learned more recently, sometimes painfully, that the contingent, merit-based individual pay that spread through the private sector was also motivated by a desire on the part of the companies to engage in obfuscatory cost accounting practices.

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

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

The six myths identified by Professor Pfeffer are:

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

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

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

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

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

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

The relevance of these myths in the context of the sudden, urgent desire to impose a pay for performance system on the federal government is telling. Professor Pfeffer's discussion of the first two myths makes one wish that his wisdom would have been considered before the creation of the federal "human capital crisis" through mindless downsizing and mandatory, across-the-board privatization quotas. Pfeffer's distinction argues that cutting salaries or hourly wages is counterproductive since doing so undermines quality, productivity,

morale, and often raises the number of workers needed to do the job. Did the federal government save on labor costs when it "downsized" and eliminated 300,000 federal jobs at the same time that the federal workload increased? Does the federal government save on labor costs when it privatizes federal jobs to contractors that pay front-line service providers less and managers and professionals much, much, much more?

Salaries for the 1.8 million federal employees cost the government about $67 billion per year (a little over a third of this goes to DoD employees), and no one knows what the taxpayer-financed payroll is for the 5 million or so employees working for federal contractors. But as a portion of the total annual expenditures, it is less than 3%, according to Congressional Budget Office (CBO) projections. Regarding the relevance of low labor costs as a competitive strategy, for the federal government it is largely the ability to compete in labor markets to recruit and retain employees with the requisite skills and commitment to carry out the missions of federal agencies and programs. Time and again, federal employees report that competitive salaries, pensions and health benefits; job security, and a chance to make a difference are what draw them to federal jobs. They are not drawn to the chance to become rich in response to financial incentives that require them to compete constantly against their co-workers for a raise or a bonus. DoD employees, in particular, are drawn to the agency's national security mission.

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

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

Pfeffer also cites the compensation consulting industry, which, he argues, has a financial incentive to perpetuate the myths he describes. More important, the

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

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

> Despite the evident popularity of this practice, the problems with individual merit pay are numerous and well documented. It has been shown to undermine teamwork, encourage employees to focus on the short term, and lead people to link compensation to political skills and ingratiating personalities rather than to performance. Indeed, those are among the reasons why W. Edwards Deming and other quality experts have argued strongly against using such schemes.

> Consider the results of several studies. One carefully designed study of a performance-contingent pay plan at 20 Social Security Administration (SSA) offices found that merit pay had no effect on office performance. Even though the merit pay plan was contingent on a number of objective indicators, such as the time taken to settle claims and the accuracy of claims processing, employees exhibited no difference in performance after the merit pay plan was introduced as part of a reform of civil service pay practices. Contrast that study with another that examined the elimination of a piece work system and its replacement by a more group-oriented compensation system at a manufacturer of exhaust system components. There, grievances decreased, product quality increased almost tenfold, and perceptions of teamwork and concern for performance all improved.[1]

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

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

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

What message would the federal government be sending to its employees and prospective employees by imposing a pay for performance system? At a minimum, if performance-based contingent pay is on an individual-by-individual basis, the message is that the work of lone rangers is valued more than cooperation and teamwork. Further, it states at the outset that there will be designated losers – everyone cannot be a winner; someone must suffer. In addition, it creates a sense of secrecy and shame regarding pay. In contrast to the current pay system that is entirely public and consistent (pay levels determined by Congress and allocated by objective job design criteria), individual

pay adjustments and pay-setting require a certain amount of secrecy, which strikes us as inappropriate for a public institution. An individual-by-individual pay for performance system whose winners and losers are determined behind closed doors sends a message that there is something to hide, that the decisions may be inequitable, and would not bear the scrutiny of the light of day.

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

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

It is crucial to remember that the OPM poll was taken during a specific historical period when federal employees are experiencing rather extreme attacks on their jobs, their performance, and their patriotism. The Administration is aggressively seeking to privatize 850,000 federal jobs and in many agencies, is doing so in far too many cases without giving incumbent federal employees the opportunity to compete in defense of their jobs. After September 11, the Administration began a campaign to strip groups of federal employees of their civil service rights and their right to seek union representation through the process of collective bargaining. The insulting rationale was "national security" and the explicit argument was that union membership and patriotism were incompatible. Some policy and lawmakers used the debate over the terms of the establishment of the Department of Homeland Security as an opportunity to defame and destroy the reputation, the work ethic, loyalty, skill and trustworthiness of federal employees. And out of all of this has come an urgent rush to replace a pay system based upon objective criteria of job duties, prerequisite skills, knowledge, and abilities, and labor market data collected by the BLS with a so-called pay for performance system based on managerial discretion.

In this historical context, federal employees responded to a survey saying that they were satisfied with their pay. In fact, 64% percent expressed satisfaction and 56% believed that their pay was comparable to private sector pay.

But as the representative of 600,000 federal employees, AFGE would suggest that they are satisfied with their pay system, not their actual paychecks. Since the alternatives with which they have been threatened seem horrendous by comparison, expression of satisfaction with the status quo in a survey sponsored by an agency determined to give managers discretion or "flexibility" over pay is no surprise.

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

In this context, it seems reasonable to ask if the majority of employees are relatively satisfied with their pay, why the frantic rush to change? If federal supervisors and managers are held in such low regard, how will a system which grants them so much new authority, flexibility, unilateral power, and discretion be

in the public interest? How will a pay system that relies on the fairness, competence, unprejudiced judgement, and rectitude of individual managers be viewed as fair when employees clearly do not trust their managers? Given that less than a third of respondents say managers do a good job of motivating them, is pay for performance just a lazy manager's blunt instrument that will mask federal managers' other deficits?

We are also highly concerned about the introduction of managerial discretion over pay in the context of recent aggressive attempts on the part of this administration to disparage and dismantle important elements of the merit system and provisions of title 5 which protect federal employees from discrimination in hiring, firing, pay, classification, performance appraisal, and which provide for collective bargaining. The current system makes sure that winning a federal job is a matter of what you know, not whom you know. The current system makes sure that the salary and career development potential of that job are a function of objective, job description criteria, not a manager's opinion of an individual worker's "competency" or skin color, gender, religion, age, political affiliation, or union status. Deviations from these protections are not warranted. Our nation has prospered and our government programs have benefited from having a professional, apolitical civil service that is strongly protected from corruption and discrimination. Introducing individualized pay systems that grant enormous power to federal managers regarding pay represents a grave danger to this protection.

The advocates of pay for performance in DoD or elsewhere in the federal government have the burden of demonstrating exactly how and why the General Schedule prevents federal managers from managing for excellence and productivity improvement. They must demonstrate exactly how and why each of the merit system principles will be upheld in the context of political appointees' supervision of managers who will decide who will and will not receive a salary adjustment, who will receive a higher salary for a particular job and who will receive a lower salary for the same job. They must demonstrate exactly how and why individualized pay for performance is superior to systems that provide financial reward for group and organizational excellence. They must demonstrate exactly how and why paying some people less so that they can pay others more will contribute to resolving the federal government's human capital crisis and attract the next generation of federal workers to public service. They must demonstrate exactly how and why agencies will invest in the training, oversight, and staffing necessary to administer elaborate, federal employee by federal employee pay for performance plans fairly and efficiently. And they must demonstrate that they will be able to secure adequate funding so that pay for performance does not degenerate into a false promise, where discretion is exercised to award higher salaries only to recruit and/or retain particular individuals rather than to reward actual performance.

**Conclusion**

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

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

As I stated above, AFGE has always supported our nation's military mission, and we remain ready and willing to sit down with Pentagon leaders to work collaboratively to solve any real problems they have experienced with regard to

accomplishing that mission that can be traced to the civil service infrastructure. The DoD proposal, however, would effectively eliminate any opportunity for collaboration between DoD management and its civilian workforce. I urge the Subcommittee in the strongest possible terms to reject this legislation and the processes that led to its presentation. Further, I urge you to recommend to the Pentagon a resumption of dialogue with its unionized workforce.

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

Mrs. DAVIS OF VIRGINIA. Mr. Shaw, you're recognized for 5 minutes and if you'd like to put your complete statement in the record you can. If you'd like to summarize, that's up to you.

Mr. SHAW. Yes. I would like my complete statement in the record, please, Ms. Chairman Davis.

Thank you for the opportunity to testify. SEA represents the interests of career members of the Senior Executive Service at DOD and all Federal agencies' senior-level senior technical employees and those in equivalent agencies' equivalent positions.

First, these—this proposal by DOD goes far beyond anything that has been demonstrated and proven in the demonstration projects that we have. I'm going to confine my comments to those matters we believe threaten the integrity of the Senior Executive Service and its cadre of career executives who ensure the impartial and nonpolitical, nonpartisan enforcement and administration of our Nation's laws.

I was watching a "60 Minutes" segment on CBS Sunday night. It involved allegations there had been improper political interference in the awarding of DOD contracts for the rebuilding effort in Iraq. Specifically it accused Vice President Cheney of interfering in the pre-hostilities award of classified contracts to Halliburton Corp. It also made allegations about former general officers in the military who are now working for Halliburton and other companies that received contracts for providing services to the troops in Iraq. Finally, it cast aspersions on the current administration and its political leadership for allegedly interfering in these and other rebuilding efforts in Afghanistan.

While allegations and innuendo are the life blood of "60 Minutes" and other television news shows, the interesting part was the response of DOD. Instead of the Secretary or another high-level political appointee responding, the Chief Counsel of the Army Corps of Engineers, Robert Anderson, responded to the allegations. He is a career member of the Senior Executive Service, and provided an eloquent defense of the procurement process. His most important and telling statement was that the contract procurement activities were performed by career employees who would not allow DOD or other Federal contracts to be awarded on the basis of partisan politics. He stated that if "60 Minutes" or any others making allegations were to spend 1 week with these career employees, they would understand how carefully and objectively these contracts were evaluated and awarded.

The importance of this is that DOD realized that the integrity of its programs depended on the career executives and career employees who carry out its day-to-day activities. It also knew that a career SES employee presenting the facts would carry more credibility with the public. "60 Minutes" was at a loss when confronted with this response, and I believe that most of the Nation's citizens dismissed the allegations out of hand because of the assurance of the career SES employee, Mr. Anderson.

We relate this incident because we firmly believe that some of the authorities sought by DOD in this legislation would serve to undermine the citizens' confidence in the integrity of government operations. This confidence is based in large part on the integrity of the Civil Service System and its career senior executive leader-

ship. This legislation would do away with many of the rights and protections of these employees need to maintain their nonpartisan integrity. SEA is aware that this is not intended but there is always a concern about unintended consequences.

We believe that the breadth and depth of the unfettered authority sought by this legislation justifies our and your concerns. Some of SEA's concerns are highlighted here today, others are in our written testimony.

First the legislation does away with the requirement for Career Reserved SES positions which are—which must be filled by career employees. They would allow such employees, such positions, to be abolished or not to exist, to be filled by anyone, qualified or unqualified, partisan politician or not. This authority is not necessary. OPM has done the job of overseeing and ensuring the positions requiring impartiality and nonpartisan enforcement of the Nation's laws are carried out by career employees who have gained their positions based on merit. We believe this should continue.

The bill would do away with the requirement that career SES appointments be made up of persons who meet the qualifications for the job. These qualifications are approved by OPM through the Qualifications Review Board process, which should continue, and which takes a maximum of 2 weeks to perform.

It would allow for SES Career Reserved positions to be filled by temporary employees with no review of their qualifications and no limit on their numbers. We object to this authority.

It also removes the restriction that political appointees may fill no more than 10 percent of SES positions overall or 25 percent in any agency. This would destroy the career SES and rob the government and the people of this country of the impartial administration of our Nation's laws and regulations. It would allow the elimination of all appeal rights for career executives and employees to the Merit System Protection Board if their pay was drastically cut or they were removed from their positions for alleged misconduct. They would have no due process rights in the taking of their pay, their positions, and their reputation.

It allows the flexibility to limit the SES appointment rules. It allows for SES employees' pay to be set annually, anywhere between 125,000 lower—at the lower end, or 198,000 at the upper end, with no opportunity for oversight, no necessity for certification of a fair evaluation process, or any right on behalf of the employee to challenge the determination anywhere, even if his or her pay is cut.

It allows the creation of appointments of highly qualified experts, quote unquote, who would be paid up to 50 percent higher than the higher SES salary or, based on current pay, $192,500. There would be no limit on the number of these appointments and they could serve for 6 years in any position with no independent check of their qualifications. If a particular DOD administrator wishes, they could unilaterally fire everyone of their current SES employees and fill these positions with, quote, highly qualified experts from whatever field without review of their actions or appointees.

Currently DOD has authority for a limited number of such positions at DARPA, the armed services research lab, etc. They are limited to scientific and engineering positions which pay 25 percent higher than the SES.

These are but some of our concerns. We urge the subcommittee to expeditiously amend this proposal to restore the necessary safeguards for career SES employees before its enactment. We do not object to additional flexibility for DOD. We support pay-for-performance and we support many of the proposed changes which would allow additional management flexibility. But we believe that loose flexibility should be limited to that provided the Department of Homeland Security and that DOD be required to go through the same process as Homeland Security before issuing regulations and beginning or implementing new systems in the Department of Defense.

Thank you.

[The prepared statement of Mr. Shaw follows:]

PO Box 44808 • Washington D.C. 20026 • (202) 927-7000 • Fax (202) 927-5192 • www.seniorexecs.org

TESTIMONY
of

G. JERRY SHAW

GENERAL COUNSEL, SENIOR EXECUTIVES ASSOCIATION

On

TRANSFORMING THE DEFENSE DEPARTMENT:
EXPLORING THE MERITS OF THE PROPOSED
NATIONAL SECURITY PERSONNEL SYSTEM

Before the

HOUSE GOVERNMENT REFORM COMMITTEE,
SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION

April 29, 2003

Madame Chair, the Senior Executives Association (SEA) appreciates the invitation to provide its views on the very recently proposed legislation from the Department of Defense that would dramatically overhaul its personnel system. We comment today on those parts of the legislation that will affect the Senior Executive Service. We further note that at least one part of the proposed bill affects the Senior Executives Association and its ability to act on behalf of its DoD members, and we also comment on that provision.

Our first observation is the speed accompanying the consideration of the DoD proposal. It was only sent to Congress the week before last and is headed in short order to closed markup hearings in both the House and Senate Armed Services Committees. It is not clear what is prompting such speedy consideration on a fast track which wasn't even accorded the legislation creating the Department of Homeland Security. At a minimum, the radical and untested nature of many of the proposals requires much more deliberation and consideration, especially considering the government-wide fallout that will undoubtedly occur as a result of the DoD proposal, if it is enacted.

SEA is proud of its representation of its members and at the same time its promotion of good government policies. We have for the past 23 years advocated a flexible and responsive Senior Executive Service, and we stand ready to work with Congress to implement necessary changes to the federal human resources system to the extent greater flexibility and responsiveness is needed.

One of the most significant good government initiatives that has consistently driven SEA policy is ensuring laws that allow for a vibrant career Senior Executive Service that can interact with political appointees without fear of reprisal or unfair branding when a political administration changes. Many of the parts of chapters 31, 33, and 35 of Title 5 are designed in large part to create an environment of a flexible Senior Executive Service with just enough protection so that career senior executives will not be unfairly subjected to politically motivated treatment.

Examples of the flexibility that agencies currently have include the right to reassign an executive to any SES position at any time, the right to remove for less than fully successful performance without a hearing or other recourse, the absence of grievance rights for performance appraisal ratings, and the authority to lower an executive's pay one level per year. SEA stands ready to participate and promote further flexibilities, as needed, but remains concerned that the DoD proposal has gone too far and allows so much flexibility that the risk is that DoD's career Senior Executive Service contingent could be replaced by political appointees and a politically driven executive corps that would be beyond the oversight or control of Congress or OPM.

The first section of the bill proposes a new section 9902 to be added to Title 5 which would require the Secretary to work with the Director of OPM in developing a new personnel system - unless the Secretary determines that national security requires him to act alone, in which case he can proceed without the OPM Director. We consider this provision to be particularly dangerous, especially since it applies to the basic design and adjustment of DoD's human resources system. We believe OPM's role is critical to assure full adherence to merit system principles. This is especially true considering OPM's government-wide role and the large

numbers of federal employees at DoD, including more Senior Executives than at any other agency.

The first portion of the proposed bill goes on to propose the flexibility to totally transform the DoD personnel system. The bill appears to have used the Homeland Security Act of 2002 as a model for creating a flexible personnel system in DoD similar to the authority given to Homeland Security last year. But DoD's bill goes much further allowing much greater flexibility and authority to the Secretary. In fact, it allows the Secretary to totally eviscerate the current system and to substitute in its place whatever he wishes without any review or restriction imposed by OPM or by Congress. Our comments are restricted to this first portion of the bill.

During the summer and fall of 2002, much debate occurred about the new Department of Homeland Security and the degree of flexibility needed to accomplish its mission. The premise of this need for personnel flexibility was the anticipated difficulty in merging 22 different federal organizations with 22 different cultures into one new department so that effective homeland security would be the result. No similar need or argument is advanced by DoD in making its request for even greater authority than has been granted to the Secretary of Homeland Security. In fact, DoD appears to have functioned quite well in the recent Iraqi War, and no examples or detailed rationales have been provided to justify the request for this additional personnel authority.

In particular, the Senior Executive Service has worked efficiently and effectively for 25 years now in DoD and is a model of an efficient, effective leadership corps that is performance and merit based. At a minimum, any reforms to the DoD personnel system should not destroy or minimize the existing structural components of the career Senior Executive Service that are designed to assure the efficient operation of a career civil service subject to the direction of its political leadership. These components to the SES structure were developed by Congress and were designed to provide a flexible career executive service that is free from political influence, but at the same time one that is subject to direction from the political appointees that career executives work with so closely.

Last summer, when SEA participated in the debate on the new Department of Homeland Security, we raised many of these same concerns. The result of our effort was an assurance by the House Select Committee on Homeland Security that the basic structure of the SES, as contained in chapters 31,33 and 35 of Title 5, United States Code, would not be disturbed. In other words, these chapters would <u>not</u> be part of the President's flexibility. In fact, our concerns led the then Chairman of the House Select Committee on Homeland Security, Representative Rob Portman, to write a letter to the editor of <u>New Republic</u> magazine in which he stated his support for the SES and specifically stated that the Homeland Security Bill sought to preserve the Senior Executive Service as it currently exists. Ultimately, the SES was fully preserved in the Homeland Security Act that is now law. And no one suggests that more flexibility in connection with the structure or rules of the SES is needed for the new Department of Homeland Security, even given its critical and sensitive mission.

**DoD BILL PROPOSED PERSONNEL SYSTEM FLEXIBILITY**

The Department of Defense now proposes that the Secretary of Defense have flexibility over all of those statutory provisions that govern the Senior Executive Service except for 5 U.S.C. sections 3131 and 3132(a). These two statutes, for which there is no flexibility, define the basic principles of the SES. The remaining SES statutes, for which flexibility is proposed, provide the important, but minimal, standards which govern the structure and operation of the SES. Some of the provisions affecting the SES for which flexibility is proposed are those requiring and implementing career reserved positions; limiting the number of noncareer SES; limiting temporary SES appointments; requiring the qualifications review procedure now performed by OPM; imposing the 120-day get acquainted rule and the 60-day notice of a geographic reassignment, allowing for fallback rights to GS positions for career employees who have entered the SES; providing for RIF procedures based primarily on performance, and eliminating performance review board protections and Merit Systems Protection Board (MSPB) appeal rights. As explained below, each of these statutory provisions is an important civil service protection that prevents politicization and misuse of the career Senior Executive Service.

**Career Reserved Positions**

Section 3132(b) of Title 5, United States Code, defines the term "career reserved position" as a position that may only be filled by a career appointee because the public requires confidence that the incumbent of the position is free from political influence. Examples of such positions are law enforcement and auditing. It is difficult to imagine why the DoD needs flexibility on this provision. Except for some positions that are required by law, the agency itself, with OPM's help, decides whether a position is general or career reserved based on a statutory definition. If public confidence requires that a position be reserved to a career appointee, the Secretary of Defense should not have the "flexibility" to place a political appointee into the position. Career reserved positions protect the public because they assure that the law is enforced without political considerations influencing required or necessary government action. This is an important protection to the operation of government and to the protection of the public, and it must be maintained.

**Noncareer SES**

Subject to exceptions granted by OPM, current law requires that no more than 10% of the Senior Executive Service, government-wide, be non-career appointees, with no more than 25% in any one agency. The Volcker Commission Report recently issued strongly advocates a reduction in the number of political appointees with a greater reliance on career appointees. Under these circumstances, there appears to be no justification for greater flexibility to permit the Secretary to appoint unlimited political Senior Executives.

**Limited Appointments**

At present, an agency may appoint temporary Senior Executives to fill emergency or special project needs. These appointees are limited to 5% of the SES positions and are also subject to time limitations. To prevent the SES from being filled with temporary appointees who

have not been subjected to a competitive process or a qualifications review, these current limitations are reasonable. No case has been made that the system that has worked well for 25 years is inadequate or that greater flexibility is needed.

**Qualifications Review Boards**

One of the most important protections for the career Senior Executive Service and the public it serves is the OPM-administered Qualifications Review Board process. This is a test all career senior executives must pass before they can receive their appointments. It assures that the appointee is truly qualified and that the appointment is free from political influence. The process is quite efficient and does not cause delays in the appointment of career senior executives. OPM completes these QRB functions on average within two weeks of the submission by the agency. No reason exists for excusing DoD from this reasonable process that ultimately protects the American public by assuring that only qualified applicants are admitted to the career SES.

**120-day get Acquainted Period**

This statute assures that a new political administration will give career Senior Executives at least 120 days to demonstrate their capabilities before effecting a permanent reassignment. Often a truly effective career SES will be unfairly labeled by an incoming political Administration or appointee as favoring the outgoing political party when the executive has merely fulfilled his or her responsibilities in carrying out appropriate policies. This 120-day get acquainted rule is an important protection that in the long run actually helps the government run more effectiviely. Again, no flexibility is needed.

**60-day Notice of Geographic Reassignment**

Senior Executives are, by definition, mobile and subject to reassignment at the pleasure of their agency. Nonetheless, an immediate reassignment to a new geographic location would obviously be unreasonable in all but the rarest case and could be used to punish the executive. The 60-day notice period, in fact, does not prevent the immediate detail of the Senior Executive to a new location if urgently needed, but it does allow for payment of per diem for the first 60 days. This is not an unreasonable requirement and no flexibility is needed. Certainly, no case has been made indicating that the current procedure is restrictive or cumbersome.

**Fallback Rights**

Current law gives career employees who enter the SES from lower level career positions the right to return to the grade level from which they were appointed if they are removed from the SES for less than fully successful performance, removed because a reduction in force, or if they do not pass their probationary period. If flexibility is granted to the Secretary of Defense to at any time change this or eliminate these fallback rights, serious consequences could result. Many career employees may choose not to seek SES positions on the mere possibility that DoD could issue an internal regulation taking away these fallback rights and then ending an employee's career solely by virtue of his or her acceptance of an SES position.

**RIF Procedures Based Primarily on Performance**

Over the years, much criticism has centered around the governments's seniority based reduction in force rules. However, this has never been the case with the Senior Executive Service where the RIF statute has always given agencies total flexibility to design their SES RIF procedures with the only requirement that it decide which executive to release as a result of a RIF primarily on the basis of performance. This existing law has it right and again no further flexibility is required.

**The Role of the Merit Systems Protection Board and Agency Performance Review Boards**

When the Homeland Security legislation was debated, SEA opposed elimination of MSPB appeal rights for federal employees and flexibility to eliminate Performance Review Boards for Senior Executives. The Homeland Security Act that was finally enacted does provide for flexibility in both these areas but the personnel system that will implement these changes has not yet been designed or tested. We do not know whether the reforms will even take place, much less whether they will work. It is premature and unnecessary to enact similar flexibilities at DoD when the MSPB appeal system and SES PRB system appears to be working everywhere in government without significant complaint. The need for flexibilities that motivated reforms in Homeland Security do not necessarily apply at DoD. We urge that this flexibility be dropped from the bill pending further justification.

**ADDITIONAL PERSONNEL AUTHORITY IN DoD BILL**

One provision proposed by DoD which SEA supports for government-wide applicability is the provision that annuitants can be re-employed by agencies without loss of their annuities. Currently, only OPM can authorize this. SEA believes that agency heads should be able to decide whether an annuitant is so valuable that he or she should be re-employed and the agency head should have the authority to pay full salary without loss of annuity if this is necessary to attract valued retirees back to needed service.

The bill also proposes a new section 9904 to Title 5 that would allow the Secretary the authority to appoint "highly qualified experts." These appointments would be for up to six years. The proposed statute contains no limit on the number of these appointments nor does it provide standards for what types of positions are to be filled by these highly qualified experts. The bill proposes to pay these experts up to the maximum now allowed by statute for base pay for Senior Executives plus full locality pay (not allowed for Senior Executives) plus an additional amount of up to 50% of salary. SEA's concern about this is: (1) no case has been made for the need for such sweeping authority; (2) the entire career SES could be supplanted by appointments of these highly qualified experts; and (3) it would lead to further fragmentation of the SES corps at a time when the future structure of a government-wide SES corps is about to be debated as a result of proposals in the Volcker Commission Report and ideas that have floated out of OPM for the last several years.

We have addressed our concerns about fragmentation before and some of it deserves repeating. The failure to address pay compression - coupled with the desire for flexibility and an "each agency for itself" mentality - is leading to more and more splintering of what was once a government-wide Senior Executive Service. We now have the Senior Biomedical Research Service, the FAA Executive system, the IRS critical pay positions, the Defense Intelligence SES, and on and on.

This proliferation of systems inhibits effective oversight of the executive corps, as well as effective management of what should be a government-wide corps, the critical human resource provided by the top career executive leadership. Also inhibited will be opportunities for mobility, for executives to move between agencies, either for professional revitalization or for the good of the government, as they will be restrained by the very different systems - whether qualifications or pay - operated by each agency.

SEA supports careful study and review of the Senior Executive Service structure and urges that it have government-wide applicability. Without this further study, we recommend against provisions like that proposed in the DoD bill for sweeping reforms of the Senior Executive Service and creation of a whole new category of highly compensated employees.

One final note is the provision on collaboration with employee organizations in the DoD Bill. Because SEA is a professional association and is not the exclusive representative of its members, the DoD bill proposes to offer collaboration to organizations such as SEA on the design of the new personnel system solely at the discretion of the Secretary. This is markedly different from the Homeland Security Act of 2002 where SEA's participation in the design of a new personnel system is assured. SEA urges similar language in the DoD bill requiring consultation with groups similar to SEA if Congress decides that DoD should have the authority to design a new personnel system.

**CONCLUSION**

The Defense Transformation for the 21st Century bill proposes sweeping changes, not just in the SES, but in the rest of DoD's civil service work force. Some of these changes may well be needed or even a good idea. For example, it seems to make sense that DoD have just one personnel system for its GS workforce, and it should be able to implement some of its best practices. Also, SEA supports DoD's efforts to achieve relief from some of the more draconian provisions of Title V that inhibit its ability to hire and compensate the executive workforce it needs. Nonetheless, we believe the basic principles we have outlined above are the minimal provisions that must be retained in statute to retain the integrity of the career Senior Executive Service.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Shaw, and thank you, Mr. Harnage. I'm going to start again with my ranking member, Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Madam Chairwoman.

Mr. Harnage, Mr. Shaw, I believe that you gentlemen basically have answered my questions, but let me ask you what role did your respective organizations play in development of this proposal and have you had any opportunity to comment on the legislation to the Department?

Mr. SHAW. No to both questions. None.

Mr. HARNAGE. No. We got word they wanted to talk to us, and they talked with us in general terms just a few days before it was published in the Register. They just gave us advance warning that it was coming out.

Mr. DAVIS OF ILLINOIS. Dr. Chu stated that employee groups had essentially commented, or had the opportunity to comment on this proposal, because you had the opportunity to comment on the nine demonstration projects that had been conducted earlier. How do you assess that comment?

Mr. SHAW. Well, first I have to correct my previous answer. We did receive a call, and there was a meeting last Friday which was the first notice that we had of any of these proposals. And we did meet with two individuals from the Department of Defense, but that was kind of late in the process seeing as it had already been introduced and was well on its way.

Second, most of the—if not all of the demonstration projects, did not affect their Senior Executive Service. So that it was not necessary or appropriate for us to be brought into that process, and we were not part of that process.

Mr. DAVIS OF ILLINOIS. Mr. Harnage.

Mr. HARNAGE. Yes, to answer your question, seems to rebut Mr. Chu's expression that the employees are in favor of this. I'm still trying to figure out whether that's "employee" or "labor." There's only one of the demonstration projects that were union. All of the others are nonunion. All of the opportunities to participate in a demonstration project in current law are subject to the approval of the recognized union, and they have yet to be able to convince our employees to ask me to try and get that legislation for them. The employees are not demanding this. It's the political appointees and top management.

Mr. DAVIS OF ILLINOIS. Are either one of you aware of any instances, have you heard from any experts where the current Civil Service laws have hindered the way in which DOD had the opportunity to execute its most recent military operations?

Mr. HARNAGE. Well, to answer that question, your colleague Steny Hoyer from Maryland asked that question during the Department of Homeland Security debate, to give one example of where either be it a union member or collective bargaining agreement has been a problem with national security, and this has been over a year and he's still waiting for an answer to that question. You would think that having just come out of this war in Iraq, that if there was ever going to be an example that would be fresh in your memory it would certainly be now, but they do not have any.

Mr. SHAW. We have heard of none that prevented any activities, appropriate activities in Iraq. And—but I must say that the—that current senior executives are aware of management inflexibilities that are dogging their ability to manage the work force in DOD and other agencies, and we have testified about those before, and we have made our suggestions to Congress to resolve those.

Mr. DAVIS OF ILLINOIS. Thank you very much, Madam Chairwoman. I have no other questions, but I would just say that I'm sure that you've got more influence with DOD than I do, but I would join with you——

Mrs. DAVIS OF VIRGINIA. Not much.

Mr. DAVIS OF ILLINOIS [continuing]. In calling upon the Secretary to withdraw this portion of the legislation and give us more time to really deal with it. So, I would thank you very much.

Mrs. DAVIS OF VIRGINIA. I'm certainly going to ask, Mr. Davis, but I wouldn't hold my breath on it. But I really would hope that we can get that portion out of the DOD authorization bill, just to be able to flesh it out more with more hearings, at least at another hearing where we'd have a little more time to prepare. To follow——

Mr. HARNAGE. Out of the Davises, we have a 2 to 1 vote.

Mrs. DAVIS OF VIRGINIA. A few more than two people on the committee, unfortunately. And he's not with me in Armed Services, unfortunately.

I'm sort of lower on the totem pole in Armed Services.

To followup on what Mr. Davis was talking about, when it comes to using Federal workers and executing the conflicts, Dr. Chu stated that—I don't think he stated it here, I think it was when he talked to us in the back—where DOD said they had 9,000 civilian workers on the ground in Iraq and only 1,500 of those 9,000 were Federal employees. And he said that the reason for that was that they don't have the flexibility that's necessary to use civilian workers.

You know I support defense very strongly, and I think our Nation's security is of utmost importance. Given that, what do you think that we need to do in order to protect the status of the DOD civilian worker from competition from contractors; what adaptations do we need to make? What is the problem? Is that what you're saying; we do not know what the problem is?

Mr. HARNAGE. Well, first of all, in all due respect to Dr. Chu, I think that was a misrepresentation of the facts. The civilian work force and the situation with Kosovo, Afghanistan, and the Gulf war, civilian employees were deployed because contractors could not be or would not be placed in harm's way. This time there may have been more contractors than there were civilians, but it had nothing to do with the civilian work force flexibilities.

The only complaints that I have heard concerning this deployment—and I think there were more than 1,500—were two complaints that came to me because they were not allowed to be deployed, not because they were deployed. Many of the people that were deployed were union members. Many of the people that were activated were Federal employees that are now reservists, were also union employees, and nobody's had to check their union card

in order for them to shove a rifle in their hand. So I think that's a total misrepresentation of the fact.

In this crowd, in this hearing room today, are several of the leaders, and Department of Defense are here because they're dedicated, and there's nobody more supportive of the Department of Defense than AFGE and its leadership out of DOD.

Mr. SHAW. There are no restrictions in laws or regulations from the deployment of career Federal managers or executives anywhere in the world, in any part of the world at any period of time.

Mrs. DAVIS OF VIRGINIA. We're going to try to get some specifics from Dr. Chu on that because I want that question answered.

Mr. Harnage, I really appreciate the time and effort you have put into your prepared remarks and I appreciate the work you do representing your people. You've posed many questions that certainly should be answered and you've got a lot of folks, 200,000 people over at DOD. That's a lot, and I know it's a job for you.

You mentioned earlier in your prepared testimony on page 5 that the AFGE's repeated overtures to the administration have been spurned.

Mr. HARNAGE. Say that again?

Mrs. DAVIS OF VIRGINIA. You were not able to talk to the people in the administration. Can you elaborate on that for us? You know, have they given—have you given them something in writing, have they ignored you? Have you tried to make appointments? Have they ignored you? Can you expand on it? What's the deal?

Mr. HARNAGE. Well, there's one specific thing I can give you in writing, where one of the first things I did was write to this administration which—when it had only been in office a couple of weeks, saying we want to sit down and talk to you about pay reform. If there's a problem with pay, then let us fix it and do it together. We were not ignored. We did get a response, but it basically said they were too busy.

The same way with this legislation. AFGE was working with the previous administration, with the Pentagon, on personnel reforms and we was working I thought very well together. We had a Department-level partnership going. That came to a screeching halt when they canceled the executive order on partnership. I used to go to the Pentagon two or three times a month, meeting with various departments and people and sometimes even with the Deputy Secretary of Defense. I have been to the Pentagon twice since this Secretary has been there, and it's twice at his calling of all the organized labor, not to talk about the Pentagon but to talk about the response to terrorism and the changes that had to be made, more or less preparing us for the eventual war that was going to happen.

Mrs. DAVIS OF VIRGINIA. Have you tried to get in to see him?

Mr. HARNAGE. Pardon?

Mrs. DAVIS OF VIRGINIA. Have you made the initiative and tried to get——

Mr. HARNAGE. We have. And even with Dr. Chu we've asked let us sit down and talk through these things. I'm not interested in being allowed to disagree or agree, I want to have meaningful input, and I think the people I represent who are on the job can have some meaningful input if given the opportunity. But the tim-

ing and the progress of this legislation is more important than the substance is my impression of the Pentagon.

Mrs. DAVIS OF VIRGINIA. OK. I'm not going to comment on that. It's clear from your testimony that the proposal we're addressing today gives you concern because of the potential for each Secretary of Defense to change the rules or to move the goal post anytime that they want to.

Would it be fair to say that because of a new and improved system that still takes many years to implement, even if it may be possible for the Secretary to act unilaterally, successive Secretaries would have other projects to put in place, than to reform a new personnel system, and do you have any comments you would like to share on that? I think we're all concerned about the sweeping power that we'd be giving the current Secretary.

Mr. HARNAGE. It's sweeping power and it's final. It's not only taking me out of the picture, it takes you out of the picture. You have got to recognize that where now we have collective bargaining by law, and it's defined what it can entail by law, you're changing that to where the employer now decides whether or not collective bargaining will take place and, if so, to what degree it will take place, and it's not subject to any outside party's interpretation.

Currently, there's an incentive to reach an agreement because there's a third-party involved. In fact, there's more than one party. You go from negotiations to impasse to mediation; from mediation to the impasse panel who has an opportunity to make the final decision, which is a panel appointed by the President of the United States.

Under this change in the law, not only will they decide the subject matter to be collectively bargained but the degree collective bargaining takes place, and then if there's an impasse, there's a final say in it, nobody else has a final word. There's no check and balance, an opportunity to agree or disagree.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Harnage. My time is up. We're going to go to Mr. Waxman.

Mr. WAXMAN. Thank you very much, Madam Chairwoman.

Mr. Harnage, I think you're absolutely right. The idea of making this kind of a change in our Civil Service System with 24 hours' notice at best for Members of Congress, for us to give up all authority we're going to have in the future about how the Civil Service System is going to be run at the Department of Defense is to me astounding. And not only are they trying to cut us out of the picture, they want to cut the workers out of the picture, too, and keep you from being able to have the input that you need, your people need, to make sure that the whole system works for everybody.

It seems like they're forgetting the big picture and the goal that we all should want is a good-performance outcome, a good result for the work of the Department of Defense; that the combination of the armed services, the Civil Service personnel, and those that have to contract out for certain services, all of it needs to be brought together effectively to work successfully. And I'm astounded at the idea that they want to trample on individual employees' rights and the rights of employees to bargain collectively and then think they're going to have a work force that's going to

be committed and feel that they have been given a fair chance to make all of this succeed, that we all want it.

I appreciate the position you have taken here and the leadership you've given to government employees not only on this issue but on so many others, and I just want to express my point of view to you. We're going to do what we can to make sure that the end result is not going to be one where we delegate to anybody in any administration to throw out 100 years of Civil Service protections at the whim of any individual. I remind this administration that administrations come and go, but the laws are there to protect us under all circumstances. I thank you very much.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Waxman. And again I'd like to say thank you to our witnesses for being so patient to hang around and let us hear from you, and thank you again for all you do. And with that, this subcommittee is adjourned.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]