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United States Government Accountability Office
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The Honorable Susan M. Collins
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate

Subject: *Human Capital: Selected Agencies' Statutory Authorities Could Offer Options in Developing a Framework for Governmentwide Reform*

Dear Chairman Collins:

As the federal government continues its overall transformation, the centerpiece of this effort is the strategic management of human capital.¹ Federal agencies will need the most effective human capital systems to succeed in their transformations. Congress has recently given agencies such as the National Aeronautics and Space Administration (NASA) and the Departments of Homeland Security (DHS) and Defense (DOD) statutory authorities intended to help them manage their human capital strategically to achieve results. Consequently, in this environment, the federal government is quickly approaching the point where “standard governmentwide” human capital policies and processes are neither standard nor governmentwide. To be effective, human capital reform needs to avoid further fragmentation within the civil service, ensure reasonable consistency within the overall civilian workforce, and help maintain a reasonably level playing field among federal agencies in competing for talent.

To help advance the discussion concerning how governmentwide human capital reform should proceed, GAO and the National Commission on the Public Service Implementation Initiative hosted a forum on whether there should be a governmentwide framework for human capital reform and, if so, what this framework should include.² While there were divergent views among the forum participants, there was general agreement on a set of principles, criteria, and processes that would serve as a starting point for further discussion in developing a governmentwide framework to advance needed human capital reform. Specifically, they include

¹ For a discussion of some of the main policy and governance challenges facing the nation in the 21st century, see GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, GAO-05-325SP (Washington, D.C.: February 2005).

² GAO and the National Commission on the Public Service Implementation Initiative, *Highlights of a Forum: Human Capital: Principles, Criteria, and Processes for Governmentwide Federal Human Capital Reform*, GAO-05-69SP (Washington, D.C.: Dec. 1, 2004).

- **principles** that the government should retain in a framework for reform because of their inherent, enduring qualities, such as certain prohibited personnel practices;
- **criteria** that agencies should have in place as they plan for and manage their new human capital authorities, such as adequate resources for planning, implementation, training, and evaluation; and
- **processes** that agencies should follow as they implement new human capital authorities, such as involving employees and stakeholders in the design and implementation of new human capital systems.

Building on this framework, you asked us to provide information on the statutory human capital authorities that Congress has already provided to various federal agencies. As the first part of our response to your request, enclosure I organizes six selected agencies' existing human capital authorities by the principles, criteria, and processes included in the framework for governmentwide reform. These six agencies have undergone statutory reform of their human capital systems within the past 10 years. Cataloging these recent authorities could help Congress craft an approach to address human capital reform efforts. For example, assuring adequate training—one process identified in the framework—is critical to the success of any human capital reform. As shown in enclosure I, Congress took a very broad approach in DOD's human capital legislation, requiring the department to provide adequate training and retraining for supervisors, managers, and employees in the implementation and operation of its performance management system. Congress took a more prescriptive approach with the Internal Revenue Service (IRS), requiring that it implement an employee training program no later than 180 days after enactment of its new personnel authority. In addition, IRS was to submit a plan that provided information such as scheduling and funding of the training and covered specific training areas such as customer service and conflict resolution.

To illustrate more broadly what specific authorities Congress has provided to agencies in the past, enclosure II identifies and summarizes 10 selected agencies' exemptions from various chapters of title 5 of the U.S. Code dealing with civil service employees. The enclosure provides details on these agencies' exemptions in six key areas: (1) merit system principles and prohibited personnel practices; (2) hiring, staffing, and employment authority; (3) performance management; (4) classification and pay administration; (5) labor-management relations; and (6) adverse actions and appeals. Except for merit system principles, generally these are the provisions of title 5 that Congress has often addressed in past agency-specific human capital reforms and might want to address in any comprehensive human capital reform legislation. For example, in the area of adverse actions and appeals, IRS is partially exempt from the general procedures that agencies are to follow in initiating adverse actions against employees for certain performance or conduct reasons. In contrast, DHS and DOD are exempt and can design their own procedures for such actions.

There is general recognition of a need to continue to develop a governmentwide framework for human capital reform that Congress and the administration can implement to enhance performance, ensure accountability, and position the nation for the future. Taken together, these enclosures offer options that Congress can consider to ensure the critical components of the framework are consistently addressed when granting both (1) agency-specific human capital authorities so agencies can design and implement effective human capital systems to help them address 21st century challenges and succeed in their transformations, and (2) governmentwide reform to provide broad consistency where desirable and appropriate.

To provide the information you requested, we selected 10 federal agencies for review: Central Intelligence Agency (CIA), DHS, DOD, Federal Aviation Administration (FAA), Federal Deposit Insurance Corporation (FDIC), IRS, NASA, National Security Agency (NSA), Securities and Exchange Commission (SEC), and Veterans Health Administration (VHA). We selected DHS, DOD, FAA, IRS, NASA, and SEC because these agencies have undergone statutory reform of their human capital systems within the past 10 years and are frequently mentioned in the context of reform efforts. We selected CIA, FDIC, NSA, and VHA because they have long been exempted from various provisions of title 5 and are likewise often cited in the context of reform. These 10 agencies have a combined workforce of over 1.2 million civilian employees.

For our analysis, we reviewed the 10 agencies' human capital authorities in 34 chapters of title 5 dealing with the civil service to identify exemptions and relevant references to principles, criteria, and processes of the human capital reform framework. As agreed, we do not provide information on whether or how the agencies have implemented these authorities. To verify the accuracy of our analysis, we provided draft copies of relevant excerpts of this report to the 10 agencies for review. A DHS official told us that DHS had no comments. Eight of the 10 agencies provided technical comments, which we incorporated where appropriate. CIA also provided comments which we were unable to fully incorporate because of the timing of their submission and the lack of readily available information to perform the work needed to resolve the interpretive issues they present. Accordingly, we do not express an opinion regarding CIA's exemption from or coverage under the particular chapter of title 5 unless Congress has enacted a specific exemption. A few agency officials commented that although an agency may not be required to follow specific provisions or chapters of title 5, the agency may have voluntarily incorporated some or all of them in its human capital system. For example, although FAA is exempt from specific title 5 requirements related to merit system principles and performance management systems, an FAA official told us that its personnel system is consistent with these title 5 requirements. Similarly, a VHA official told us that while VHA is not required to apply veterans' preference procedures when hiring for healthcare positions, VHA gives preference to veterans when the qualifications of candidates are approximately equal.

We conducted our work from September 2004 through March 2005 in accordance with generally accepted government auditing standards. The information in this report does not represent all the agencies' statutory authorities and exemptions related to human capital. For comparative purposes, enclosure III includes a summary of GAO's human capital statutory authorities, and enclosure IV lists selected GAO products related to governmentwide human capital issues and specific human capital management at the agencies included in this report.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the report date. At that time, we will send copies to the Ranking Minority Member of the Committee on Homeland Security and Governmental Affairs and to other appropriate congressional committees. We will also send copies of this report to the heads of the 10 agencies included in our review, the Director of the Office of Personnel Management, and other interested parties. Copies will be made available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report or need additional information, please contact me or Lisa Shames, Assistant Director, at (202) 512-6806. We can also be reached by e-mail at larencee@gao.gov or shamesl@gao.gov. Other GAO staff that made key contributions to this report are Michelle Bracy, K. Scott Derrick, Karin Fangman, Michael Volpe, and Katherine H. Walker.

Sincerely yours,



Eileen R. Larence
Director, Strategic Issues

Enclosures – 4

Selected Agencies' Statutory References to the Principles, Criteria, and Processes for Governmentwide Human Capital Reform

We reported that the following principles, criteria, and processes can serve as a starting point for further discussion in developing a governmentwide framework to advance needed human capital reform, as shown in figure I.1.¹

Figure I.1: Principles, Criteria, and Processes for a Human Capital Reform Framework

Principles that the government should retain in a framework for reform because of their inherent, enduring qualities:

1. Merit principles that balance organizational mission, goals, and performance objectives with individual rights and responsibilities
2. Ability to organize, bargain collectively, and participate through labor organizations
3. Certain prohibited personnel practices
4. Guaranteed due process that is fair, fast, and final

Criteria that agencies should have in place as they plan for and manage their new human capital authorities:

1. Demonstrated business case or readiness for use of targeted authorities
2. An integrated approach to results-oriented strategic planning and human capital planning and management
3. Adequate resources for planning, implementation, training, and evaluation
4. A modern, effective, credible, and integrated performance management system that includes adequate safeguards to help ensure equity and prevent discrimination

Processes that agencies should follow as they implement new human capital authorities:

1. Prescribing regulations in consultation or jointly with the Office of Personnel Management (OPM)
2. Establishing appeals processes in consultation with the Merit Systems Protection Board (MSPB)
3. Involving employees and stakeholders in the design and implementation of new human capital systems
4. Phasing in implementation of new human capital systems
5. Committing to transparency, reporting, and evaluation
6. Establishing a communications strategy
7. Assuring adequate training

Source: GAO.

Four of the 10 federal agencies in our review—Central Intelligence Agency, Federal Deposit Insurance Corporation, National Security Agency, and Veterans Health Administration—have long been exempted from various provisions in title 5 of the U. S. Code. The remaining 6 agencies have undertaken a range of human capital reforms over

¹ GAO-05-69SP.

Enclosure I

the past 10 years. These six agencies and the dates of enactment for their statutory authorities are as follows:

- Federal Aviation Administration (FAA), November 15, 1995;
- Internal Revenue Service (IRS), July 22, 1998;
- Securities and Exchange Commission (SEC), January 16, 2002, and July 3, 2003;
- Department of Homeland Security (DHS), November 25, 2002;
- Department of Defense (DOD), November 24, 2003; and
- National Aeronautics and Space Administration (NASA), February 24, 2004.

Tables I.1 through I.15 describe these six agencies' statutory references to the principles, criteria, and processes in the framework. In these tables, all references to chapters are for title 5 of the U.S. Code, unless otherwise noted.

Table I.1: Selected Agencies' Statutory References to Principle #1

Principle #1

Merit principles that balance organizational mission, goals, and performance objectives with individual rights and responsibilities

Merit system principles are the fundamental foundation of the federal human capital system and provide guidance for how federal managers and supervisors should manage their human capital. Adherence to principles of fairness, efficiency, and objectivity help to make certain that federal employees are hired, promoted, paid, and discharged on the basis of merit.

Chapter 23 requires that all federal personnel management be conducted in accordance with nine fundamental concepts known as merit system principles. Examples of these merit principles include appointing or promoting employees based on merit, retaining or separating employees based on performance, and protecting employees from arbitrary action or personal favoritism.

Agency	Statutory references
DOD	DOD must use its new human capital authorities in accordance with the merit system principles as delineated in chapter 23.
DHS	DHS must use its new human capital authorities in accordance with the merit system principles as delineated in chapter 23.
FAA	FAA is not required to adhere to the merit system principles as delineated in chapter 23.
IRS	IRS must use its new human capital authorities in accordance with the merit system principles as delineated in chapter 23.
NASA	NASA must use its new human capital authorities in accordance with the merit system principles as delineated in chapter 23.
SEC	SEC must use its new human capital authorities in accordance with the merit system principles as delineated in chapter 23.

Source: GAO.

Table I.2: Selected Agencies’ Statutory References to Principle #2

Principle #2

Ability to organize, bargain collectively, and participate through labor organizations

The ability to organize, bargain collectively, and participate in labor organizations helps to ensure that the perspectives of agency employees, presented through their representatives, can be heard. Engaging employee unions in major changes, such as changing work rules, can help achieve consensus on the planned changes, avoid misunderstandings, speed implementation, and more expeditiously resolve problems that occur.

Chapter 71 prescribes how federal agencies should interact with labor organizations. The chapter describes the rights and duties of agency management and labor organizations, standards of conduct for labor organizations, the grievance and appeals processes, and other administrative provisions. The chapter establishes that labor organizations and collective bargaining in the civil service are in the public interest. The chapter also requires agencies to recognize employee rights to engage in collective bargaining through representatives chosen by employees. However, the President may, by Executive Order, exclude from coverage under chapter 71 any agency or subdivision that has as a primary function intelligence, counterintelligence, investigation, or national security work.

Agency	Statutory references
DOD	DOD is authorized to establish a tailored labor relations system that would “address the unique role that the department’s civilian workforce plays in supporting the department’s national security mission.” Labor unions have 30 days to review and comment on the proposal for the department’s new personnel system; DOD must meet and confer for at least 30 days to resolve disputes; and Congress is to be notified of remaining disputes 30 days before implementation. In addition, DOD may bargain at the national level instead of at the local level.
DHS	DHS is required to construct a human resources system that ensures its employees may organize, bargain collectively, and participate through labor organizations of their choosing in decisions that affect them, subject to exclusions established by law. Labor unions have 30 days to review and comment on the proposal for the department’s new personnel system; DHS must meet and confer for at least 30 days to resolve disputes; and Congress is to be notified of the implementation of any part of the proposal to include an explanation of why this implementation is proper.
FAA	FAA is required to recognize and engage in collective bargaining as delineated in chapter 71.
IRS	IRS is required to recognize and engage in collective bargaining as delineated in chapter 71. Under the agency’s new personnel authority, employees within a unit with a recognized employee union will be affected by the exercise of new personnel flexibilities only if a written agreement between the union and IRS is required and so specifies. These flexibilities are streamlined demonstration project authority, the general workforce performance management system, classification and pay, and staffing.
NASA	NASA must recognize and engage in collective bargaining as delineated in chapter 71.
SEC	SEC is authorized to set and adjust rates of basic pay for all SEC employees without regard to the restrictions of the General Schedule in order to maintain comparability with other financial regulatory agencies. Also, the base pay of an employee represented by a labor organization with exclusive recognition in accordance with Chapter 71 may not be reduced by reason of enactment of the 2002 legislation.

Source: GAO.

Table I.3: Selected Agencies’ Statutory References to Principle #3

Principle #3

Certain prohibited personnel practices

Certain personnel practices, such as reprisal against whistleblowers, should be prohibited. In the public sector, such safeguards are particularly important because the workforce takes an oath rather than signs a contract and expectations for transparency and accountability are often greater than in the private sector.

Chapter 23 specifies 12 prohibited personnel practices that may not be taken by any employee who can take, direct others to take, recommend, or approve any personnel actions. Examples of prohibited personnel actions include discrimination, coercion of political activity, reprisal against whistleblowers, and nepotism.

Agency	Statutory references
DOD	DOD must implement its new human capital authorities without violating the prohibited personnel practices as specified in chapter 23.
DHS	DHS must implement its new human capital authorities without violating the prohibited personnel practices as specified in chapter 23.
FAA	FAA is bound by one of the 12 prohibited personnel practices delineated in chapter 23, which specifically proscribes retaliation against whistleblowers, whether an employee or a job applicant.
IRS	IRS’s new human capital authorities must be exercised in a manner to ensure the prevention of the prohibited personnel practices specified in chapter 23.
NASA	Congress did not exempt NASA from ensuring against the prohibited personnel practices in exercising its new human capital flexibilities.
SEC	SEC’s new human capital flexibilities must be exercised in a manner to ensure against the prohibited personnel practices specified in chapter 23.

Source: GAO.

Table I.4: Selected Agencies’ Statutory References to Principle #4

Principle #4

Guaranteed due process that is fair, fast, and final

Agencies need to ensure that their employees are afforded the protections of due process in the agencies’ human capital systems. A guaranteed due process that is fair, fast, and final will aid both employees and agencies in protecting employees’ rights while avoiding systems that are inefficient, expensive, and time-consuming.

Chapters 43 and 75 provide procedures for agencies to follow in taking actions to address performance- or conduct-based problems. These chapters also provide MSPB with jurisdiction over employee appeals from such agency actions. The types of adverse actions that employees can appeal to MSPB include removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or fewer. Chapter 77 outlines the MSPB procedures and standards of proof for these and other appeals.

Agency	Statutory references
DOD	DOD must ensure its employees the right to appeal an adverse decision to the full MSPB. DOD also must consult with MSPB in developing its appeals process procedures and must provide fair treatment to its employees in all appeals related to employment decisions. DOD’s performance management system must have effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.
DHS	DHS must consult with MSPB in developing its appeals process procedures and must provide fair treatment to its employees in all appeals related to employment decisions. Specifically, DHS must ensure the availability of procedures that (1) are consistent with requirements of due process; (2) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the department; and (3) modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving department employees.
FAA	FAA has the authority to establish its own procedures for initiating adverse actions. Although the 1995 legislation did not provide statutory appeal rights for adverse action cases, Congress reinstated by statute in 2000 the right of FAA employees to appeal adverse actions to MSPB and the federal courts.
IRS	The period to notify employees regarding personnel actions based on unacceptable performance or adverse actions is 15 days instead of 30 days. Also, an IRS employee’s right to appeal the denial of a periodic step increase to MSPB is eliminated. The agency shall terminate an employee if there is an administrative or judicial determination that the employee committed any act or omission described in Section 1203(b) of the 1998 legislation in the performance of the employee’s official duties. These actions are often referred to as the “ten deadly sins.” The IRS Commissioner has the sole discretionary authority to mitigate the penalty to anything other than termination for a violation of Section 1203. The Commissioner’s penalty determination may not be appealed in any administrative or judicial proceeding.
NASA	No direct statutory reference.
SEC	No direct statutory reference.

Source: GAO.

Table I.5: Selected Agencies' Statutory References to Criteria #1

Criteria #1

Demonstrated business case or readiness for use of targeted authorities

High-performing organizations identify their current and future human capital needs using fact-based analysis. Presenting a business case or passing a readiness assessment are positive first steps for an agency to ensure that it has crucial elements in place to move forward with implementation of new human capital authorities.

Chapter 47 gives OPM the authority to establish, maintain, and evaluate personnel research programs and demonstration projects in order to study improved methods and technologies in federal personnel management. To be authorized to conduct an OPM-sponsored demonstration project, an agency is required to establish a business case in the form of a published project plan in the *Federal Register* as well as consult with unions and employees in developing the implementation plan for the demonstration project, notify Congress and employees of the demonstration project, and ensure an evaluation of the results of each demonstration project and its impact on improving public management, among other things.

Agency	Statutory references
DOD	No direct statutory reference.
DHS	No direct statutory reference.
FAA	In May 1994, Congress directed the Secretary of Transportation to undertake a study of management, regulatory, and legislative reforms that would enable FAA to provide better air traffic control services without changing FAA's basic organizational structure. The resulting FAA report to Congress, issued in August 1995, concluded that the most effective internal reform would be to exempt FAA from most federal personnel rules and procedures. On November 15, 1995, Congress, in making appropriations for the Department of Transportation, directed the FAA Administrator to develop and implement a new personnel management system for the agency.
IRS	IRS has streamlined authority to implement OPM-sponsored demonstration projects related to human capital management of its employees. IRS's exemptions allow the agency to waive the required public hearing and the 90-day advance notification requirement to Congress, as well as shorten the 180-day notification period to Congress to 30 days. In addition, IRS is not subject to the 10-year limitation on the duration of its demonstration projects. IRS must obtain approval from OPM to deviate from the classification system as it appears in Chapter 53. With OPM approval, IRS also may establish a broadbanded system for senior level positions. In addition, IRS may develop its own rules governing payment of recruitment, relocation, and retention incentives and provide allowable travel and transportation expenses for certain new employees and current employee transfers. However, IRS's authority in this area is subject to OPM approval and is set to expire in 2008.
NASA	In advance of exercising any of its new hiring and staffing flexibilities, NASA is to submit a workforce plan, approved by OPM, to Congress 90 days before NASA is to implement its human capital authorities.
SEC	Prior to implementing its new classification and compensation system, SEC must prepare an implementation plan within its annual performance plan as required under the Government Performance and Results Act (GPRA). The agency must consult with and seek approval from OPM to implement its pay and classification system.

Source: GAO.

Table I.6: Selected Agencies' Statutory References to Criteria #2

Criteria #2

An integrated approach to results-oriented strategic planning and human capital planning and management

To implement additional human capital authorities, an agency should have an institutional infrastructure in place that includes, among other things, a planning process that integrates the agency's human capital policies, strategies, and programs with its program goals, mission, and desired outcomes. Linking strategic and human capital planning and management will more firmly assist each agency in accomplishing its mission and programmatic goals.

The Chief Human Capital Officers (CHCO) Act of 2002

- calls for the alignment of human capital strategies with agencies' missions, goals, and objectives;
- requires agencies to include human capital strategic planning in their annual performance plans and performance reports; and
- requires selected agencies to establish positions and functions of a CHCO.

In addition, the act establishes the CHCO Council to aid in sharing information about effective human capital practices and in coordinating agency human capital improvement efforts.

Agency	Statutory references
DOD	DOD is required to link its new performance management system with the agency's strategic plan.
DHS	No direct statutory reference.
FAA	No direct statutory reference.
IRS	No direct statutory reference.
NASA	NASA is required by statute to engage in strategic human capital planning. NASA must submit a workforce plan to Congress that provides specific information on workforce issues relevant to using the new personnel flexibilities, including each critical need of the agency and the criteria used to identify that need.
SEC	Prior to implementing its new classification and compensation system, SEC must prepare an implementation plan within its annual performance plan.

Source: GAO.

Table I.7: Selected Agencies' Statutory References to Criteria #3

Criteria #3

Adequate resources for planning, implementation, training, and evaluation

Successful human capital reform requires that agencies have adequate resources to ensure sufficient planning, implementation, training, and evaluation. Experience has shown that additional resources are often necessary for agencies to achieve this success. The CHCO Act, along with establishing the CHCO Council, requires the inclusion of agency human capital strategic planning in performance plans and program performance reports.

Agency	Statutory references
DOD	Congress required DOD to ensure adequate resources were allocated for the design, implementation, and administration of its new performance management system.
DHS	No direct statutory reference.
FAA	No direct statutory reference.
IRS	IRS was required, no later than 180 days after enactment of its new personnel authority in 1998, to implement an employee training program. The act also required IRS to submit to congressional tax writing committees within 180 days of the date of enactment an employee training plan that would: (1) detail a comprehensive employee training program to ensure adequate customer service training; (2) detail a schedule for training and the fiscal years during which the training will occur; (3) detail the funding of the program and the relevant information to demonstrate the priority and commitment of resources to the plan; (4) review the organizational design of customer service; (5) provide for the implementation of a performance development system; and (6) provide for at least 16 hours of conflict management training during fiscal year 1999 for employees conducting collection activities.
NASA	NASA must submit a workforce plan to Congress that provides specific information on workforce issues relevant to using the authorities.
SEC	SEC must prepare an implementation plan within the annual performance plan prior to implementing its new classification and compensation system.

Source: GAO.

Table I.8: Selected Agencies’ Statutory References to Criteria #4

Criteria #4

A modern, effective, credible, and integrated performance management system that includes adequate safeguards to help ensure quality and prevent discrimination

Effective performance management systems strive to: (1) provide candid and constructive feedback to help individuals maximize their contribution and potential in understanding and realizing the goals and objectives of the organization; (2) seek to provide management with the objective and fact-based information it needs to reward top performers; and (3) provide the necessary information and documentation to deal with poor performers. Before additional human capital authorities are implemented, agencies should have to demonstrate that they have modern, effective, and credible performance management systems in place with adequate safeguards to ensure fairness and prevent politicization and abuse of employees.

Chapter 43 establishes requirements for and defines OPM’s advisory role in agencies’ development of employee performance appraisal systems. Specifically, agencies are required to

- establish appraisal systems with performance standards, which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position under the system; and
- develop performance appraisal systems that: (1) provide for periodic appraisals of job performance of employees; (2) encourage employee participation in establishing performance standards; and (3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

The chapter also details the actions that agencies can take in cases of unacceptable employee performance and specifies that employees can appeal certain agency actions to MSPB as delineated in chapter 77.

Agency	Statutory references
DOD	DOD can develop its own performance management system. The new system is to be results-oriented and link individual employee performance to organizational mission and goals. The department cannot expand its new personnel system until a performance management approach is in place that meets these criteria.
DHS	DHS can develop its own performance management system(s).
FAA	FAA can develop its own performance management system.
IRS	Within 1 year of enactment of its new personnel authority, IRS was to establish its own results-oriented performance management system that maintains individual employee accountability through the use of performance assessments linked to organizational and individual goals and objectives.
NASA	No direct statutory reference.
SEC	No direct statutory reference.

Source: GAO.

Table I.9: Selected Agencies' Statutory References to Process #1

Process #1

Prescribing regulations in consultation or jointly with OPM

Involving OPM offers opportunities to make certain that human capital authorities are implemented efficiently and effectively and in a manner that places the public's interest paramount. OPM serves as the federal government's central personnel management agency and is responsible for executing, administering, and enforcing civil service laws, rules, and regulations. Its mission is to support the federal government's ability to have the best workforce possible to do the best job possible. OPM is to accomplish this mission chiefly by leading federal agencies in shaping federal resources management systems and serving federal agencies, employees, retirees, their families, and the public through technical assistance, employment information, pay administration, and benefits delivery. In carrying out this mission, OPM is to advise the President on actions that may be taken to promote an efficient civil service and a systematic application of the merit system principles.

Agency	Statutory references
DOD	DOD is required to jointly prescribe regulations with OPM to establish the new human capital system.
DHS	DHS is required to jointly prescribe regulations with OPM to establish the new human capital system.
FAA	No direct statutory reference.
IRS	For a period of 10 years subject to OPM approval after the date of enactment of IRS's new personnel authority, the Secretary of the Treasury may provide for variations in the payment of recruitment, relocation, and retention incentives. The Treasury Secretary also may, subject to criteria to be prescribed by the OPM, establish one or more broadbanded systems covering all or any portion of the IRS workforce.
NASA	NASA is required to prepare a workforce plan that provides specific information on workforce issues relevant to using its new hiring and staffing authorities. NASA must provide its workforce plan to relevant employee representatives and fully consider any recommended changes and then submit its plan to OPM for approval. NASA is also required to establish a plan (approved by OPM) for paying recruitment, redesignation, relocation, and retention bonuses under the NASA Flexibility Act of 2004 and for setting pay under the qualifications pay authority in the act.
SEC	SEC must prepare an implementation plan and submit a report to Congress and OPM before implementing its new classification and compensation system. SEC must also include this implementation plan in the SEC annual performance plan and report as required under GPRA.

Source: GAO.

Table I.10: Selected Agencies' Statutory References to Process #2**Process #2*****Establishing appeals processes in consultation with the Merit Systems Protection Board (MSPB)***

Involving MSPB offers opportunities to make certain that human capital authorities are implemented efficiently and effectively and in a manner that places the public's interest paramount. MSPB is an independent, quasi-judicial executive agency created by the Civil Service Reform Act of 1978. Its mission is to ensure that: (1) federal employees are protected against abuses by their agencies' management; (2) executive branch agencies make employment decisions in accordance with merit system principles; and (3) federal merit systems are kept free of prohibited personnel practices. In large part, MSPB is to accomplish its mission by hearing and deciding appeals by federal employees alleging actions taken against them by their agencies. In addition to its adjudicatory functions, MSPB is responsible for conducting studies relating to the civil service and to other merit systems in the executive branch and reporting to the President and to Congress whether or not the public interest is paramount and the civil service is free of prohibited personnel practices and adequately protected.

Agency	Statutory references
DOD	DOD is required to consult with MSPB when developing processes and procedures for employee appeals.
DHS	DHS is required to consult with MSPB when developing processes and procedures for employee appeals.
FAA	In 2000, Congress reinstated the right of FAA employees to appeal adverse actions to MSPB and the federal courts.
IRS	IRS is not required to consult with MSPB regarding any changes to the appeals process.
NASA	NASA is not required to consult with MSPB when developing processes and procedures for employee appeals.
SEC	SEC is not required to consult with MSPB when developing processes and procedures for employee appeals.

Source: GAO.

Table I.11: Selected Agencies' Statutory References to Process #3

Process #3

Involving employees and stakeholders in the design and implementation of new human capital systems

Successful organizational transformation should involve employees and their representatives from the beginning to gain their ownership for the changes that are occurring in the organization. Employee involvement strengthens the transformation process by including frontline perspectives and experiences. Agencies can involve employees in a variety of ways, such as using employee teams to assist in implementing changes and incorporating employee feedback into new policies and procedures. Except for general requirements related to collective bargaining issues, title 5 provisions related to civil service employees do not directly call for involving employees and stakeholders when designing and implementing any new human capital system.

Agency	Statutory references
DOD	DOD is required to include a means for ensuring employee representatives' involvement in the design and implementation of its new human capital system. Labor unions have at least 30 days to review and make recommendations regarding the proposal for new personnel authorities. DOD must give "full and fair consideration" of any recommendations and must notify Congress if the department disagrees with the recommendations. DOD must then meet and confer with the employee representatives who made the recommendations in an attempt to reach agreement. For future and continuing collaboration, the Secretary of DOD and the Director of OPM must (1) develop a method for each employee representative to participate in any further planning or development that might become necessary and (2) give each employee representative adequate access to information to make that participation productive.
DHS	The legislation authorizing DHS to create a new personnel system noted that it is the sense of Congress that employees be involved in the creation of the new human capital system. DHS and OPM must share any proposal for a new personnel system with employee representatives and give these representatives 30 days to review the proposal and make recommendations with respect to the proposal. DHS must give "full and fair consideration" of any recommendations and must notify Congress if the department disagrees with the recommendations. DHS must then meet and confer with employee representatives who made such recommendations in an attempt to reach agreement. For future and continuing collaboration, the Secretary of DHS and the Director of OPM must (1) develop a method for each employee representative to participate in any further planning or development that might become necessary and (2) give each employee representative adequate access to information to make that participation productive.
FAA	In developing and implementing its new personnel management system, FAA was required to consult with its employees and such nongovernmental personnel experts it deemed appropriate. The agency must negotiate with its unions regarding changes made to its personnel management system.
IRS	IRS must have a written agreement with the recognized employee union to implement the new personnel flexibilities within a unit covered by that union to the extent the matter is bargainable under Chapter 71.
NASA	NASA must provide a copy of its workforce plan for implementing any new human capital authorities to each employee representative representing any employees who might be affected by the new authorities. Each representative would have 30 days to review and make recommendations with respect to the proposed plan, or subsequent modifications to the plan. NASA must give "full and fair consideration" of any recommendations received from these employee representatives. Moreover, NASA has to provide a copy of the workforce plan to all employees no later than 60 days prior to exercising any of the new workforce authorities.

**Table I.11: Selected Agencies' Statutory References to Process #3
(Continued)**

Agency	Statutory references
SEC	SEC is authorized to set and adjust rates of basic pay for all SEC employees without regard to the restrictions of the General Schedule to maintain comparability with other financial regulatory agencies. Also, the base pay of an employee represented by a labor organization with exclusive recognition in accordance with Chapter 71 may not be reduced by reason of enactment of the 2002 legislation.

Source: GAO.

Table I.12: Selected Agencies' Statutory References to Process #4

Process #4

Phasing in implementation of new human capital systems

A phased implementation approach recognizes that different components of agencies will often have varied levels of readiness and diverse capabilities to implement new authorities. Furthermore, a phased approach allows for learning so that appropriate adjustments and midcourse corrections can be made before new policies and procedures are fully implemented organizationwide. In general, title 5 provisions related to civil service employees do not directly call for the phasing in of any new human capital authorities that agencies might acquire.

Agency	Statutory references
DOD	DOD's new personnel system can be put into place for up to 300,000 employees and cannot be expanded until a performance management system is in place that meets the criteria in the law.
DHS	DHS is required to phase in implementation of its new human capital system through consultation with employee representatives and notification of Congress.
FAA	In implementing its new personnel system, FAA cannot adversely affect the pay of any employee for 3 years, which ended in 1999.
IRS	No direct statutory reference.
NASA	No direct statutory reference.
SEC	No direct statutory reference.

Source: GAO.

Table I.13: Selected Agencies' Statutory References to Process #5

Process #5

Committing to transparency, reporting, and evaluation

High-performing organizations continually review and revise their human capital management systems based on data-driven lessons learned and changing needs in the environment. Transparency, reporting, and evaluation are critical processes in ongoing human capital reform efforts because they help to demonstrate how well the government is doing to improve the quality of its civil service as measured against objective standards linked to promised results.

As mentioned earlier, chapter 47 gives OPM the authority to establish, maintain, and evaluate personnel demonstration projects in order to study improved methods and technologies in federal personnel management. OPM must provide for an evaluation of the results of each demonstration project and its impact on improving public management. Before conducting or entering into any agreement or contract to conduct such a demonstration project, OPM must have developed a plan that identifies the methodology and criteria for the evaluation.

Agency	Statutory references
DOD	No direct statutory reference.
DHS	No direct statutory reference.
FAA	Three years after implementation of its new personnel system, FAA is to subject its new system to outside expert evaluation.
IRS	Under its streamlined demonstration project authority, IRS is required to work with OPM to provide for an evaluation of the results of each demonstration project and its impact on improving public management.
NASA	NASA must submit to appropriate congressional committees, not later than February 28 of each of the 6 years following enactment of its new authority, a report that summarizes the extent to which the agency used each of the authorized personnel flexibilities. Within 6 years of enactment of its new authority, NASA must conduct an evaluation of the effectiveness of the implemented flexibilities.
SEC	In its annual program performance report, SEC must report on the effects of implementing its compensation and classification system.

Source: GAO.

Table I.14: Selected Agencies' Statutory References to Process #6

Process #6

Establishing a communications strategy

An organization implementing any major change management initiative, such as human capital authorities, needs to develop a comprehensive communications strategy that reaches out to employees, customers, and stakeholders and seeks to genuinely engage them in the transformation process. Creating an effective, ongoing communications strategy is essential to help build trust, ensure consistency of message, encourage two-way communication, and provide information to meet specific needs of employees. Title 5 provisions related to civil service employees do not directly call for establishing a communications strategy.

Agency	Statutory references
DOD	DOD is required to consult with employee representatives in the development of the new human capital system and when further planning or development might become necessary.
DHS	DHS must consult with employee organizations in the development of the human capital system and when further planning or development might become necessary.
FAA	In developing and implementing a new personnel management system, FAA is required to consult with its employees and negotiate with its unions.
IRS	IRS is required to have a written agreement with the recognized employee union of an affected IRS unit to the extent the matter is bargainable under Chapter 71.
NASA	NASA is required to provide employee representatives with a copy of the agency's workforce plan during consultation and to provide all employees with a copy of the plan prior to implementation of any new authorities.
SEC	No direct statutory reference.

Source: GAO.

Table I.15: Selected Agencies' Statutory References to Process #7

Process #7

Assuring adequate training

High-performing organizations understand the value of training employees, particularly when undergoing significant change, such as human capital reform. Training and developing new and current staff to fill new roles and work in different ways will play an important role in the federal government's endeavors to meet its transformation challenges.

Under chapter 41, which codifies provisions of the Government Employees Training Act, the head of each agency is responsible for ensuring that the training needs of the organization are identified and programs are established to meet those needs. In general, authority granted under this chapter is broad and flexible to enable an agency to provide whatever training is necessary to accomplish its mission and achieve its goals.

Agency	Statutory references
DOD	For any new performance management system developed, DOD must incorporate adequate training and retraining of supervisors, managers, and employees in the implementation and operation of the system.
DHS	No direct statutory reference.
FAA	FAA can develop its own training policies.
IRS	IRS was required, not later than 180 days after enactment of its new personnel authority, to implement an employee training program. IRS was required to submit to congressional tax writing committees within 180 days of the date of enactment, an employee training plan that would: (1) detail a comprehensive employee training program to ensure adequate customer service training; (2) detail a schedule for training and the fiscal years during which the training will occur; (3) detail the funding of the program and the relevant information to demonstrate the priority and commitment of resources to the plan; (4) review the organizational design of customer service; (5) provide for the implementation of a performance development system; and (6) provide for at least 16 hours of conflict management training during fiscal year 1999 for employees conducting collection activities.
NASA	No direct statutory reference.
SEC	No direct statutory reference.

Source: GAO.

Full and Partial Exemptions from Title 5 for Selected Agencies

Federal agencies have received various exemptions from the requirements in part III of title 5 of the U.S. Code, which deals with civil service employees. These exemptions have led to considerable variation in the personnel authorities granted to individual agencies. Figure II.1 shows the full and partial exemptions for 10 selected agencies by relevant chapters of title 5. These 10 agencies are the Central Intelligence Agency (CIA), the Department of Defense (DOD), the Federal Aviation Administration (FAA), the Federal Deposit Insurance Corporation (FDIC), the Department of Homeland Security (DHS), the Internal Revenue Service (IRS), the National Aeronautics and Space Administration (NASA), National Security Agency (NSA), Securities and Exchange Commission (SEC), and the Veterans Health Administration (VHA).¹ The narrative summary that follows in tables II.1 through II.6 provides further details on the exemptions for these agencies in six categories:

- merit system principles and prohibited personnel practices;
- hiring, staffing, and employment authority;
- performance management;
- classification and pay administration;
- labor management relations; and
- adverse actions and appeals.

¹ For VHA, this analysis focuses on physicians, dentists, and other health-care professionals covered under 38 USC 7401(1). In the absence of overriding provisions in title 38, these health-care professionals are covered by various provisions in title 5.

Enclosure II

Figure II.1: Summary of Selected Agencies' Exemptions from Title 5 Chapters Related To Civil Service Employees

Chapter of Title 5 U.S. Code	CIA ¹	DHS	DOD	FAA	FDIC	IRS	NASA	NSA	SEC	VHA
21 - Definitions	○	○	○	●	○	○	○	○	○	○
23 - Merit System Principles	○	○	○	●	●	○	○	●	○	○
29 - Commissions, Oaths, Records, and Reports	○	○	○	●	●	○	○	○	○	○
31 - Authority for Employment	○	○	○	●	●	○	○	○	○	○
33 - Examination, Selection, and Placement	●	○	○	○	○	○	○	○	○	○
34 - Part-time Career Employment Opportunities	●	○	○	●	●	○	○	○	○	○
35 - Retention Preference, Voluntary Separation Incentive Payments, Restoration, and Reemployment	○	○	○	●	○	○	○	○	○	○
37 - Information Technology Exchange Program	○	○	○	●	○	○	○	○	○	○
41 - Training	○	○	○	●	○	○	○	○	○	○
43 - Performance Appraisal	●	●	●	●	●	○	○	○	○	○
45 - Incentive Awards	○	○	○	●	○	○	○	○	○	○
47 - Personnel Research Programs and Demonstration Projects	●	○	○	●	●	○	○	○	○	○
51 - Classification	●	●	●	●	●	●	○	○	○	○
53 - Pay Rates and Systems	●	○	○	●	○	○	○	○	○	○
54 - Human Capital Performance Fund	●	○	○	●	○	○	○	○	○	○
55 - Pay Administration	○	○	○	○	○	○	○	○	○	○
57 - Travel, Transportation, and Subsistence	○	○	○	●	●	○	○	○	○	○
59 - Allowances	○	○	○	●	○	○	○	○	○	○
61 - Hours of Work	○	○	○	●	○	○	○	○	○	○
63 - Leave	○	○	○	●	○	○	○	○	○	○
71 - Labor-management Relations	●	●	○	○	○	○	○	○	○	○
72 - Antidiscrimination; Right to Petition Congress	○	○	○	○	○	○	○	○	○	○
73 - Suitability, Security, and Conduct	○	○	○	○	○	○	○	○	○	○
75 - Adverse Actions	●	●	○	○	○	○	○	○	○	○
77 - Appeals	●	●	○	○	○	○	○	○	○	○
79 - Services to Employees	○	○	○	○	○	○	○	○	○	○
81 - Compensation for Work Injuries	○	○	○	○	○	○	○	○	○	○
83 - Retirement	○	○	○	○	○	○	○	○	○	○
84 - Federal Employees' Retirement System	○	○	○	○	○	○	○	○	○	○
85 - Unemployment Compensation	○	○	○	○	○	○	○	○	○	○
87 - Life Insurance	○	○	○	○	○	○	○	○	○	○
89 - Health Insurance	○	○	○	○	○	○	○	○	○	○
90 - Long-term Care Insurance	○	○	○	○	○	○	○	○	○	○
91 - Access to Criminal History Records	○	○	○	○	●	○	○	○	○	○

● = Fully exempt ○ = Partially exempt ○ = Not exempt

Source: GAO.

Notes: For an agency fully exempt from the requirements of a particular chapter of title 5, this figure does not indicate whether or not reform provisions impose other restrictions or requirements on agency action. Chapters 48, 95, 97, 98, and 99 of title 5 have been omitted from this figure because these chapters reference agency-specific exemptions that are captured elsewhere in this figure.

¹ For CIA, a blank circle for a chapter does not indicate that the agency is fully covered. A blank circle indicates that we are not expressing an opinion regarding CIA's exemption from or extent of coverage under such chapter. See the discussion of scope and methodology.

Table II.1: Selected Agencies' Exemptions from Chapter 23 of Title 5

Merit System Principles and Prohibited Personnel Practices

Chapter 23 requires that all federal personnel management be conducted in accordance with nine fundamental concepts known as merit system principles. Examples of these merit principles include appointing or promoting employees based on merit, retaining or separating employees based on performance, and protecting employees against arbitrary action or personal favoritism. This chapter also outlines 12 prohibited personnel practices that may not be taken by any employee who can take, direct others to take, recommend, or approve any personnel actions. Examples of prohibited personnel actions include discrimination, coercion of political activity, reprisal against whistleblowers, and nepotism. The Office of Personnel Management (OPM) is responsible for overseeing agency personnel management functions to ensure compliance with merit system principles.

Agency	Degree of exemption
CIA	CIA is not covered by the prohibitions on specific personnel practices under chapter 23; however, its employees have special whistleblower protection through the Intelligence Community Whistleblower Protection Act of 1998, as amended. We express no opinion with regard to CIA's coverage under the remainder of the chapter. See the discussion of scope and methodology.
DHS	DHS is not exempt from the requirements of chapter 23. Therefore, DHS is required to implement its personnel system in a manner consistent with the principles and prohibitions specified in the chapter.
DOD	DOD is not exempt from the requirements of chapter 23. Therefore, DOD is required to implement its personnel management system consistent with the principles and prohibitions specified in the chapter.
FAA	FAA is partially exempt from the requirements of chapter 23. FAA is not required to adhere to the merit system principles as delineated in the chapter. However, FAA is bound by the portion of the chapter under prohibited personnel practices that specifically proscribes retaliation against whistleblowers, whether an employee or a job applicant.
FDIC	FDIC is partially exempt from the requirements in chapter 23. FDIC is bound by all provisions in the chapter dealing with merit system principles. FDIC is not subject to the prohibited personnel practices, with the exception of the prohibition relating to whistleblower retaliation.
IRS	IRS is not exempt from the requirements of chapter 23. IRS is to carry out its personnel management system consistent with merit system principles and ensure the prevention of the prohibited personnel practices.
NASA	NASA is not exempt from the requirements of chapter 23. NASA must adhere to all provisions dealing with merit system principles and prohibited personnel practices.
NSA	NSA is partially exempt from the requirements of chapter 23. While the merit principles apply to NSA, it is not under OPM oversight in this regard, and the application of the merit principles may not impair the agency's authorities and responsibilities. Although NSA is not covered by the prohibitions on specific personnel practices, its employees have special whistleblower protection through the Intelligence Community Whistleblower Protection Act of 1998, as amended.
SEC	SEC is not exempt from the requirements of chapter 23. Therefore, SEC is required to implement its personnel management system consistent with the principles and prohibitions specified in the chapter.

**Table II.1: Selected Agencies' Exemptions from Chapter 23 of Title 5
(Continued)**

Agency	Degree of exemption
VHA	VHA is not exempt from the requirements of chapter 23. Therefore, VHA is required to implement its personnel management system consistent with the principles and prohibitions specified in the chapter.

Source: GAO.

Table II.2: Selected Agencies' Exemptions from Chapters 31 and 33 of Title 5

Hiring, Staffing, and Employment Authority

Chapter 31 provides specific authorities and restrictions with regard to the employment of personnel under the General Schedule (GS) system, which is the basic classification and compensation system for white-collar occupations in the federal government. The chapter also provides authorities and restrictions regarding Senior Executive Service (SES) positions. In addition, the chapter gives agencies the authority to employ disabled veterans noncompetitively and accept the voluntary services of students. Requirements in the chapter preclude student volunteers from being considered as traditional employees and restrict them from receiving government benefits with certain exceptions.

Chapter 33 provides the rules for the selection and placement of federal employees, including rules related to examination, certification, and appointment of individuals entering the competitive service. This chapter also includes procedures for using category rating and veterans' preference in the hiring process and provides rules that dictate the conditions of appointment to the competitive service, such as requiring probationary periods.

Agency	Degree of exemption
CIA	<p>CIA is exempt from the provisions of chapter 31 related to establishing positions under the SES. We express no opinion with regard to CIA's coverage under the remainder of the chapter. See the discussion of scope and methodology.</p> <p>CIA is fully exempt from the requirements of chapter 33. Thus, CIA has the authority to examine, certify, and appoint individuals in a manner outside the rules in the chapter.</p>
DHS	<p>DHS is not exempt from the requirements of chapter 31. Thus, DHS is obligated to appoint personnel in accordance with the provisions in the chapter.</p> <p>DHS is not exempt from the requirements of chapter 33. DHS is therefore required to examine, select, and place its employees consistent with all requirements in the chapter.</p>
DOD	<p>DOD is partially exempt from the requirements of chapter 31. For example, DOD can create new hiring authorities and has the expanded authority to hire highly qualified experts.</p> <p>DOD is partially exempt from the requirements of chapter 33. DOD may modify these provisions without regard to limitations on methods of: (1) establishing qualification requirements for, recruitment for, and appointment to positions; and (2) assigning, reassigning, detailing, transferring, or promoting employees.</p>
FAA	<p>FAA is fully exempt from the requirements of chapter 31. Each head of a line or business staff organization at FAA is allowed to determine the number of employees for his/her organization based on the amount of funds allocated to the line of business or staff organization by the administrator. Also, FAA is not limited in providing certain employee benefits to student volunteers at the agency.</p> <p>FAA is partially exempt from the requirements of chapter 33. FAA must still comply with the provisions of veterans' preference.</p>
FDIC	<p>FDIC is partially exempt from the requirements of chapter 31. As a government corporation, FDIC is exempt from the chapter 31 rules governing the SES and the rules on the temporary or intermittent employment of experts and consultants. FDIC is authorized by the Federal Deposit Insurance Act of 1933 to appoint and to fix the compensation of its employees.</p> <p>FDIC is partially exempt from the requirements of chapter 33. For example, the chapter 33 provision on appointments to positions classified above GS-15 does not apply to FDIC, as FDIC is authorized to appoint and fix the compensation of its employees.</p>

Table II.2: Selected Agencies' Exemptions from Chapters 31 and 33 of Title 5 (Continued)

Agency	Degree of exemption
IRS	<p>IRS is partially exempt from the requirements of chapter 31. For IRS, the definition of “career reserved position” was broadened to include certain positions filled by “limited emergency appointees” and “limited-term appointees.” Under this exemption, the number of such appointees is limited to up to 10 percent of the number of SES positions available to IRS.</p> <p>IRS is partially exempt from the requirements of chapter 33. IRS has the authority to convert term appointment employees to competitive appointees under certain specified conditions. IRS may establish its own category-ranking systems for evaluating competitive service candidates and may also waive restrictions on the length of time for new employee probationary periods and employee details.</p>
NASA	<p>NASA is partially exempt from the requirements of chapter 31. NASA can fill up to 10 percent of “career reserved” SES positions for a limited-term (which could extend up to 7 years) without prior OPM approval and is exempt from the limitations that OPM places on the number of SES positions available to each agency. These NASA limited-term appointments can be used for situations other than project-based needs or emergencies, and individuals in these limited-term appointments are eligible for cash bonuses.</p> <p>NASA is partially exempt from the requirements of chapter 33. NASA’s legislation allows the agency to convert term appointees to career conditional employees after a period of at least 1 year, exempting the agency from part of the chapter that requires at least a 3-year appointment for term employees. NASA may also accept assignments of personnel from other government agencies and organizations for a total of 6 years instead of 4 years. In addition, NASA may waive requirements relating to competitive service examination and rules governing the ranking and selection of preference eligibles if candidates have completed a degree program within 2 years of appointment.</p>
NSA	<p>NSA is partially exempt from the requirements of chapter 31. NSA is exempt, for example, from provisions establishing SES positions within the agency.</p> <p>NSA is partially exempt from the requirements of chapter 33. NSA is exempt, for example, from the chapter rules related to selecting and placing individuals in job positions at the agency.</p>
SEC	<p>SEC is partially exempt from the requirements of chapter 31. SEC may appoint accountants, economists, and securities compliance examiners under excepted service procedures.</p> <p>SEC is not exempt from the requirements of chapter 33. The agency is obligated to follow all chapter provisions when examining, certifying, and appointing individuals to positions.</p>
VHA	<p>VHA is fully exempt from the requirements of chapter 31 for its health-care positions. Appointment of health-care professionals authorized under title 38 of the U.S. Code may be made without regard to civil service requirements. Therefore, chapter 31 provisions do not apply unless their application would be consistent with chapters 73 and 74 of title 38, which outline VHA personnel authorities.</p> <p>VHA is fully exempt from the requirements of chapter 33 for its health-care positions. These health-care positions are exempt from the competitive examination provisions of title 5. Thus, VHA is not required to rate and rank candidates for these positions nor must VHA apply veterans’ preference procedures. In addition, these health-care positions do not require any competition for internal placements with promotion potential. Therefore, chapter 33 provisions do not apply unless their application would be consistent with chapters 73 and 74 of title 38.</p>

Source: GAO.

Table II.3: Selected Agencies' Exemptions from Chapters of 43 and 45 of Title 5

Performance Management

Chapter 43 establishes requirements for and defines OPM's advisory role in the development of employee and SES performance appraisal systems. The chapter also outlines specific criteria and performance ratings required for the SES performance appraisal system. For example, agencies are required to establish appraisal systems with performance standards, which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position under the system. Chapter 43 also specifies the procedures that agencies are to follow in removing or reducing in grade an employee for unacceptable performance and provides employees the right to appeal to the Merit Systems Protection Board (MSPB).

Chapter 45 provides guidance for the administration of incentive awards to federal employees, including specific guidelines for the frequency and amount of the award distribution. Under this chapter, agencies can grant an employee, whose performance appraisal is "fully successful" or better, a lump sum cash award. These performance-based cash awards can be up to 10 percent of the employee's annual rate of basic pay, or up to 20 percent for "exceptional performance." Agencies also may grant a cash award to an employee in recognition of a highly exceptional and unusually outstanding suggestion, invention, superior accomplishment, or other meritorious effort. For these accomplishment-based cash awards, agencies may grant up to \$10,000 without OPM approval.

Agency	Degree of exemption
CIA	<p>CIA is fully exempt from the requirements in chapter 43. This exemption allows CIA to establish its own performance management system.</p> <p>CIA's senior executive personnel are excluded from coverage under chapter 45 regarding presidential rank awards given for superior accomplishments. We express no opinion with regard to CIA's coverage under the remainder of the chapter. See the discussion of scope and methodology.</p>
DHS	<p>DHS is fully exempt from the requirements in chapter 43. This exemption allows DHS to establish its own performance management system.</p> <p>DHS is not exempt from the requirements in chapter 45. As a result, DHS is to use the guidelines and procedures spelled out in the chapter when granting incentive awards to its employees.</p>
DOD	<p>DOD is fully exempt from requirements in chapter 43. This exemption allows DOD to establish its own performance management system. Nonetheless, the legislation creating DOD's new personnel system provides employees the right to petition the full MSPB for review of adverse action decisions.</p> <p>DOD is partially exempt from the requirements in chapter 45. For example, DOD is not required to obtain OPM approval to provide its employees with accomplishment-based cash awards in excess of \$10,000.</p>
FAA	<p>FAA is fully exempt from the requirements of chapter 43. This exemption allows FAA to establish its own performance management system.</p> <p>FAA is fully exempt from the requirements of chapter 45 and thus can establish its own incentive awards program.</p>
FDIC	<p>FDIC is fully exempt from the requirements of chapter 43 and is thus permitted to establish its own performance appraisal system.</p>

Table II.3: Selected Agencies' Exemptions from Chapters 43 and 45 of Title 5 (Continued)

Agency	Degree of exemption
FDIC	FDIC is not exempt from the requirements in chapter 45. Nonetheless, according to FDIC, Executive Order 12976, which provides that government corporations should not pay bonuses in excess of those authorized in the chapter, does not apply to FDIC because it conflicts with FDIC's authority to determine the compensation of its employees.
IRS	IRS is partially exempt from requirements in chapter 43. IRS is allowed to design and implement its own performance management system. Nonetheless, IRS's performance management system must still maintain individual accountability with one or more retention standards and periodic determinations if an employee meets this standard(s). IRS is partially exempt from the requirements in chapter 45. For example, IRS is not required to obtain OPM approval to provide its employees with accomplishment-based cash awards in excess of \$10,000.
NASA	NASA is not exempt from the requirements in chapter 43. As a result, NASA is bound by the chapter's provisions when developing and implementing a performance management system for its employees. NASA is not exempt from the requirements in chapter 45. Thus, NASA is required to follow the provisions in the chapter when granting incentive awards to its employees.
NSA	NSA is partially exempt from the requirements of chapter 43. NSA is allowed to establish its own performance management system. However, title 10 of the U.S. Code requires NSA to follow the chapter 43 performance management requirements relating to senior executives. NSA is partially exempt from the requirements in chapter 45. For example, NSA is not required to obtain OPM approval to provide its employees with accomplishment-based awards in excess of \$10,000.
SEC	SEC is not exempt from the requirements in chapter 43. Thus, SEC must develop and implement a performance management system in compliance with the provisions in the chapter. SEC is not exempt from the requirements in chapter 45. SEC must adhere to all chapter provisions in the administration of incentive awards to employees.
VHA	VHA is fully exempt from the requirements in chapter 43 for its health-care positions. Therefore, VHA has the authority to create a unique performance management system for these health-care professionals. VHA is partially exempt from the requirements in chapter 45 for its health-care positions. For example, the VHA health-care professionals are excluded from coverage under the presidential rank awards given for superior accomplishments. However, VHA can grant these health-care professionals cash awards for cost-savings disclosures. As described in chapter 45, VHA may pay a cash award to any employee of the agency whose disclosure of fraud, waste, or mismanagement has resulted in costs savings for the agency.

Source: GAO.

Table II.4: Selected Agencies' Exemptions from Chapters 51, 53, and 55 of Title 5

Classification and Pay Administration

Chapter 51 defines and provides standards for classification of positions under the GS system. The chapter provides descriptions for each of the 15 GS grades. Grades represent levels of difficulty, responsibility, and qualifications that are sufficiently similar to warrant their inclusion within one range of rates of basic pay. This chapter also establishes OPM's authority to establish, modify, and review classification standards and revoke agency authority to classify positions.

Chapter 53 establishes the guidelines that determine federal employee pay. The chapter explains requirements for the administration of pay comparability, which sets the standard that federal employees should receive equal pay for work of equal value. The chapter also provides rules and guidance that govern the determination of annual pay adjustments and locality pay as well as the granting of special pay authority for hard-to-fill positions. In addition, the chapter establishes guidelines that govern those federal employees paid under the Executive Schedule and GS systems, including how and when step pay increases are to be administered. In addition, the chapter establishes guidance for the pay of student-employees, prevailing rate employees, and SES employees, as well as rules establishing pay retention.

Chapter 55 describes how to compute employee salary and pay; explains what taxes and other withholdings are permitted to be deducted from pay; sets guidelines for dual employment and dual pay (e.g., working for a federal agency while being enlisted in National Guard or Reserves); establishes rules governing premium pay (e.g., overtime pay, night differential, and availability pay); and defines the rules governing payment for accrued leave and severance and back pay.

Agency	Degree of exemption
CIA	<p>CIA is fully exempt from the requirements in chapter 51. Therefore, CIA has the authority to establish its own agency-specific classification system.</p> <p>CIA is fully exempt from the requirements in chapter 53 and thus may develop its own agency-specific pay system.</p> <p>We express no opinion with regard to CIA's coverage under chapter 55. See the discussion of scope and methodology.</p>
DHS	<p>DHS is fully exempt from the requirements in chapter 51 and thus has the authority to establish its own agency-specific classification system.</p> <p>DHS is partially exempt from the requirements in chapter 53. Although DHS is exempt from most rules governing pay rate and pay system requirements, it may not modify the pay of any employee who serves in an Executive Schedule position (or a position for which the rate of basic pay is fixed in statute by reference to the Executive Schedule) or set employee pay in excess of the limitation on aggregate annual compensation payable under chapter 53.</p> <p>DHS is not exempt from the requirements in chapter 55 and is thus obligated, for example, to follow chapter rules in determining premium pay and payment of accrued leave for its employees.</p>
DOD	<p>DOD is fully exempt from the requirements in chapter 51 and therefore has the authority to establish its own agency-specific classification system.</p>

Table II.4: Selected Agencies' Exemptions from Chapters 51, 53, and 55 of Title 5 (Continued)

Agency	Degree of exemption
DOD	<p>DOD is partially exempt from the requirements in chapter 53. DOD can develop its own agency-specific pay system. Nonetheless, DOD is required, to the maximum extent practicable, to ensure that the rates of compensation for civilian employees are adjusted at the same rate and same proportion as are rates for members of the uniformed services. DOD is also required to ensure that the aggregate of allowances, differentials, bonuses, awards, or other similar cash payments to senior level or SES employees does not exceed the total annual compensation payable to the vice president of the United States.</p> <p>DOD is partially exempt from requirements in chapter 55 and thus has greater flexibility to establish its own rules in determining premium pay for its employees.</p>
FAA	<p>FAA is fully exempt from the requirements in chapter 51. As a result, FAA has the authority to establish its own agency-specific classification system.</p> <p>FAA is fully exempt from the requirements in chapter 53 and thus may develop its own agency-specific pay system.</p> <p>FAA is partially exempt from the requirements in chapter 55 and hence has greater flexibility to establish its own rules in determining premium pay and payment of accrued leave for its employees.</p>
FDIC	<p>FDIC is fully exempt from the requirements in chapter 51. This exemption allows FDIC to define its own standards for classification of positions within the agency.</p> <p>FDIC is partially exempt from the requirements in chapter 53. FDIC is not subject to GS pay rates but is subject to Executive Schedule pay rates and provisions on student employees.</p> <p>FDIC is not exempt from the requirements in chapter 55. As a result, FDIC must, for example, follow chapter rules in determining premium pay and payment of accrued leave for its employees.</p>
IRS	<p>IRS is fully exempt from the requirements in chapter 51. Hence, IRS has the authority to establish its own broadbanded classification system.</p> <p>IRS is partially exempt from the requirements in chapter 53. IRS is permitted to establish ranges of rates of pay in one or more occupation series under its classification system. IRS also has the authority to fix the rate of basic pay for critical or hard-to-fill positions and has increased flexibility to set limitations for the amount of performance awards available to its SES employees. In addition, IRS may also vary from requirements that govern reduction in force and reduction in pay for its employees. Nonetheless, IRS must ensure that each employee's total compensation (including base pay, incentive pay, and other allowances) does not exceed the total of the annual rate of basic pay payable for level I of the Executive Schedule.</p> <p>IRS is not exempt from the requirements in chapter 55 and hence is obligated to follow chapter rules related to determining premium pay and payment of accrued leave for its employees.</p>
NASA	<p>NASA is not exempt from the requirements of chapter 51 and thus is still obligated to use the GS classification system.</p>

Table II.4: Selected Agencies' Exemptions from Chapters 51, 53, and 55 of Title 5 (Continued)

Agency	Degree of exemption
NASA	<p>NASA is partially exempt from chapter 53. The agency is allowed added flexibility in administering recruitment, retention, and relocation bonuses. NASA also may set the rate of basic pay for critical or hard-to-fill positions. NASA must adhere to the requirement that each employee's total compensation (including base pay, incentive pay, and other allowances) does not exceed the total of the annual rate of basic pay payable for the Vice President. NASA has the flexibility, for example, to provide performance awards to limited term appointees in the same manner and amounts as career appointees and to set pay under the qualifications pay authority in title 5, section 9814.</p> <p>NASA is not exempt from chapter 55 and is thus bound to chapter rules in determining premium pay and payment of accrued leave for its employees.</p>
NSA	<p>NSA is fully exempt from the requirements in chapter 51.</p> <p>NSA is partially exempt from the requirements in chapter 53. The Secretary of Defense has the authority by regulation to fix rates of basic pay for NSA employees, although their pay must be related to pay for comparable DOD positions and is subject to the same limitations on maximum rates of pay.</p> <p>NSA is partially exempt from the requirements in chapter 55. NSA has flexibility as to whether to extend premium pay benefits; however, if NSA opts to do so, it must follow the premium pay rules under chapter 55.</p>
SEC	<p>SEC is fully exempt from the requirements of chapter 51 and therefore is free to establish its own agency-specific classification system.</p> <p>SEC is partially exempt from the requirements of chapter 53. SEC can fix the compensation of attorneys, economists, securities compliance examiners, and other employees as may be necessary for carrying out its functions under the securities laws. SEC may provide additional compensation and benefits to its employees if the same types of compensation or benefits are then being provided by other federal banking agencies. Nonetheless, SEC is still required to follow chapter 53 rules for paying employees in other occupations within the agency.</p> <p>SEC is not exempt from the requirements of chapter 55 and thus is required to follow chapter rules related to determining premium pay and payment of accrued leave for its employees.</p>
VHA	<p>VHA is fully exempt from the requirements of chapter 51 for its health-care positions. The classification system for these positions is provided for under title 38 of the U.S. Code.</p> <p>VHA is fully exempt from the requirements of chapter 53 for its health-care positions. The pay system established for these health-care professionals is a statutory pay system provided for under title 38, which allows VHA to use a rank-in-person approach rather than a rank-in-position approach for setting grade and pay. In addition, the health-care professionals have pay schedules specific to the occupation, rather than being paid under the GS system. The pay for certain of these health-care professionals—physicians and dentists—is to consist of three elements: (1) base; (2) market; and (3) performance. VHA can set special pay rates for nurses and other designated health-care personnel in any of the title 38 occupations at its medical centers based on the need to have pay competitive with other health care providers in the community.</p>

Table II.4: Selected Agencies' Exemptions from Chapters 51, 53, and 55 of Title 5 (Continued)

Agency	Degree of exemption
VHA	VHA is partially exempt from the requirements of chapter 55 related to these health-care positions. For example, VHA is not required to follow chapter rules on premium pay for these health-care positions.

Source: GAO.

Table II.5: Selected Agencies' Exemptions from Chapter 71 of Title 5**Labor Management Relations**

Chapter 71 provides guidance for how the federal agencies should interact with labor organizations. The chapter describes the rights and duties of agency management and labor organizations, standards of conduct for labor organizations, the grievance and appeals processes, and other administrative provisions. The chapter establishes that labor organizations and collective bargaining in the civil service are in the public interest. The chapter also requires agencies to recognize employee rights to engage in collective bargaining through representatives chosen by employees.

Agency	Degree of exemption
CIA	CIA is fully exempt from the requirements of chapter 71.
DHS	DHS is fully exempt from the requirements of chapter 71. Nonetheless, the legislation establishing DHS's new personnel system states that the department must construct a human resources system that ensures employees may organize, bargain collectively, and participate through labor organizations of their choosing in decisions that affect them.
DOD	DOD is partially exempt from the requirements of chapter 71 and thus is authorized to establish a labor relations system that deviates in certain respects from this chapter. DOD is required to recognize and engage in collective bargaining but may, for example, bargain at the national level instead of the local level. Any provisions in existing collective bargaining agreements that conflict with DOD regulations establishing the new personnel system are void. In addition, the new labor relations system must provide for an independent third party review of labor-management decisions, including what decisions are reviewable, what standards would be used for the review, and what third party would conduct the review. The labor relations system established is limited to a 6-year period, unless renewed by law. Once expired, the provisions of chapter 71 would apply.
FAA	FAA is not exempt from the requirements in chapter 71. FAA's 1995 reform legislation gave it partial exemption from the requirements of chapter 71. In March 1996, a change in law reinstated the requirement for FAA to comply fully with this chapter.
FDIC	FDIC is not exempt from the requirements in chapter 71. FDIC must therefore comply with all provisions in the chapter when interacting with recognized labor organizations and in implementing its labor relations program.
IRS	IRS is not exempt from the requirements in chapter 71. IRS is obligated to follow chapter rules when interacting with recognized labor organizations to carry out its labor relations program.
NASA	NASA is not exempt from the requirements in chapter 71. NASA must adhere to the chapter rules when carrying out its labor-management relations activities.
NSA	NSA is fully exempt from the requirements of chapter 71.
SEC	SEC is not exempt from the requirements in chapter 71. SEC is required to follow all chapter rules when interacting with recognized labor organizations.
VHA	VHA is partially exempt from the requirements of chapter 71. VHA's health-care positions are covered under chapter 71 collective bargaining provisions as modified by title 38. For example, title 38 excludes from collective bargaining any matter relating to (1) professional conduct or competence; (2) peer review; and (3) the establishment, determination, or adjustment of employee compensation under title 38.

Source: GAO.

Table II.6: Selected Agencies' Exemptions from Chapters 75 and 77 of Title 5

Adverse Actions and Appeals

Chapter 75 specifies the general procedures that agencies are to follow in initiating adverse actions against employees for performance or conduct reasons to promote the efficiency of the civil service. These adverse actions include suspensions, removals, reductions in grade or pay, or furloughs of 30 days or fewer. This chapter includes the right of employees to appeal certain of these adverse actions to MSPB.

Chapter 77 outlines the MSPB procedures and standards of proof for handling adverse actions and other appeals. The types of actions that employees can appeal to MSPB include removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or fewer; OPM determinations in retirement matters; OPM suitability determinations; denials of restoration or reemployment rights; and certain terminations of probationary employees.

Agency	Degree of exemption
CIA	<p>CIA is fully exempt from the requirements of chapter 75. CIA is therefore free to establish its own rules governing the initiation of adverse actions against employees. The head of CIA may terminate an employee whenever in the interests of the United States.</p> <p>CIA is fully exempt from the requirements of chapter 77 for adverse action appeals. Thus, the procedures for employee appeals do not apply to CIA and its employees.</p>
DHS	<p>DHS is fully exempt from the requirements of chapter 75. DHS can therefore establish specific procedures and rules governing the initiation of adverse actions against employees.</p> <p>DHS is fully exempt from the requirements of chapter 77 for adverse action appeals. Thus, the procedures for the employee appeals process do not apply to DHS and its employees.</p>
DOD	<p>DOD is fully exempt from the requirements of chapter 75 and hence can establish its own procedures and rules governing adverse actions beyond those delineated in the chapter. Nonetheless, the legislation creating DOD's new personnel system provides employees the right to petition the full MSPB for review of adverse action decisions.</p> <p>DOD is fully exempt from the requirements of chapter 77 for adverse action appeals. Thus, the procedures for employee appeals do not apply to DOD and its employees.</p>
FAA	<p>FAA is partially exempt from the requirements in chapter 75. Although FAA can establish its own procedures and rules governing adverse actions, FAA employees can appeal all adverse actions to MSPB.</p> <p>FAA is not exempt from the requirements in chapter 77. The appeals process procedures specified in the chapter apply fully to FAA and its employees. FAA's 1995 reform legislation exempted it from the appeals process, but in 2000 Congress reinstated appeals of adverse actions to MSPB.</p>
FDIC	<p>FDIC is not exempt from the requirements in chapter 75. FDIC is obligated to follow the procedures and rules specified in the chapter when initiating an adverse action against an employee for misconduct or poor performance.</p> <p>FDIC is not exempt from the requirements in chapter 77. Therefore, the procedures for processing employee appeals are fully applicable to FDIC and its employees.</p>

Table II.6: Selected Agencies' Exemptions from Chapters 75 and 77 of Title 5 (Continued)

Agency	Degree of exemption
IRS	<p>IRS is partially exempt from the requirements of chapter 75. With this partial exemption, IRS is allowed to establish critical pay positions at higher levels of pay than is usually permitted. Employees in these critical pay positions have no appeal rights (except those related to alleged discrimination under federal civil rights provisions). In addition, IRS may terminate any employee if there is an administrative or judicial determination that the employee committed certain acts or omissions in performance of official duties. The IRS Commissioner has sole authority to take personnel action other than termination and to establish a procedure that would be used to determine whether an individual should be referred to him or her for such determination. Also, the notice period for adverse actions is shortened from 30 days to 15 days.</p> <p>IRS is not exempt from the requirements in chapter 77. Thus, the appeals process procedures apply fully to IRS and its employees.</p>
NASA	<p>NASA is not exempt from the requirements in chapter 75. As a result, NASA must adhere to the rules and procedures delineated in the chapter when initiating adverse actions against employees for misconduct.</p> <p>NASA is not exempt from the requirements in chapter 77. Therefore, the procedures for processing employee appeals are fully applicable to NASA and its employees.</p>
NSA	<p>NSA is partially exempt from the requirements in chapter 75. Preference eligible employees at NSA may appeal adverse actions to MSPB.</p> <p>NSA is partially exempt from the requirements in chapter 77. Preference eligible employees at NSA may appeal adverse actions to MSPB. The suspension or termination of an employee for national security reasons or in the interest of the United States may not be appealed to MSPB.</p>
SEC	<p>SEC is not exempt from the requirements in chapter 75. Hence, SEC must adhere to the rules and procedures specified in the chapter when initiating adverse actions against employees for misconduct.</p> <p>SEC is not exempt from the requirements in chapter 77. The procedures specified in the chapter for processing employee appeals are fully applicable to SEC and its employees.</p>
VHA	<p>VHA is fully exempt from the requirements in chapter 75 for the agency's health-care positions.</p> <p>VHA is partially exempt from the requirements of chapter 77 for its health-care positions. These health-care professionals are considered MSPB employees for purposes of chapter 77 and may file whistleblower retaliation charges with MSPB.</p>

Source: GAO.

Background on GAO's Human Capital Authorities

Over the past 25 years, the U.S. Government Accountability Office (GAO) has taken a number of steps to improve and tailor its human capital system by seeking various statutory flexibilities. Congress provided these flexibilities through the GAO Personnel Act of 1980, the 2000 Amendments, and the Human Capital Reform Act of 2004.

GAO Personnel Act of 1980

Prior to 1980, GAO's personnel system was subject to the same laws, regulations, and policies as those of executive branch agencies. Out of concern that GAO could not objectively audit executive branch agencies that had authority to review GAO's internal personnel activities, such as the Office of Personnel Management (OPM), Congress passed the GAO Personnel Act of 1980. The principal goal of the act was to make GAO's personnel system more independent of the executive branch. In addition, the act also gave GAO greater flexibility in hiring and managing its workforce.

Key provisions of the GAO Personnel Act of 1980 included the following:

- **Recruiting and hiring:** Allowed GAO to establish a more flexible recruiting and hiring process by providing the Comptroller General (CG) the authority to appoint, promote, and assign employees without regard to related requirements in Title 5 of the U.S. Code.
- **Classification and compensation:** Provided authority to GAO to deviate from the General Schedule and create a broadbanded pay-for-performance (PFP) system with the goal of rewarding staff on the basis of their knowledge, skills, and performance and provided managers with additional flexibility to assign and use staff in a manner more suitable to multi-tasking and the full utilization of available staff.¹
- **Competitive service status:** Employees of GAO who complete at least 1 year of continuous service under a non-temporary appointment acquire competitive status for appointment to a position in the executive branch.
- **Appeals process:** Established the Personnel Appeals Board (PAB) to provide GAO employees with an independent appeal authority and protection against prohibited and/or discriminatory actions.

Public Law 106-303 - 2000 Amendments

During the mid-1990's, GAO underwent budgetary cuts, necessitating a workforce reduction and a virtual hiring freeze at the entry level. Because of this reduction in hiring, GAO's workforce was smaller, closer to retirement, and at increasingly higher-

¹ GAO created a broadbanded system for analysts and specialists which places staff in three bands rather than in Grades 7 through 15.

grade levels. In addition to the succession-related concerns raised by such a human capital profile, GAO also faced a range of skills gaps. Policy issues had become more complex and technology had rapidly developed over the years, increasing the need for sophisticated skills. GAO used its internal administrative authority to implement measures to improve the alignment of its human capital skills with its organizational goals and needs. In addition to these initiatives, GAO's leadership recognized that additional steps were necessary to reshape the agency's workforce and preexisting personnel authorities did not allow the agency to address these challenges effectively. The 2000 Amendments addressed these concerns and increased GAO's flexibilities to help reshape the agency's workforce and recruit and retain staff with needed technical skills.

Key provisions of the 2000 Amendments included the following:

- Early retirement: Provided GAO with a 3 year authority to grant voluntary early retirement to certain employee groups to address budgetary or mission constraints; correct skill imbalances; or reduce high-grade, supervisory, or managerial positions, not to exceed 10 percent of the workforce in any fiscal year.
- Voluntary separation: Permitted the CG to offer voluntary separation incentive payments to up to 5 percent of employees in any fiscal year to realign the workforce based on criteria he determined as appropriate for a three year period.
- Reduction-in-force regulations: (1) Authorized the CG to prescribe regulations for the separation of GAO employees during a reduction-in-force or other adjustment in force consistent with those issued by OPM under section 3502(a) of Title 5, U. S. Code; (2) allowed GAO employees in the event of involuntary job reductions to compete for retention on the basis of the following factors in descending order of priority: tenure, veteran's preference, performance ratings, and length of federal service; (3) allowed the CG to base retention on other objective factors, including skills and knowledge, in addition to the above factors, at his own discretion.
- Recruit for specialized senior positions: Allowed GAO to create senior level (SL) positions at compensation levels and benefits consistent with Senior Executive Service (SES) positions to address GAO's need for scientific, technical, and professional career expertise.

Human Capital Reform Act of 2004 – Public Law 108-271

To help continue in reshaping the agency, GAO sought and received additional human capital flexibilities in the Human Capital Reform Act of 2004. In addition to making permanent the 2000 flexibilities to offer early outs and buyouts, the 2004 act authorized additional flexibilities in the areas of annual pay adjustments, pay retention, and relocation benefits.

Key provisions of the Human Capital Reform Act of 2004 include the following:

- Early outs and buyouts: Makes permanent GAO's 3-year authority to offer early outs and buyouts.
- Compensation: Allows (1) the CG to adjust the rates of basic pay of GAO employees on a separate basis from the annual adjustments authorized for employees of the executive branch; (2) GAO to set the pay of an employee who is demoted as a result of workforce restructuring or reclassification at his or her current rate with no automatic annual increase to basic pay until his or her salary is less than the maximum rate for the new position; and (3) GAO to withhold the annual across the board increase from employees who are not performing at a satisfactory level.
- Relocation expenses: Provides the authority in appropriate circumstances to reimburse employees for some relocation expenses when the transfer does not meet current legal requirements for entitlement to reimbursement but still provides some benefits to GAO.
- Annual leave: Allows key officers and employees with less than 3 years of federal service to receive 6 hours of annual leave per biweekly pay period rather than 4 hours.
- Executive exchange program: Authorizes an executive exchange program with private sector organizations to further the institutional interest of GAO or Congress.

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