OVERSIGHT OF PERFORMANCE-BASED ORGANIZATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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OVERSIGHT OF PERFORMANCE-BASED ORGANIZATIONS

TUESDAY, JULY 8, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2154, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Sessions, Davis of Virginia, Maloney, and Davis of Illinois.

Staff present: J. Russell George, staff director and chief counsel; Matt Ryan and John Hynes, professional staff members; Andrea Miller, clerk; and Mark Stephenson, professional staff member.

Mr. HORN. The Subcommittee on Government Management, Information, and Technology will come to order.

Governments around the world are struggling with the effort to provide services more efficiently and effectively and at a lower cost to their taxpayers. One approach is to model government agencies along the lines of competitive private-sector organizations. There will always be public policy and regulatory functions that cannot be measured by business standards. There are, however, many government functions that can profit from application of private-sector methods and standards.

We have learned from our series of hearings on the Government Performance and Results Act that Federal agencies need to change their incentives and internal cultures in order to focus on customers and achieving results. Agencies need to be more responsive to citizens at the same time that they account for program costs and safeguard broader public interests.

We are here today to examine the proposition that such reforms are obtainable through the creation of performance-based organizations. Performance-based organizations set forth clear measures of performance, hold the head of the organization clearly accountable for achieving results, and grant the head of the government's authority to deviate from governmentwide rules if this is needed to achieve agreed-upon results.

A performance-based organization is a discrete management unit with strong incentives to manage for result. Performance-based organizations commit to clear objectives, specific measurable goals, customer service standards, and targets for improved performance. Once designated, a performance-based organization must have cus-

tomized managerial flexibility and a competitively hired chief executive. The chief executive signs an annual performance agreement with the secretary and has his or her pay and tenure tied to the organization's performance. The British Government, on which the concept of performance-based organizations is modeled, has found that such agencies improve performance while cutting administrative costs.

This morning we will hear from several expert witnesses on the issue of performance-based organizations, including people who have firsthand experience with reforms at the agency level. We hope to hear from our witnesses on several key questions, including: What specific problems do performance-based organizations address? How will a change to performance-based organization status affect the operations of the proposed candidates for that role? What are the major benefits and drawbacks to the American taxpayer in creating performance-based organizations?

We welcome all of our witnesses, and we look forward to their testimony.

[The prepared statements of Hon. Stephen Horn, Hon. Danny K. Davis, and Hon. Carolyn B. Maloney follow:]

"Performance-Based Organizations"

July 8, 1997

OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)

Chairman, Subcommittee on Government Management,
Information, and Technology

Governments around the world are struggling to provide services more efficiently, effectively, and at a lower cost to their taxpayers. One approach is to model government agencies along the lines of competitive private-sector organizations. There will always be public policy and regulatory functions that cannot be measured by business standards. There are, however, many government functions that can profit from application of private-sector methods and standards.

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We welcome all of our witnesses and look forward to their testimony.

STATEMENT OF DANNY K. DAVIS

"The Government Reform and Oversight Subcommittee on Government Management Information, and Technology"
July 8, 1997

Thank you Mr. Chairman for convening this hearing regarding Performance Based Organizations (PBOs). I would also like to acknowledge the distinguished panels of witnesses for coming here today and sharing with us their expertise and knowledge.

The concept of Performance Based Organizations is a unique idea that has it genesis in the British Government. This idea is one that provides for a government to operate like a business. An idea that seeks to have agencies be more responsive and responsible to the American citizens. An idea that seeks to improve performance while cutting costs. The notions of streamlining government and improving performance are good goals, however, I believe we must proceed with caution when looking at something that seems too good to be true.

In this climate there are calls for a leaner more responsive government, not a meaner government. The PBO concept would place more power in the hands of a few, Congress would lose some of its oversight authority. In addition, employees and unions would be displaced. While I support a more responsive, and efficient government, I do not support displacing workers and limiting their rights.

I believe that Felix Frankfurter said it best when he said "Government is neither business nor technology, nor applied science. It is the art of making men live together in peace and with reasonable happiness."

Therefore, as we begin to debate this bold initiative, I look forward to your testimony and understanding why PBOs are necessary, and what protections employees and unions will have. I am confident that we will be able to reach a consensus that provides both, equity for the employees, while at the same time meeting the needs of our citizens.

Again, thank you Mr. Chairman and I ask unanimous consent to revise and extend my remarks for up to seven legislative days.

ONE HUNDRED FIFTH CONGRESS

Congress of the United States

House of Representatives

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Statement of Carolyn B. Maloney
Hearing on Performance Based Organizations

July 8, 1997

Thank you Mr. Chairman.

I am pleased that you have called today's hearing on Performance Based Organizations, or PBOs. The concept of a PBO is an innovative, new approach in government management developed by the National Performance Review team lead by Vice President Gore. The NPR initiative has been a real success in streamlining government, and improving service and customer satisfaction. Along the way, it has also saved the American taxpayer billions of dollars -- close to $100 billion by some accounts. Without these savings, balancing the budget would have been all but impossible. The hard and patient work in the nuts and bolts of government management has truly paid off.

PBOs are intended to be performance-driven, customer-oriented agencies. The aim is to allow discrete management units in the federal government to operate more like a business. This would be accomplished by creating a Chief Operating Officer directly accountable for results and providing flexibility in federal procurement and personnel laws. This is a concept that has worked in other countries, and one which should probably be explored in ours.

Before closing, I want to commend John Koskinen for his years of service to the American people. I understand that this is probably your last official testimony before retirement, and I think it is fitting it is before this Subcommittee, where you have spent so much time. In all seriousness though, you have been a true inspiration for myself and I'm sure other Members of Congress. Your wisdom, experience and charm will be sorely missed.

Thank you Mr. Chairman.

Mr. HORN. Panel one is a long-time friend of this committee and subcommittee, and that's John Koskinen, Deputy Director for Management, Office of Management and Budget. Mr. Koskinen has appeared before this subcommittee for about 3, going on 4 years. It just seems like 8 years. But he's always come with a well-prepared background.

He has done a tremendous job in this administration in bringing people together—the Chief Inspectors General, the Chief Financial Officers, the Chief Information Officers, and all the rest. He has had both his handprints and footprints on progress in these areas.

As he goes and leaves the administration, we wish him well; and his leaving is a good example of why we need an Office of Federal Management. Maybe that will bring him back. Don't worry. We will be keeping on that junket, shall we say, until we get something accomplished with it.

But welcome, John. You know the routine around here.

[Witness sworn.]

Mr. HORN. Please proceed in any manner you would like.

STATEMENT OF JOHN KOSKINEN, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. KOSKINEN. Mr. Chairman, I'm pleased to appear before the committee this morning to discuss the administration's initiative to create performance-based organizations [PBO's]. We believe these organizations can play a significant role in improving Government effectiveness and increasing public confidence in Government operations.

Also, as you noted, I will be leaving my position in 2 days. I thought if I were going to testify one last time this was probably the right forum in light of the number of times I've been here in the past but also in light of the great work you and your subcommittee and the full committee continue to do in working in a bipartisan way, trying to help us all improve the management and the effectiveness of the Federal Government.

On the other hand, I have been disappointed. I keep waiting for the award package that goes with my frequent testifier mileage, and it hasn't shown up yet.

With your permission, Mr. Chairman, I'll submit my full statement for the record and provide a summary of it orally.

Mr. HORN. Without objection, it will be in the record.

Mr. KOSKINEN. As you noted, a PBO is a discrete management unit that deals with the public. It has operations that can provide clear measures of performance. Under a PBO, primary responsibility for policymaking would be separated from program operations and remain in the domain of the department under the control of political appointees. Program operations would be retained in the PBO.

While this division of responsibilities will be clear, the managers of the PBO will continue to operate within the structure of the organization's present department to ensure communication between the policy formulation and operation functions. However, by separating policy decisions affecting those operations from daily activities, we can create a management with strong incentives to manage for results by committing to clear objectives, specific measur-

able goals, customer service standards, and targets for improved performance.

A critical aspect of a PBO is that it would be led by a chief operating officer hired for a fixed term based on a demonstrated track record of effective management, as distinguished from policy expertise. The chief operating officer might come from the private sector or from the ranks of the civil service.

The chief operating officer will give us a manager with a longer time horizon than the normal political appointee; and, rather than having a focus on career tenure, the chief operating officer will sign an annual performance agreement with the Secretary; and his or her compensation and tenure would be tied to the organization's performance.

In exchange for this increased personal accountability for performance, the PBO would be granted legislative and administrative managerial flexibilities in areas such as personnel, procurement, and other administrative areas.

Not all Government agencies or functions are suited to become PBO's. The concept works best with operations that produce clear, measurable results. For example, the foreign policy and planning officers in the State Department or basic scientific research offices at the National Institutes for Health may be inappropriate candidates to become PBO's.

Some have asked how PBO's differ from Government corporations. The corporate form is appropriate when an entity carries out commercial functions that not only produce revenue but are self-sustaining. However, in the past, some entities have sought to become corporations because that was seen as the only way to achieve personnel and procurement flexibilities. The problem is that, to achieve those goals, they were turned into independent, free-standing entities, making effective policy control and oversight much more difficult.

In contrast, while a PBO will focus on performance and, importantly, remain within its present department under the policy guidance and direction of the Secretary, it will still be the subject to all governmentwide regulations, rules, policies, and procedures, unless specific waivers are granted.

Thanks to the long, hard work of executives in the candidate agencies, those working with the National Performance Review and people at OMB, we are ready to take the next step, seeking legislative action. You will shortly hear from a panel of the first three PBO candidates that have submitted their legislative proposals. While we have consulted with various congressional officers in the past few months about PBO's generally, we're pleased to enter into a dialog with you now about these three specific PBO candidates and to seek your support.

The challenge in creating new forms of organization is to balance the desire for autonomy and flexibility with the need for accountability and oversight. PBO's provide an operational structure that allows Federal entities to carry out their functions in the most effective and efficient manner, yet remain accountable to senior administration policymakers. While the process for converting agencies and functions to a PBO has taken time and effort, we believe

the concept is sound and the progress to date has laid the groundwork for success.

As President Clinton said late last year, we want hundreds of organizations to become performance based, to be trailblazers in increasing productivity and making their customers happy.

Mr. Chairman, I appreciate your subcommittee's long-time interest in Government management improvement generally and in this initiative and the time you've taken to hold this hearing; and I will be pleased to answer any questions you or other members of the panel might have.

Mr. HORN. We thank you for that very good summary.

[The prepared statement of Mr. Koskinen follows:]

STATEMENT OF
JOHN A. KOSKINEN
DEPUTY DIRECTOR FOR MANAGEMENT
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY OF THE
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
JULY 8, 1997

Mr. Chairman, I am pleased to appear before the Committee this morning to discuss the Administration's initiative to create Performance-Based Organizations, also known as PBOs. We believe these organizations can play a significant role in improving government effectiveness and increasing public confidence in government operations.

This Committee has been a leader in providing Federal managers with the tools and incentives to perform effectively and accountably. In the past few years this has led to the adoption of the Chief Financial Officers (CFOs) Act, the Government Performance and Results Act (GPRA), the Clinger-Cohen information technology reforms, and the Debt Collection Improvement Act.

PBOs grew out of a concern that we share with this Committee for management improvement. Under Phase II of the National Performance Review, we set up teams to study every function and activity of government to decide which ones the Federal Government should continue to perform, which it should eliminate together, and which it should shift to other levels of government. During that effort it became clear that many agencies perform businesslike functions that carry out important public purposes. While not suitable for privatization, these functions have the potential to be managed much more effectively.

In March 1996, Vice President Al Gore announced that a series of agencies would be transformed into performance-based customer-oriented agencies. President Clinton described the initial candidates in his FY 1997 budget, an initiative carried forward into the President's FY 1998 Budget.

What is a Performance-Based Organization?

A PBO is a discrete management unit that deals with the public and has operations that can provide clear measures of performance. Primary responsibility for policy making is separated from program operations and remains in the domain of the Department under the control of political appointees. Program operations are retained in the PBO. While this division of responsibilities will be clear, the managers of the PBO will continue to operate within the

structure of the organization's present Department to ensure communication between the policy formulation and operation functions. However, by separating policy decisions affecting those operations from daily activities, we can create a management with strong incentives to manage for results by committing to clear objectives, specific measurable goals, customer service standards, and targets for improved performance.

A critical aspect of a PBO is that it would be led by a Chief Operating Officer (COO) hired for a fixed term based on a demonstrated track record of effective management, as distinguished from policy expertise. The COO might come from the private sector or from the ranks of the civil service. The COO will give us a manager with a longer time horizon than the normal political appointee, and, rather than having a focus on career tenure, the COO would sign an annual performance agreement with the Secretary; and his or her compensation and tenure would be tied to the organization's performance. The Secretary may reappoint the COO to subsequent terms, if he or she has met or exceeded organizational and individual performance goals.

In exchange for this increased personal accountability for performance, the PBO would be granted legislative and administrative managerial flexiblities in areas such as personnel, procurement, and other administrative areas. A PBO will otherwise still be subject to all other government wide regulations, rules, policies, and procedures.

Candidates to be PBOs

Not all government agencies or functions are suited to become PBOs. The concept works best with operations that produce clear, measurable results. For example, the foreign policy and planning offices in the State Department or basic scientific research offices at the National Institutes for Health may be inappropriate candidates.

The best candidates to become a PBO are those that:

- Have a clear mission, measurable services, and a performance measurement system in place or in development;
- Generally focus on functions -- not necessarily entire agencies -- that have external customers. For the early candidates, we are not pursuing organizations or functions that primarily serve other government agencies;
- Have a clear line of accountability to an agency head who has policy accountability for the functions. As a result, independent agencies are not ready candidates;
- Have top level support to transform a function into a PBO; and
- Have predictable sources of funding.

Some have asked how PBOs differ from government corporations. As you know, the concept of a government corporation has been applied inconsistently in the past. The corporate form is appropriate when an entity carries out commercial functions that not only

produce revenue, but are self-sustaining. However, in the past some entities have sought to become corporations because that was seen as the only way to achieve personnel and procurement flexibilities. The problem is that, to achieve those goals, they were turned into independent, freestanding entities, making effective policy control and oversight much more difficult.

In contrast, a PBO will focus on performance and, importantly, remain within its present department under the policy guidance and direction of the Secretary. It will still be subject to all government wide regulations, rules, policies and procedures, unless specific waivers are granted.

The Process for Converting to a PBO

Shortly after Vice President Gore's announcement of the PBO initiative in early 1996, OMB and NPR crafted a process for converting agencies or functions into PBOs. I asked the President's Management Council for potential candidates and the members nominated nine candidates from among their agencies. OMB and NPR then formed conversion teams for each candidate with representatives from OMB, NPR, the candidate function, and their home Department.

These teams identified potential legislative and managerial flexiblities that would allow them to improve the management of their operations. The most progress was made when the candidates worked jointly as a team with their conversion colleagues, especially with their departments, NPR, and OMB representatives.

Early in the process, we discovered that the leaders of many PBO candidates were unaware of the flexibilities that were already available to them under existing law. This was not surprising since implementation and execution of statutory changes is just as challenging and often takes longer than getting the laws passed. We therefore worked with the candidates to ensure they understood and were using the flexiblities Congress and the Administration had already given them.

Thanks to the long, hard work of executives in the candidate agencies, the National Performance Review, and OMB, we are ready to take the next step: seeking legislative action. You will shortly hear from a panel of the first three PBO candidates that have submitted their legislative proposals. While we have consulted with various Congressional offices in the past few months about PBOs generally, we are pleased to enter into a dialogue with you now about these three specific PBO candidates and to seek your support.

Lessons Learned and Progress to Date

In your letter of invitation, you asked that I summarize the progress we've made in the past year and the lessons we've learned that will help future candidates in the conversion process.

One of the things we learned over the course of the past year was the importance of developing commitments for improved performance along with requests for increased operating flexiblities. While it is probably impossible to show a one-to-one correlation between a specific flexibility and a specific increase in performance, we think it is imperative for candidates to commit to increases in performance in exchange for obtaining desired flexibilities.

We also learned that a targeted approach is important. Candidates that requested a wide range of management flexiblities, some of which were minor or marginal to their operations, became bogged down in laborious interagency debates and clearances. Also, successful candidates found it useful to separate those flexiblities that could be achieved administratively from those that required legislative action.

To date, three of the Administration's nine PBO candidates conveyed their legislative packages to Congress in April or May -- the Patent and Trademark Office, the Defense Commissary Agency, and the St. Lawrence Seaway Development Corporation. Three others are developing their legislative packages and should have them completed in the coming weeks -- the U.S. Mint, the Government National Mortgage Association, and the Seafood Inspection Service. Two others are delayed in developing their legislative packages for unrelated reasons -- the Federal Housing Administration and the National Technical Information Service. The Federal Retirement and Insurance Service in the Office of Personnel Management believes it can achieve all the authority and flexibilities it needs administratively, without additional legislation.

We have now asked the President's Management Council to identify additional candidates to begin the conversion process so the Administration can introduce additional candidates next Spring along with the President's FY 1999 budget proposal.

Conclusions

The challenge in creating new forms of organization is to balance the desire for autonomy and flexibility with the need for accountability and oversight. PBOs provide an operational structure that allows Federal entities to carry out their functions in the most effective and efficient manner, yet remain accountable to senior administration policy makers. While the process for converting agencies and functions to a PBO has taken time and effort, we believe the concept is sound and the progress to date has laid the groundwork for success.

As President Clinton said late last year, "We want hundreds of organizations to become performance-based, to be trailblazers in increasing productivity and making their customers happy."

Mr. Chairman, I appreciate your subcommittee's interest in this initiative and would be pleased to take any questions you might have.

Mr. HORN. Generally, I like the draft bill I've seen and even the semifinal draft; and we will be putting that in and asking the ranking minority member to be cosponsor as we do with most of these good government bills.

I think my first question is: How does the performance-based organization relate to the Government Performance and Results Act which we've held extensive hearings on? Should it simply be an amendment to that act? Should it be a separate bill as you have in a tentative draft? And why shouldn't it be under the performance and results program?

Mr. KOSKINEN. They clearly are all headed in the same direction. In fact, with the NPR, we held a contest to see if we could come up with another name for PBO's. Because, ultimately, the goal of the Government Performance and Results Act is for every organization to be performance based, to be focused on outcomes and results. However, because of the important focus of what we're trying to accomplish here, we thought the name was appropriate.

What we have in mind is that those organizations focused on businesslike activities would have very specific commitments to performance goals tied to both the leadership of the organization and also to additional procurement personnel flexibilities. So that, otherwise, these will be doing exactly what other organizations will be doing.

We hope that everyone across the Government, as we discussed on other occasions, would have clearer statements of their goals and objectives and clearer performance measures focused on outcomes rather than just inputs and outputs. In the long run, every entity would be a performance-based organization in the sense of what their operations were headed toward. These particular organizations, though, would be able to be pilots for us, as it were, demonstrating what you could do with additional personnel and procurement flexibilities.

Mr. HORN. Your flexibilities and your placement of accountability seems to be the key to this; and I wonder whether those two major thrusts, which are very clear when you're talking to PBO's, might also be an approach to every single agency that is going through the goal-setting process. I don't see how you achieve those goals unless you hand responsibility to either the chief executive or chief operating officer and you also permit flexibility in terms of procurement, as you noted in your remarks, as well as personnel.

Mr. KOSKINEN. That's right. But a lot of—as you—when you step back and take a lot of the Government—a lot of functions in the Government are not businesslike functions. A lot of them are in the policy development organization. They're in regulatory areas. They are not producing measurable services to the public.

A lot of organizations in the Government don't interface directly with the public. They interface with other Government agencies. They interface at State and local governments. Therefore, we have focused on those organizations that actually interface with the public to start, much as the experience, as you noted, in England is.

In other areas, there is a need for accountability, but the people leading those organizations need to be political appointees. If you were running large aspects of the State Department, obviously those are major policy issues for which you would not be hiring a

manager for his managerial expertise, you would be hiring someone for their policy expertise.

Nonetheless, one of the initiatives that we have started in this administration is to designate that the deputy secretary or an equivalent senior person in a department should be designated the chief operating officer for the department. With a little luck over time, we would begin to ask candidates whom we appoint to be deputy secretaries not only what their policy background is but what their management background is. Do they have an understanding of what it's like to try to manage what is, in many cases a large conglomerate organization?

Too often in the past, all of the senior appointees in the department come with a background in policy and very little background or interest in management. So that when you look at the operation of the department to find someone really focused on the day-to-day management, you have to go down several levels. So I think, ultimately, a thrust is exactly right. We need to have at the top of every major department a senior official who is, in fact, responsible and accountable for the operation of that department and who comes with some background in that department. And that's a major understanding.

Mr. HORN. Well, I agree with it, that it's a major understanding, but it seems to me we eventually have to face it. Now maybe the best way is to have so many pilot models going as we start that you help spread the good virus among the more traditional line agencies.

I agree with you on the problems of policy areas versus the implementation situation. I think part of the problem are our schools of public administration. They've moved from public administration and how you get something done into the glorious, romantic world of policy studies, which is very interesting, but then they wonder why their policy studies never get implemented and their policy proposals never get implemented.

Do you have any comments on this as you leave the administration? You would make an ideal dean for some school of public administration. But if you do, would you get them back to reality? Because they're not in the world of reality and haven't been for about 10 years.

Mr. KOSKINEN. Well, actually, I am departing a lot of organizations. As you know, I just finished my 12 years as a trustee, the last 3 years as chairman of the board of trustees at Duke University, which has a major policy institute, whose board of visitors I used to chair. And your point is well taken that one of the things we need to feed back into the system is that all the good ideas in the world are not very helpful if nobody can execute and implement those ideas.

As we've discussed with a specific statute like the Debt Collection Improvement Act, it's a wonderful initiative and it's an important step forward, but the real question is, can we get it implemented? Can we get it executed? Can we apply the principles in a way that, in fact, allows us to derive the benefit from the ideas? And it's clear that's a major challenge across the board.

When you look at the Federal Government, it is a very large collection management challenge. Each of the departments is a con-

glomerate in its own right. If those departments were operating in the private sector, they would each be viewed as one of the major corporations in the United States; and they would—in fact, it would be assumed that we should have very skillful management somewhere at the top of those organizations worried about them. We need to begin to understand that in the Federal Government as well.

Mr. HORN. One last question on my part, and I'll yield to Mr. Davis. But I have to ask this, because we hear so much about it.

We never see much implementation as is done in Great Britain. Did you ever look at privatization as an option in either lieu of or parallel to the performance-based organizations? Why and why not? Could some things be privatized? And are we then doing the same thing you're trying to reach through PBO operation?

Mr. KOSKINEN. Actually, we got into the PBO business as I noted in my formal statement, by going through reinventing government II, or REGO II, as we called it, and asking agencies just that question. We wanted them to look at all their operations, figure out which things could they stop doing, work wasn't necessary to be done, which things could they devolve or spin off either to the private sector or State and local governments. For those issues that they needed to continue to do, could they restructure and reorganize.

Ultimately, the concept in a PBO is its basic function is, for any number of reasons, critical to be under the control of the Government. The Patent and Trademark Office is a clear example. We could not privatize, constitutionally, and probably could not privatize a patent function and turn it over to the private sector.

On the other hand, PTO has many characteristics of an operating business that can be measured with a set of clients who are very concerned with its efficiency. In general, the way we've distinguished PBO's is that these are functions we need to continue to perform in the Government.

The question is, how can we create a structure that allows to us perform most effectively? And there are going to be other areas, and we looked at this particularly in the Government corporations when we first started 3 years ago, in which we said, if you want to be a Government corporation and you're freestanding and revenue-supporting and self-sustaining, one question we should ask is, why not spin you all the way out into the private sector?

And we've done that with some functions. As you know, we created an ESOP at OPM and the investigation function is now, in fact, a competitor in the private sector and is no longer a government operation. There's a spectrum of options and possibilities here. One of the things we have to be careful about is not trying to fit everybody into one particular category.

Mr. HORN. I thank the gentleman.

I now yield to the gentleman from Illinois, Mr. Davis. We'll have 10 minutes each person alternating, and we'll go a second round if there's question left.

Mr. DAVIS of Illinois. Thank you very much, Mr. Chairman; and let me just indicate that I have a statement I would like to submit for the record.

Mr. HORN. Without objection, it will be put at the beginning with the opening statements as if read.

Mr. DAVIS of Illinois. Thank you. Thank you very much.

As I listened and we talked a little bit about the question of privatization versus performance based, do you think that privatization is getting a little too much attention right now?

Mr. KOSKINEN. I'm fixed pretty hard to weigh that. I think it's always a good question to ask when you're performing a function as to who can perform it most effectively.

We've had a lot of discussion in another context about contracting out and contracting in. There's an issue as to whether we should say any commercial function ought to be performed only in the private sector. Our position has been we ought to get commercial-like functions and services for the Government performed in the most effective way possible and the best way for the taxpayers. If it turns out Government employees can perform a function best, that's what we ought to do.

So I think to the extent that there are people saying what we ought to do is have any commercial function put in the private sector, whether it's more cost-effective or not, strikes me to be moving the balance in a way to where we ought to be going. Our ultimate goal ought to be to provide organizations that function as efficiently and effectively as we can for the best price for the taxpayer. Often, that work has been provided and demonstrated to be provided by Federal employees.

Mr. DAVIS of Illinois. I appreciate that response because it appears to me that there are so many instances where privatization sort of takes away some of the rights that workers have and certainly benefits—I mean, benefits more than anything else; and even in many instances I've seen where individuals who had become accustomed to earning a certain level of compensation, that, too, was reduced. And it just concerns me. That's why I raise that question.

Looking at the United Kingdom experience, how is it characterized? I mean, has it been good? Has it been helpful? Has it been meaningful? Has it——

Mr. KOSKINEN. We have talked to the British, and they've been at this for 10 years so they're a good test basis for us. They have almost 75 percent of their workers and work force in PBO's, as it were, next step agencies as they're called in England. They think that they have demonstrably saved significant amounts of operating costs over those 10 years as the organizations have become more focused on results.

If they have a challenge that remains, it is trying to make sure that their performance measures are challenging enough. The natural tendency when you're negotiating a performance agreement, if you're the one who is going to be held accountable, is to have those goals reachable. In fact, if you can get away with it, you would like to have them be very reachable so that there's not a challenge at all.

And I think the British experience, as they've set all these in motion, is they're going back now and they're working very hard at looking at the nature of the performance measures that the organization have established.

But we have yet to hear anyone who is concerned that PBO's haven't worked well and they aren't moving well. There have been some reviews of whether, in all cases, they've involved appropriately employees in the discussions and the determinations of how best to do the work.

Again, another of our initiatives is to push and support the concept of labor-management partnerships wherein employees and union representatives and managers jointly are looking at how can we improve the management of an organization. How can we turn it into more of a performance-based organization?

Our concern, as a general matter, is that—and it's a not a public sector only, it's similar in the private sector—that if, with a small group of people, you try to tell people how to do the work better, you're not nearly as effective as if you involve them in the discussions with you, if you draw upon their experiences and make determinations accordingly.

And then an offshoot of that, of course, is that everyone wants to be doing meaningful work. When employees feel that they're part of the solution rather than part of the problem, they become much more productive. They're much more enthusiastic, and they have a clearer idea about how the work they're doing relates to the overall goals and objectives of the organization.

Mr. DAVIS of Illinois. I guess I call that sort of a shared approach to management. Are we very good at that?

Mr. KOSKINEN. In the United States there is a revolution in that direction obviously going on in the private sector as we move toward greater involvement of workers in terms of providing feedback about what's happening on the front lines of the job. We also see greater empowerment of work teams to, in fact, redesign the way work is done. We're learning from that in the public sector, but we're really at the walking stage. We're clearly not even jogging yet. It's an area that we think deserves a lot more attention and I think has great potential for the Federal Government.

Mr. DAVIS of Illinois. Would you say—if you had to compare where the British were at the time that they started and where we are now relative to productivity, could there be any comparison?

Mr. KOSKINEN. I'm not able to make that comparison. I think in terms of concepts, we are probably ahead of where they were there, because we spent the last 4 or 5 years thinking hard and talking a lot about how to reinvent government so we have a lot of mechanisms in place. Therefore, from where they started at a dead start, we're ahead of them in that sense; and I think we have improved our productivity significantly over the last 3, 4, or 5 years. But, on the other hand, I think we're at the start of an evolutionary process that I hope will continue to proceed.

Mr. DAVIS of Illinois. Is there a reason to believe that this concept or this process would be more effective than, say, the formation of a corporate-like structure for some of the agencies and then functioning on that basis like a corporation?

Mr. KOSKINEN. As I noted, the concern we've had historically with Government corporations is there is no one definition of a Government corporation. We've got a number of agencies that look like corporations that aren't called corporations. We have some

other organizations that are called corporations that don't look very much like corporations.

Our biggest concern is accountability. Sometimes, being a Government corporation has been synonymous with being a freestanding entity outside of the reach of most policy officials. Often, that then leaves you with the question of how you change policies, how you exercise control, whoever the administration is. Therefore, as a general matter, one of the attractions we think after PBO is that the operation, while it becomes more organized and focused on businesslike processes, remains under the overall policy umbrella of the operating department from which it came.

Mr. DAVIS of Illinois. I know we're not necessarily always trying to fix things, although I guess the conventional wisdom is that there is generally something that does, in fact, need fixing. But we're also always becoming—but I'm certain that there must be some problem areas that some of the agencies have that we're trying to correct and eradicate. Could you share with us what some of those might be?

Mr. KOSKINEN. I think the major challenge we're having that we're working on is in the information technology area. Thanks to the support of this committee and the Congress, the Information Technology Management Reform Act, now known as the Clinger-Cohen Act, I think gives us the tools to move forward effectively in this area. The act is based on a set of concepts that are derived from the best practices in the private sector as well as in Government agencies.

We designed that legislation drawing upon work that the GAO had done looking at the best private-sector companies. We looked at and reviewed the history of failed systems in the Government and are prepared to move forward to more effectively address issues like tax systems modernization and other major information technology challenges.

I select information technology because, as we began to appoint chief information officers in all of the departments pursuant to the act, my assumption had been that there must be some departments where information technology would not rise to the level of challenge that it was in some of the more obvious cases. However, I can report to you that there is no major department in the Federal Government that right now is not challenged to more effectively use information technology. Everyone is depending upon better information systems, better information management to be able to continue to provide the services they need to provide with declining or constrained resources. So I think if there's one area that we're working hard on, it's that.

The other area that we've begun to tap into is the area we just discussed, which is the way we manage employees. I think that, as an overall generalization, we do not provide great support and training for managers on how to manage. We still have, in many ways, a very rule-based, hierarchial structure in which we manage. We have a system for resolving disagreements that is very formal. If you have a disagreement with an employer or a supervisor, you get encouraged or led into a very formal adversarial process which is, I think, in the long run, corrosive to morale of both managers and employees. We have a lot of potential for improvements there,

and labor-management partnerships are a major part but just one of the areas and one of the activities that we can pursue.

Mr. DAVIS of Illinois. I know that OMB has developed what's been called a model bill. How would that bill be used for, say, small agencies like the St. Lawrence Seaway Development Corporation, which really does not employ a lot of people nor does it make a lot of purchases and it's kind of a small agency. So how would it affect small agencies?

Mr. KOSKINEN. The template, as we call it, for the PBO's was developed after our first round of discussions with the agencies to try to give people a clearer idea what a PBO would look like. We still can tailor those—that legislation to fit each particular case but, as a general matter, the principles apply to small agencies as well as larger agencies.

In a case like the St. Lawrence Seaway, where procurement is not one of their major issues, the procurement flexibilities will be less important; and they will not rely on those. On the other hand, the personnel flexibilities and the ability to have an effective, streamlined demonstration project will be attractive, we think, to all of the organizations that we're dealing with.

Mr. DAVIS of Illinois. Well, let me just tell you, I appreciate your responses; and I like the idea of greater interaction of the employees. I'm one who firmly believes that if you can get people to buy into whatever it is that you're doing or selling, that you get more productivity out of them, so I appreciate that.

Thank you very much.

Mr. HORN. I thank the gentleman.

The gentleman from Virginia, Mr. Davis.

Mr. DAVIS of Virginia. Thank you. I just have a couple questions.

Why is it assumed that increases in the amount of personnel and procurement flexibilities will lead to greater organization and performance?

Mr. KOSKINEN. On the personnel side, what the flexibility provides is that the managers and employees can design a streamlined demonstration project that will allow them to deal with what they view are obstacles in their own management, whether that's to allow them greater flexibility in hiring and broadband compensation or other ways to work within the limitations of the present personnel system. Going back to the chairman's earlier question, clearly our hope is that all agencies will be focused increasingly on improving their performance under the Government Performance and Results Act.

In these particular cases, there's a long history of proposals of civil service reform across the board. One of the things that we hope will happen as a result of the PBO's is that, in as many as 8 or 15 or 20 organizations, depending how many we can set up, we will actually be able to answer your question with real results. We'll be able to look at what flexibilities did an organization adopt and what was the effect on performance. We'll be able to see whether those flexibilities then ought to be considered on a broader basis.

Right now, we have a lot of suggestions and anecdotal evidence; but we don't really have hard cases of saying, by definition, since we have a singular system, what would happen if you made these

changes. It's hard to make those changes across the Government all at once. If you're not sure of the impact, everyone legitimately has some hesitation. Therefore, one of the things that we think we will get out of the PBO's, although it's not the major reason we're doing it, is experience that will allow us to, in fact, look at a range of flexibilities that people have used and see if we can correlate and they can correlate the additional flexibilities with additional, improved effectiveness.

Mr. DAVIS of Virginia. Let me just ask kind of an esoteric question. You go back 20 years and take a look at the Federal work of 20 years ago and today; and, of course, technology, the whole thing changed. You've got people with their desktop computers now and logging in a lot of technology. Much of that, of course, allows for a different way you treat employees, you motivate employees and everything else. What would you say are the huge changes why this works today, wouldn't have worked 20 years ago? Any broad philosophical view on that?

Mr. KOSKINEN. You're exactly right. Technology makes a big difference in your ability to impart and share information not only with customers but with employees. Therefore, you can reach across an organization and down into an organization much more effectively now than you could before. So that talking about feedback from employees and participation makes more sense, and the lines of communication are more open.

But Edward Deming, the great father of Japanese quality circles and participatory management 50 years ago, thought that we ought to be moving in the direction that the private sector has now gone. So the short answer is, about 20 years ago is when many private-sector companies began to try to reform the way they were managing to move away from the classic hierarchial model of how organizations ought to run to a flatter organization that involved more accountability and responsibility from front-line employees and those in between.

Thus, it's appropriate for the Federal Government not necessarily to try everything first and I think to draw upon lessons not only in the private sector but also in other countries like England. But clearly there are strong messages out there that we need to become more creative in the way we actually manage and deal with our work force. We need to find better ways to allow them to increase and maximize their potential.

Mr. DAVIS of Virginia. What efforts have been undertaken to demonstrate that current personnel and procurement regulations are onerous or overly restrictive to the operations of these PBO candidates?

Mr. KOSKINEN. Well, we've had some, although a very small number, of demonstration projects under the demonstration project authority. The one everyone cites is the China Lake experiment where we used broadbanding and other personnel flexibilities. You had a significant increase in both employee satisfaction and productivity.

But, again, we have limited experience comparing our rules and regulations to what the better operating entities in the private sector use. We have historically had a very compliance-driven process.

As one member of the President's Management Council, which I chair, which includes the chief operating offices of the agencies, noted, his biggest surprise, coming from the private sector to the Government, was that we basically run a job shop. That is, the focus is on everybody as an individual and what their responsibilities and rights are. There is less focus on the overall organization.

That's one of the things that, historically, we've developed. When we developed it, it made a lot of sense to make sure that employees rights were protected, that, in fact, they understand and have protections in terms of arbitrary actions or discriminatory actions.

But, over time, we have built up a classic hierarchy that looks like hierarchies in the private sector. Large insurance companies became very large bureaucracies the same way. Increasingly now, the experience is that you can't manage effectively with that kind of a structure.

As I say and said in the past, General Motors didn't drop its headquarters staff from 13,000 to 1,300 just to save money. They dropped it because they couldn't manage with that kind of layering at the top. They had to become a different kind of management organization.

Mr. DAVIS of Virginia. In the long term, the role of unions and everybody, it all evolves as this changes, doesn't it?

Mr. KOSKINEN. Yes. In fact, one of the interesting things to me has been that the leaders in our conversations and the major supporters for changing the way we manage have been the heads of the major employee unions, Federal employee unions who have, instead of standing fast and saying they don't want to change anything and look backward, are actually among the most forward people that I've dealt with.

They have participated in the labor-management partnerships. They have supported the PBO concepts, even though it will now open to discussion different ways of managing employees. And, as you noted, the dialog evolved in a way you would not have been able to predict 10 or 15 years ago.

Mr. DAVIS of Virginia. What is the cause for the delay in developing PBO legislation within the Federal Housing Administration and the National Technical Information Services?

Mr. KOSKINEN. We've had a number of candidates. In the Federal Housing Administration, we're in the middle—the Secretary is totally rethinking the organization. And so, as that restructuring of HUD goes on, until that gets finalized and they complete their strategic plan, it's hard to figure out exactly how a PBO would fit in or whether a PBO would be the appropriate function.

In the NTIS, there have been some internal questions and management reviews about how they're operating. Some reviews and studies have been going on and we thought it was appropriate to see what recommendations resulted. A couple of management audits, that we thought, before we come forward, we ought to take advantage of the lessons learned from those reviews because they may teach us things about what we need in that legislation.

Mr. DAVIS of Virginia. OK. I'm particularly concerned on NTIS, which has Springfield headquarters based out there. A lot of different options have been floated over the last couple years—what should happen, what direction it ought to go. It's a great service.

You get that up on the Internet, and I think—you collate that information in an appropriate fashion, I think we just begun to touch what that agency can do over the long term.

Mr. KOSKINEN. I think that's right. NTIS is one—an organization that thinks that they would benefit greatly by the PBO flexibilities. If they had more ability with their employees to figure out how more efficiently to do the work constrained by fewer rules and regulations, they could produce a wonderful service. So we're excited about that.

Mr. DAVIS of Virginia. Why did you ask the President's Management Council to identify additional PBO candidates before the first PBO had been created?

Mr. KOSKINEN. We did that because we—with the eight or nine candidates we've been working with for the last year and a half—have an assembly line process, in an industrial analogy, to fill the pipeline.

We need to start focusing on additional candidates now, because it will take us several months to identify them, begin to work with them, and see what the appropriate legislation is. If we're going to have legislation in this Congress by the end of this year, or the start of next year, we have to identify those candidates now.

Mr. DAVIS of Virginia. Could you just briefly, then, describe the accountability measures they're going to have? Under PBO, the head of the agency is held directly accountable for the results. There's, of course, accountability now in the law for managers and agency heads. How does this—what is the change, as you envision it?

Mr. KOSKINEN. The biggest change—and it's an important question—is that the new head, the chief operating officer of one of these entities, would have a 5-year contract tied to performance. This does two things: you bring someone in who has a 5-year term and perspective, as opposed to many political appointees who serve a very short period of time.

But on the other end of the spectrum, it focuses them on their performance in that timeframe and they have no guarantee they will be rehired. They can, in fact, be terminated within that contract period if their performance is ineffective. That gives them a clearer managerial focus on results. They sign up for a position where, if they do not perform, they simply are terminated or are not renewed. They have none of the long-term perspectives or protections that the civil service managers have.

Mr. DAVIS of Virginia. You hope the evaluators under that will take a longer perspective, though, and not always look for the short-term results. Because, as you know, pushing the short-term results can sometimes be the detriment of——

Mr. KOSKINEN. Exactly. That's one of the reasons we picked 5 years as the contract term. We did not want people coming in with 2- or 3-year turnaround sort of expectations. We thought that 5 years would be appropriate for someone to be able to make an impact and be able to be judged accordingly.

Mr. DAVIS of Virginia. But from an evaluator's point of view—not the PBO, but the evaluators—we need to keep that—because you can take a look at 1 or 2 years out and maybe that isn't enough

time to give them to turn something around if they have a longer plan.

Mr. KOSKINEN. That's right, and one of the critical aspects of this will be what the longer term plan is. We expect, getting back to the chairman's statement, that all of these organizations will have strategic plans, with a long-term vision of where they're going and a long-term set of goals and objectives with benchmarks of their annual performance plan along the way.

Mr. DAVIS of Virginia. Thank you very much.

I yield back.

Mr. HORN. I thank the gentleman and now am pleased to yield 10 minutes to the ranking minority member, Mrs. Maloney of New York.

Mrs. MALONEY. Thank you very much, Mr. Chairman.

I first would like to commend John Koskinen for many years of service to the American people. I understand that this will be your last testimony before an official committee before your retirement; and I think it's very fitting that it's before this committee, one before which you've testified so many times and spent so much time. You have truly been an inspiration to me, and I can assure you that your wisdom and experience will be greatly missed by many of us.

Mr. KOSKINEN. Thank you very much.

Mrs. MALONEY. My first question is, we really went to the PBO—it grew out of the National Performance Review initiative that you worked so hard on and that Vice President Gore led.

By some accounts, the National Performance Review and this program itself have saved the American taxpayer billions of dollars. Some accounts say that it's been close to $100 billion—by some accounts. Could you outline some of the areas where we've saved taxpayers dollars through the NPR, through the PBO and other really new initiatives that came into being under your tenure and your leadership?

Mr. KOSKINEN. Well, we have not saved any money on PBO's yet, because we haven't got any of them up and running. But I see potential savings in the future as we move forward.

Clearly, the largest saving we've had is that we are continuing to provide the same and we hope improved levels of service and operations in the government with a substantially smaller work force. We have over 300,000 fewer Government workers, and they have not been replaced by contract employers. The level of service contracts has basically been flat, with moderate increases tied to inflation. So we actually are at this point providing a Government that certainly costs less and we think works better.

Again, with great support from this committee and the Congress, we've begun to make tremendous progress in procurement reform. We have streamlined the procurement process. We are making major changes in savings in the way the Government procures systems.

We similarly have——

Mrs. MALONEY. Have you documented that? How they've saved money in procurement?

Mr. KOSKINEN. On an annual basis, the NPR's report updates and provides that listing. Last September's report had a breakout

of where the savings were across the board. There will be another report this September that will, in fact, document where the savings have taken place and where we continue to expect further savings.

Mrs. MALONEY. Uh-huh. Good.

And, in procurement, about how much have you saved, do you think? Do you recall?

Mr. KOSKINEN. I don't have that number.

Mrs. MALONEY. Could you pull out just the procurement and send it to the committee? I would like to see that.

Mr. HORN. We'll put it in the record at this point.

Mr. KOSKINEN. I'll do that.

[The information referred to follows:]

Enclosure 1

NPR Phase I Savings

1. Streamlining the Bureaucracy Through Reengineering

The Administration is well ahead of schedule in reducing the size of the federal civilian workforce by 272,900 full-time equivalent (FTE) positions between the beginning of the Clinton Administration in January 1993 and the end of FY 1999. Specifically, the Federal Workforce Restructuring Act of 1994 (Public Law 103-226) mandated a civilian workforce reduction of 111,900 FTE positions by fiscal year 1995. The Administration, however, has reduced the civilian workforce by 185,000 FTE positions—73,100 positions more than required under the act. The Administration estimates that by FY 1997, nearly 90 percent of the workforce reduction goal will have been achieved.[2]

As a result of the fast pace in FTE cuts, total five-year savings are projected to be $46.4 billion at the end of FY 1999—an increase of $6 billion over NPR's 1993 estimate of $40.4 billion. Savings were derived by multiplying the total number of reductions by the average cost to the government for a federal employee for the year(s) following departure from federal service.[3] The Administration calculated the FY 1995 average cost to the government of each federal employee at $42,950.

2. Reinventing Federal Procurement

The Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), signed into law in October 1994, incorporates many of NPR's recommendations. The Congressional Budget Office did not estimate savings from this legislation, but the Administration estimated a five-year savings of $12.3 billion. For example, the Defense Department identified savings of $4.7 billion in just three programs that it attributes to the passage of this law.[4] In early 1996, a second procurement bill, the Federal Acquisition Reform Act of 1996 (contained in Public Law 104–106), was signed into law. These additional reforms will help ensure that these savings will be met—if not exceeded.

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[2]See Executive Office of the President, "Analytical Perspectives," *Budget of the United States, Fiscal Year 1997* (Washington, DC: U.S. Government Printing Office), p.180.

[3]This methodology does not account for severance pay, increases in annuity expenses, or the point in the year at which a person leaves federal service (obviously, savings are greater if a person leaves earlier rather than later in a year). This is why savings are not claimed until the following year. Note that the average employee cost may be lower than the actual salaries of the departing personnel, since many of the people leaving are older and more highly paid than the average employee. A report by the Congressional Budget Office (CBO) estimates higher savings—$61 billion—from personnel reductions between FYs 1994–1999. See CBO Memorandum, *Changes in Federal Civilian Employment*, July 1996, p.9

[4]Department of Defense, "Defense Acquisition Pilot Programs Forecast Cost/Schedule Savings of Up to 50 Percent From Acquisition Reform," News Release No. 138-96, March 14, 1996.

Table C-1. 1993 Estimates of Savings From NPR Recommendations Compared With Savings Estimates From Actions to Date

(in billions of dollars)

	FY95	FY96	FY97	FY98	FY99	Total
1. Streamlining the Bureaucracy Through Reengineering						
Savings estimated in September 1993 report	5.0	5.8	7.4	9.5	12.7	40.4
Savings based on actions to date	4.4*	8.2	9.8	11.5	12.5	46.4
2. Reinventing Federal Procurement						
Savings estimated in September 1993 report	0	5.6	5.6	5.6	5.7	22.5
Savings based on actions to date	0.7	2.8	2.8	2.9	3.1	12.3
3. Reengineering Through Information Technology						
Savings estimated in September 1993 report	0.1	0.5	1.2	1.6	2.0	5.4
Savings based on actions to date	0	0	0	0	0.4	0.4
4. Reducing Intergovernmental Administrative Costs						
Savings estimated in September 1993 report	0.5	0.7	0.7	0.7	0.7	3.3
Savings based on actions to date	0	CBE	CBE	CBE	CBE	CBE
5. Changes in Individual Agencies						
Savings estimated in September 1993 report	7.0*	6.2	7.0	7.3	8.9	36.4
Savings based on actions to date	4.3*	3.9	2.0	2.1	2.1	14.4
Savings pending in legislation	0	0	0.4	0.4	0.5	1.3
Total Savings for NPR Phase 1						
Savings estimated in September 1993 report	12.6*	18.8	21.9	24.7	30.0	108.0
Savings based on actions to date	9.4*	14.9	14.5	16.4	18.2	73.4
Savings pending in legislation	0	0	0.4	0.4	0.5	1.3

CBE=Cannot be estimated at this time; estimates will be developed later.
*Figures include some FY 1994 savings.
Note: Details may not equal totals due to rounding.

Mrs. MALONEY. I have a very basic question. You mentioned that the PBO was not part of the earlier reform that moved forward. What problems are performance-based organizations intended to address that currently cannot be taken care of by other means such as a government corporation? And I would be—I also look forward to hearing from the agencies later on about some of the problems that they've identified that PBO's may be able to address. But why do we need them?

Mr. KOSKINEN. As I noted earlier, we think that, in many cases, government corporations create as many problems as they solve. They are basically founded on the principle that they should become freestanding entities, self-sustaining in their own right. That making them much harder—it's much harder to provide oversight and policy guidance to a freestanding entity that is not on a regular basis supervised by a senior political appointee.

Either way, if you want to create a corporation, you have to have legislation. So the question is, which form of legislation is more attractive?

For the PBO's, where you're trying to create an organization focused on management with policy direction from policy officials, we think that having that connection between the PBO and the policy officials is critical. If you had the equivalent and created a freestanding Government corporation, you would spin off both the policy and management functions. Then, internally with that organization, to have this concept work, you would have to separate them out within that level.

We think it works much more effectively and with much more oversight from both the administration and the Congress to have this done within the context of the organization.

Another critical issue—and, again, you could define the legislation however you would like—but it is the contractual provision by which you would have a chief operating officer hired under a 5-year contract with the Secretary tied to the performance of the individual and the organization. Now, again, theoretically, you could create a Government corporation and spin it off on a freestanding basis. The question is, with whom would that contract be and what kind of supervision would you be able to provide?

So we think that the PBO legislation is an appropriate way to proceed with the candidates that we've talked about. They have basic, inherent governmental functions or important functions to the Government that needs to be performed under policy supervision. But we ought to try to achieve as much businesslike effectiveness as we can within an overall policy framework.

Mrs. MALONEY. The model legislation contains a provision that would allow a PBO to contract for other agencies in the acquisition of goods and services and what is the reason for this provision? Doesn't it create a tremendous loophole which would essentially let the entire Government use this procurement system outside of the governmentally legislative procurement system and it's less competitive?

Mr. KOSKINEN. Well, actually, the procurement flexibilities that we provide—there are greater flexibilities in the personal side than the procurement side, because we've already provided substantial procurement flexibilities across the Government. These are——

Mrs. MALONEY. But doesn't it allow other agencies to contract with the PBO for their goods and services?

Mr. KOSKINEN. For the providing of their services—either for the provision of the services or for the contracting of the services. But we do that already. This is not a new concept.

This committee and the Congress have provided franchise funds, for instance, which allow Government agencies that are good at providing particular services to compete for the provision of those services with other agencies. We have six of those that are up and running again on the principle that every agency ought not to be the provider of all of its services if there's another place to provide them, that it can obtain them more effectively; and that other place may be another Government agency.

Mrs. MALONEY. But the point is not obtaining them more effectively or obtaining them for other agencies. The point is that it is a loophole around the procurement process that we've already put in place, is it not?

Mr. KOSKINEN. No. Actually, what it will do is, to the extent of your point about competition, these procurement systems will be more competitive than the present system. The additional flexibility as provided here are flexibilities we've recommended across the board.

We think that what will happen is much like the personnel side, the PBO's will give us pilots, to see what will happen with these additional flexibilities. Will we, in fact, be able to provide a more competitive and better product for the agencies or not? Will this make a difference? Will it, in fact——

Mrs. MALONEY. And what are the flexibilities that you're putting into the PBO's that are not in other places in Government?

Mr. KOSKINEN. Well, on the personnel side, what we're doing is providing a streamlined demonstration process——

Mrs. MALONEY. Not personnel. In contracting goods and services.

Mr. KOSKINEN. On the procurement side, we have very limited additional procurement flexibilities that I would actually have to take a quick look at.

Mrs. MALONEY. Could you put them into the record, what the additional procurement flexibilities are?

Mr. KOSKINEN. Yes. I will be happy to put our template and the discussion of what the flexibilities are.

Mrs. MALONEY. OK. I would like it in my office, too, in addition to the record.

Mr. KOSKINEN. Sure.

Mr. HORN. Without objection, it will be put at this point in the record.

[The information referred to follows:]

Enclosure 2

PBO "Template"

PROCUREMENT PROVISIONS

Sec. __. (a) In General. -- Except as provided in this section, the [Name of PBO] shall abide by all applicable federal procurement laws and regulations when procuring property and services.

(b) Additional Authorities. -- When procuring property or services, the [Name of PBO] may use any of the following authorities, consistent with guidance provided by the Administrator for Federal Procurement Policy pursuant to subsection (c) of this section:

(1) Two-phase selection procedures. -- (A) The [Name of PBO] may, subject to the requirements in paragraphs (B) and (C), conduct a competition, which shall be considered to be a competitive procedure for purposes of this or any other Act, in which:

(i) sources submit basic information, such as the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the proposed conceptual approach, past performance information, and such additional information requested by the contracting officer in the first phase; and

(ii) a limited number of sources are selected to participate in a competition in the second phase in accordance with section 2305 of title 10, United States Code, or with sections 303A and 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253a and 253b), as applicable.

(B) Prior to the first-phase competition, a notice shall be published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and sections 8(e), (f) and (g) of the Small Business Act (15 U.S.C. 637(e), (f), and (g)), except that, in lieu of section 18(b) of the Office of Federal Procurement Policy Act and section 8(f) of the Small Business Act, the notice need only include --

(i) a general description of the scope or purpose of the procurement that is sufficient for sources to

make an informed business decision whether to participate in the procurement;

(ii) a description of the basis on which sources will be selected to submit offers in the second phase; and

(iii) and any additional information the contracting officer determines is appropriate.

(C) Only those sources selected in the first-phase competition shall be eligible to compete in the second phase. The number of sources selected to compete in the second phase shall be limited to that number of sources as the contracting officer determines is appropriate and in the best interests of the government.

(D) The second phase may include a single procurement or multiple procurements within the general scope or for the purpose stated in the notice.

(2) Application of Simplified Procedures to Commercial Items. -- Whenever the [name of PBO] anticipates that commercial items will be offered, the [name of PBO] may acquire commercial items by using the special simplified procedures authorized by section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) and consistent with section 31(g) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(g)) without regard to any dollar limitations set forth in those sections and without regard to the expiration date of the test of such procedures set forth in section 4202 of the Clinger-Cohen Act of 1996.

(3) Flexible Wait Periods and Deadlines for Submission of Offers. -- Consistent with international agreements, whenever the [name of PBO] is acquiring property or services that do not meet the definition of commercial item set forth in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)), the [Name of PBO] may --

(A) reduce the minimum period of time specified in section 18(a)(3)(A) of that Act (41 U.S.C. 416(a)(3)(A))that an agency must wait after publication of notice by the Secretary of Commerce before a solicitation is issued; and

(B) establish flexible deadlines for the submission of bids or proposals notwithstanding any deadlines set forth in

section 18(a)(3) of that Act (41 U.S.C. 416(a)(3)). Deadlines shall afford potential offerors a reasonable opportunity to respond.

(4) Modular Contracting. -- (A) The [Name of PBO]'s system needs may be satisfied in successive acquisitions of modules, each of which must be useful in itself or in combination with other completed modules without the completion of subsequent modules.

(B) If the initial module was awarded using competitive procedures, the [Name of PBO] may award a contract for an additional module by one of the following procedures, subject to the requirements in paragraphs (C), (D), and (E), or by any other procedure authorized by law:

(i) Make an award on a sole-source basis to a contractor who was awarded a contract for an earlier module on the basis of a competition conducted pursuant to subparagraph (ii) or other competitive procedures; or

(ii) Make an award on the basis of adequate competition between a contractor who was awarded a contract for an earlier module on the basis of a competition conducted pursuant to this subparagraph or other competitive procedures and at least one offeror that has previously participated in competitions for either the initial module or any subsequent follow-on module and is expected to be competitive based on that participation.

(C) The [name of PBO] may exercise the authority provided in paragraph (B) to award a contract for a module only if the solicitation for the initial module included --

(i) a general description of the entire system to be acquired that was sufficient to put potential offerors on notice of the general scope of future modules and to enable them to make an informed business judgement whether to submit a bid or a proposal for the initial module; and

(ii) a statement that the head of the agency reserves the right to award subsequent modules pursuant to the authority provided in paragraph (B).

(D)(i) Except as provided in subparagraph (ii), the [name of PBO] shall publish a notice stating the [name of PBO]'s intent to award a contract pursuant to the authority provided in paragraph (B)(i) or (B)(ii) in the Commerce Business Daily not less than 30 days prior to the issuance of a solicitation for the contract. The notice shall contain the information required by Section 18(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(b)), with the exception of the statement required by clause (4) of such section, and shall invite persons who believe that the proposed procurement approach is not in the best interest of the government to submit information supporting that view.

(ii) Notice is not required pursuant to subparagraph (i)if the contractor referred to in paragraph (B) performed on a module that contained cost, schedule, and performance goals and the contractor met those goals.

(E) The basis for award shall be documented. However, a justification pursuant to section 2304(f) of title 10, United States Code, or section 303(f) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)) or section 8(h) of the Small Business Act (15 U.S.C. 637(h)) is not required.

(F) The [Name of PBO] may prescribe simplified source selection procedures for the acquisition of modules, other than the initial module, that are not to be acquired on a sole source basis.

(5) Streamlined Acquisition of Services from Small Businesses. -- (A) Whenever the [Name of PBO] is acquiring services that do not meet the definition of commercial item set forth in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)), the [Name of PBO] may use the special simplified procedures applicable to procurements below the simplified acquisition threshold as set forth in the Federal Acquisition Regulation if --

(i) the procurement is in an amount not greater than $1,000,000;

(ii) the procurement is conducted as a small business set-aside pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)); and

(iii) supply items are expected to constitute less than 20 percent of the total value of the contract.

(B) The authority set forth in this paragraph:

(i) may not be used to make an award on a sole source basis; and

(ii) does not apply to the procurement of construction.".

(c) Implementation. -- The head of the [name of PBO], in consultation with the Administrator for Federal Procurement Policy, shall issue guidance to implement the authorities set forth in this section. As part of the consultation, the Administrator shall provide guidance to the [name of PBO], which shall be designed to ensure, to the maximum extent practicable, consistent implementation of these authorities by other performance-based organizations with the same authorities.

(d) Limitation on Multiagency Contracting. -- No agency may purchase property and services under contracts entered into or administered by the [name of PBO] using any authority provided in subsection (b) unless the purchase is approved in advance by the senior procurement official responsible for purchasing by the ordering agency.

(e) Provisions Not Affected. -- Nothing in this section shall be construed to waive civil rights or labor standards laws applicable to federal contracts.

Explanation of Procurement Provisions in PBO Template

This section addresses the procurement authorities of the PBO. As a general matter, the PBO would be required to abide by all applicable federal procurement laws and regulations when procuring property and services, many of which have been significantly streamlined by the Federal Acquisition Streamlining Act and the Clinger-Cohen Act of 1996 (the latter previously referred to as the Federal Acquisition Reform Act and the Information Technology Management Reform Act). However, the PBO could take full advantage of the additional authorities specified in subsection (b) in order to procure property and services in an even more efficient and effective manner. At the same time, no agency would be permitted to purchase property or services under contracts entered into by the PBO using any of the authorities in subsection (b) unless the purchase was approved in advance by the senior procurement official responsible for purchasing by the ordering agency.

In implementing the authorities in subsection (b), the head of the PBO would be required to consult with the Administrator for Federal Procurement Policy. As part of the consultation, the Administrator would be required to provide guidance to the PBO to help ensure, to the maximum extent practicable, consistent implementation of the subsection (b) authorities by other PBOs with the same authorities.

Two-phase selection procedures.

While the Competition in Contracting Act did much to instill the concept of openness in the procurement process, it has proven too rigid in certain respects to provide contracting officers with the tools to take advantage of this openness in an efficient manner. For instance, contracting officers are effectively precluded from seeking information short of a "proposal" once an open competition begins and may not exclude offerors without fully evaluating their offers in terms of the significant factors and subfactors identified in the solicitation in accordance with 41 U.S.C. 253a and 253b and 10 U.S.C. 2305.

Subsection (b)(1) would provide broad authority for contracting officers to conduct a "two-phase" selection where competition is initiated with a streamlined process that avoids the submission of formal proposals detailing an offered solution ("phase I") and from which a limited number of sources would be selected to submit formal offers as part of a further competition ("phase II").

General authorization to conduct two-phase selection would be a central tool for combining competition and efficiency for larger procurements. It would allow the PBO to initiate competitions without the submission of formal proposals and to

efficiently make "downselect" decisions based on less detailed vendor submissions. This would save firms the cost of unnecessarily preparing detailed proposals and save the government the time spent evaluating them, when a simpler submission could effectively permit the government to select those sources that are likely to submit the most competitive offers. It would also allow firms to understand their weaknesses earlier in the process, thus giving them more time to strengthen their position as they prepare to compete for future procurement opportunities.

The process would begin with the contracting officer publishing widespread notice giving a general description of the scope or purpose of the acquisition, a description of the basis on which sources will be selected to submit offers in the second phase, and any additional information determined to be appropriate. Any interested source would be given a full opportunity to compete in the first phase of competition, but would not necessarily be asked to submit a "proposal." Rather than going through the time and expense of conceiving a detailed solution to meet the government's needs, they would be asked to focus on how their capabilities might fit with what the government is generally looking for. Past performance information, including past performance on pricing or cost control, would generally also be sought at this phase. Proposals with formal offers would be sought only in the second phase from those sources that were selected based on information provided in the first phase.

Before submitting proposals, the offerors selected in the first phase could be invited to participate in an open communications process in which vendors examine the problem to be solved in depth and develop specific competing solutions. The second phase of competition would be conducted in accordance with the procedural requirements set forth in 303A and 303B of the Federal Property and Administrative Services Act or, alternatively, 2305 of title 10, if applicable.

The section would also authorize the PBO to establish, from a phase-one selection, a verified list of vendors who would compete for multiple procurements within the general scope of the initial competition based on business practices, product or service quality, and past performance (including past performance on price or cost). Provided lists were opened periodically to add or substitute sources, this authority would enable a PBO to utilize the competitive process much more effectively.

Application of Simplified Procedures to Commercial Items.

The Clinger-Cohen Act authorizes the establishment of special simplified procedures on a three-year test period for the acquisition of commercial items between $100,000 and $5,000,000 where the contracting officer expects commercial items to be

offered. Subsection (b)(2) would remove the caveats placed on use of this authority and permit the PBO to use this authority without regard to any dollar limitations or expiration date. The broadest use of these flexibilities would give the PBO a further incentive to take advantage of the economies and innovations offered by the commercial marketplace. Vested with this additional procedural discretion, contracting officers would be able to reduce proposal costs for offerors and administrative costs for the government.

While development of detailed specifications and formal evaluations may be needed under certain circumstances, they are largely unnecessary in commercial item buys in any amount. The rigors of the commercial market already help to ensure that vendors offer proven products. The use of streamlined procedures would enable contracting officers to avoid many of the burdensome formalities of the current process. Examples of flexibilities include issuing a solicitation without subfactors or identifying the relative weights of factors; foregoing a competitive range determination; having discussions on an "as needed" basis only with those offerors where communication would be beneficial to the government; conducting functional product testing without a formal test plan; evaluating offerors informally without establishing specific schemes for specific factors; and conducting comparative evaluation of offers. Use of these simplified procedures can save agencies the time and expense of designing detailed evaluation schemes to analyze lengthy proposals, and can save vendors the cost of describing in a detailed proposal what can be effectively communicated through customary commercial marketing tools (e.g., existing product literature and samples).

Flexible Wait Periods and Deadlines for Submission of Offers.

Subsection b(3) would provide relief from statutorily specified wait periods when acquiring property or services that do not meet the definition of commercial item in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 4(12)). It would permit the establishment of a wait period shorter than the currently required 15-day waiting period between the date a synopsis is published by the Secretary of Commerce and the date the solicitation is issued. It would also allow for the establishment of a deadline requiring the submission of offers less than 30 days after the solicitation was issued.

The Federal Acquisition Streamlining Act and the Clinger-Cohen Act provided similar relief from these inflexible time periods with respect to the acquisition of commercial items. Elimination of these mandatory periods would streamline the procurement process when mission needs could not be met with commercial items and allow the PBO to be more cost effective in

the conduct of its procurement programs. It would be expected that established solicitation response times would afford potential offerors a reasonable opportunity to respond. It would also be expected that response times would be consistent with international agreements.

Modular Contracting.

A modular buying approach may be an effective strategy for ensuring that major acquisitions are better managed and streamlined. Breaking large procurements into smaller more manageable pieces has many advantages, including:

- minimizing risk and increasing the accountability of the program management team and contractors;
- providing program benefits early in the process, thereby strengthening and maintaining program office buy-in;
- allowing the agency to develop its systems in an evolving way to solve current agency problems with current technologies and market dynamics; and
- permitting periodic evaluation to ensure projects continue to merit funding under current budget priorities.

Subsection (b)(4) would greatly enhance the utility of modular contracting by giving contracting officers several options for acquiring additional modules after award of the initial module. Provided that modules are not dependent on the completion of any subsequent module (i.e., that each module is useful in itself with other completed modules without the completion of subsequent modules), contracting officers could, among other things, subject to certain conditions, award a subsequent module by conducting a limited competition or directing award to a successful provider or providers of a previous module. In addition, the PBO could prescribe simplified source selection procedures for the acquisition of modules, other than the initial module, that were not to be acquired on a sole source basis.

Streamlined Acquisition of Services from Small Businesses.

Subsection (b)(5) would provide the PBO with additional flexibility in the acquisition of services up to $1 million that do not meet the definition of commercial item set forth in section 4(12) of the Office of Federal Procurement Policy Act, when such procurements are conducted as small business set-asides and if supply items are expected to constitute less than 20 percent of the total value of the contract. It would authorize

the PBO to use the special simplified procedures applicable to procurements below the simplified acquisition threshold as set forth in the Federal Acquisition Regulation. A large pool of highly qualified small business service contractors exists that can compete for service requirements in this dollar range. The combination of simplified procedures (where, among other things, the conduct of discussions, formal evaluation plans and scoring are not required) and spirited competition among small businesses (whose low overhead and favorable wage structures can enable them to offer competitive bids) can result in lower costs to the government and reduce acquisition lead times. This authority would also provide the PBO with a viable alternative to aggregating services into large single award task order contracts simply to avoid the burdensome procedures for competing individual requirements. This authority would not apply to the acquisition of construction.

Mrs. MALONEY. Another question: As you know, much of the last Congress and this committee was taken up with so-called Clinger-Cohen Act, which was a dramatic change in the Federal acquisition process; and many of the reforms included in the PBO legislation are things that were supported by the administration during those debates but for whatever reason were rejected by Congress. Then why should Congress approve these measures now? During the time when we were debating this, a lot of what is being proposed now was rejected. Why should we accept it now? And why was it rejected then?

Mr. KOSKINEN. I think the Congress would have to answer why it was rejected.

Why it's proposed again is, first of all, obviously, it's possible people will change their views. But, more importantly, what we think these PBO's offer is the opportunity to test these additional flexibilities in a relatively defined and constrained number of instances and to see what happens.

Congressman Davis had asked earlier about personnel flexibilities and what would happen with these, and, as I noted there, we will be able over the course of a relatively short period of time to be able to demonstrate whether or not the additional flexibilities made a difference or created any problems.

So one of the advantages and major differences here is we're not talking about this across the Government. We're talking about a handful of agencies who identified these as important flexibilities they would like to use. They are willing to commit that in exchange for those flexibilities they will provide improved performance and better outcomes.

Mrs. MALONEY. But is this sunsetted, your PBO legislation, or is it permanent?

Mr. KOSKINEN. The PBO has to be reviewed again by Congress at the end of 5 years. So that it will come back, and these flexibilities will be available. But, more importantly, these organizations will be providing annual performance reports every year. They will give us performance reports to the Secretary and to the Congress about what efficiencies they've achieved and what the results have been.

Mrs. MALONEY. Well, if I could just add one—one brief clarifying question. If I recall correctly, I believe Congress rejected on the procurement side the changes in the PBO, the so-called flexibilities, because it skirted competitive bidding for goods and services; and that, I believe, was the objection. Is that a correct——

Mr. KOSKINEN. That's not our interpretation of what the impact of these flexibilities would be. But that's, of course, why we have the dialog. We think that these would improve the procurement process, would improve competitiveness and would, in fact, provide better results.

Our position on the PBO's is that this will give us a chance to test out the exhortations on each side. We will be able to determine on the basis of what actually happens whether our competitiveness has increased or decreased, whether the results have increased or decreased. We will be able to do this with a modest number of experiments or pilots rather than arguing about it and either doing it or not doing it across the full Government.

Mrs. MALONEY. Thank you.

Mr. HORN. Let me ask on your side, do we have any more questions?

Mr. DAVIS of Illinois. Just one.

Mr. HORN. OK. Go ahead. The gentleman from Illinois, Mr. Davis.

Mr. DAVIS of Illinois. You indicated that there was enthusiastic support from labor unions and from the labor side of things. Could you indicate which unions or some of the unions? Because I—there are others that I'm aware of that are not so enthusiastic about it, such as the AFGE.

Mr. KOSKINEN. We had a joint meeting with the PBO candidates and the union leaders. We had Mr. Sturdevant, the head of the AFGE; Mr. Tobias, the head of the NTEU; and John Laden of the AFL–CIO. They all made it clear that they thought the template, as ultimately designed, was an important step forward. They had had some concerns about what has happened in England with the next-step agencies, in terms of labor-management relations; but they are satisfied that the joint development of streamlined demonstrations programs is an attractive way to proceed and they supported it.

Therefore, I am comfortable that they are supportive of it, primarily because the only way you can get the flexibilities in these demonstration projects is to have agreements between management and employees that this is the way they want to go.

Mr. DAVIS of Illinois. I certainly wouldn't purport to speak for them, and I'm sure we'll hear further from them in terms of where they stand and what their positions are.

Thank you very much.

Mr. HORN. You're welcome.

The gentlewoman from New York, Mrs. Maloney.

Mrs. MALONEY. Just one last question, and you can just put it in the record if you would like.

On your procurement flexibility, you talk about a two-phase selection process where you review a limited amount of information to select a small number of competing suppliers. That would bypass competitive bidding.

Mr. KOSKINEN. Actually, our position on that——

Mrs. MALONEY. I would just like it in writing. How are you going to select your small number of competing suppliers? And how are you going to advertise for that? And how is that——

Mr. KOSKINEN. I would be happy to have that submitted to you.

[The information referred to follows:]

Enclosure 3

Two-Phase Acquisition Process

Question: What is the purpose of the two-phase acquisition selection process contemplated by the PBO procurement template? How would you advertise? How would you select the smaller number of competing suppliers in the second phase? How would you know they are the most competitive if you don't allow competitive bidding? Why do you limit participation in the second phase if it doesn't cost the government anything to get more bids?

Answer:

- **Purpose of Two-Phase Selection Authority.**

Two-phase selection authority is designed to allow a PBO to make effective and efficient use of competition. This authority would do so by allowing a PBO to (1) initiate competitions without the submission of formal proposals, (2) efficiently make "downselect" decisions based on less detailed vendor submissions, and (3) permit those initially selected to work with the government to obtain a better understanding of the government's needs so they can submit stronger proposals that better match these needs. Making downselect decisions based on less detailed vendor submissions would save firms the cost of unnecessarily preparing detailed proposals, and potentially encourage more participation by firms that have successfully performed in the private sector, but because of the high cost, have not previously chosen to compete for government contracts. The government would save the time spent evaluating detailed proposals, when a simpler submission could effectively permit the government to select those sources that are likely to submit the most competitive offers.

Equally important, because the initial downselect would occur before the formal issuance of solicitations, sources selected to participate in the second phase would be able to contribute substantially to the development of requirements and evaluation criteria. This opportunity would incentivize them to invest more of their own resources to perform "due diligence" to learn about agency needs, to more effectively and efficiently develop innovative high value solutions that can better fit with those needs, and to offer stronger proposals for a vigorous second phase competition conducted in accordance with the procedural requirements set forth in 303A and 303B of the Federal Property and Administrative Services Act or, alternatively, 2305 of title 10, if applicable.

- **Advertising.**

The process would begin with the contracting officer publishing widespread notice in the *Commerce Business Daily* giving a general description of the scope or purpose of the acquisition, a description of the basis on which sources will be selected to submit offers in the second phase,

given a full opportunity to compete in the first phase of competition. However, rather than going through the time and expense of conceiving a detailed solution to meet the government's needs, they would be asked to focus on how their capabilities might fit with what the government is generally looking for. The requested information would typically consist of information about past performance and experience, a conceptual outline of the proposed technical approach (versus a particular technical solution) and a rough order of magnitude pricing.

- **Selection of Competitive Sources to Participate in the Second Phase.**

Selection of sources to participate in the second phase would be in accordance with the basis set forth in the initial notice. The information obtained from interested sources in the first phase (e.g., past performance references and commercial catalogs in commercial acquisitions) would give the integrated project team (IPT) a good sense of which interested sources are contenders for award. The PBO would have the discretion to decide the number of sources that would be selected for the second phase (although the process contemplates that at least two sources would be selected).

- **The benefits of limiting participation in the second phase of competition.**

The benefits of competition depend not only on the number of offers received, but also on how likely the offerors are to submit proposals that will meet the agency's needs and provide good value. Receipt of three robust offers makes for better competition than ten mediocre ones.

The two-phase authority set forth in the PBO template would increase the intensity of competition and the quality of offers that are eventually submitted in two important ways. First, it would vest PBOs with authority to limit consideration in the second phase to those offerors selected in the first phase (versus performing an "advisory downselect" in which offerors are advised of their competitive viability but are permitted to participate in the second phase). With fewer offerors participating, both the government and offerors will be able to better concentrate their resources. This will make for a more intense and worthwhile effort to identify the best fit between agency needs and marketplace capabilities in the due diligence effort.

Second, the template would permit this selection to be made prior to the issuance of a formal solicitation. Those selected would have a strong incentive to work with the integrated-project team, end-users, and others to obtain good information about, and a firm understanding of, the agency's needs. This "due diligence" effort on the part of interested sources will enhance substantially offers' ability to submit high value proposals and avoid contract disputes. The refined solicitation produced from this more efficient and effective communication between sources and agency personnel will put offerors in a good position to propose what the agency actually needs and wants. This, in turn, will increase the probability that the resulting contract will represent the best value available in or capable of being developed by, the marketplace.

In short, key benefits of two-phase -- better identification of the best fit between government needs and marketplace capabilities and increasing the intensity of competition -- depend on the government's ability to effectively limit the number of sources in the second phase when "due diligence" and the formal competition occurs. Permitting additional sources to enter the process in the second phase that had not participated in the first would be costly not only in terms of the added work in the evaluation process, but also in terms of the lost incentives that can improve the government's ability to secure the best solutions from its contractors on behalf of the taxpayers.

Mr. KOSKINEN. As you know, our position consistent on that has been that you would be down selecting, or two-phase selecting, initially, people who looked as if they were the most competitive and could provide the services. And what you would do is, in fact——

Mrs. MALONEY. How do you know if they're most competitive if you don't allow competitive bidding?

Mr. KOSKINEN. The supposition is you would be able, in those cases, to obtain enough information to determine which are the major competitors and most likely winners in that process.

The problem with the present system, as you will see, in fact, sweep the board, is you waste a lot of people's time who on the basis of fairly detailed preliminary information, are clearly not going to win. Many companies have taken the position they would rather——

Mrs. MALONEY. What's wrong with letting them decide? If they want to go forward and, quote, waste their time, then why not let the small businessman or woman make the decision, not government limiting who it is that competes?

Mr. KOSKINEN. Mr. Kelman at OMB is obviously the expert in this. But we have substantial numbers of people in the private sector who think that this would be a much more effective and competitive way for the government to proceed. But we will provide you that information.

Mrs. MALONEY. But maybe not the people who would like to compete that are not put on that particular Government list.

Mr. KOSKINEN. Right. But we have on both sides of these issues assertions about what would happen, with neither party having any factual basis.

The advantage of the PBO's is we might actually get facts that would determine whether or not people were disadvantaged or advantaged by the process, whether or not the Government was better served or not, whether or not the organization was able to function better or not. It seems to me that if we try this with several PBO's we might actually be able to learn something about how the process would work.

Mrs. MALONEY. But if it doesn't cost Government anything to let an individual or industry assume the risk or expense to compete for a Government contract, you know, why are we closing the door on them? They may have a great idea that maybe a bureaucrat didn't think about. But if we limit who can come in and compete, we may be cutting off a whole area of expertise.

In any event——

Mr. KOSKINEN. Well, anyway, the assumption that it doesn't cost anything to get more bids is, I don't think, correct. The more bids you have, the more volume of paper you have to deal with, and obviously the more time it takes. Somebody has to respond to all of that. So it's not cost free.

Mrs. MALONEY. Good luck in your next position. We will miss you here in Washington.

Mr. KOSKINEN. Thank you.

Mrs. MALONEY. And I've enjoyed working with you.

Mr. KOSKINEN. Thank you very much.

Mr. HORN. Now I'll give you some softball questions.

How many staff do we have in the Office of Management and Budget that are devoted to management functions?

Mr. KOSKINEN. 530.

Mr. HORN. 530 out of how many?

Mr. KOSKINEN. 530.

Mr. HORN. Well, you know, when everybody is involved, nobody is involved.

Mr. KOSKINEN. No, actually, that's not quite right. I would rather put it that the only way to make management work in the Federal Government is to have not only everyone at OMB involved in management, aware of the issues and challenged by them, but to reach out and have as many senior managers and the agencies involved as you can.

As you know, my concern is that, if you ask who are the people involved in management and create a small cadre of them, you have marginalized management. Companies don't say who are our managers and then who are the people who actually are running the company and doing other issues. Companies say we are in the management business. Everybody in a company is a manager. Some people—even people doing research are managers. There's not an artificial divide in well-run organizations between the "managers" and everybody else. We have spent a lot of time in my 3 years changing the culture at OMB so that we have 530 people interested in, aware of, and involved in management.

Mr. HORN. Of course, what that means is that in your own testimony here, you felt that it needs to be a separation on PBO's between policies and administration, implementation of policy. You seem to be picking models, unquote, that are simply things you can administer very clearly; and you yourself have said it, of course, would not apply in the Department of State where they're primarily engaged in policy formulation.

So how do you explain the dichotomy here between all of these supermen and women in OMB that are deeply immersed in management presumably when they've got very few that are immersed in management, if I am correct? How many do you have on your staff?

Mr. KOSKINEN. In terms of personnel?

Mr. HORN. How many people report to you?

Mr. KOSKINEN. How many people work for me? At last count, five or six.

Mr. HORN. Five or six. Now that's a lean management group.

Mr. KOSKINEN. Right. That's because we don't view ourselves as the only people interested in management.

Mr. HORN. Yeah. And we could ask what group within OMB prepared, let's say, the documentation that went with performance-based organizations. I don't think it's 530 people.

Mr. KOSKINEN. No. But it would surprise you how many were. Each of these organizations—PTO, the DeCA, and the St. Lawrence Seaway—had their documents prepared by a combination of people in the Office of Federal Procurement Policy, the Office of Federal Financial Management, and the program examiners.

The conversion teams that worked with the agencies were comprised of people from the NPR, the program examining folks at OMB, as well as the "people interested in management" at OMB.

I submit that, as a result, we have better legislation that we would have had if we had only a cadre of managers or a separate Office of Federal Management, you should pardon the expression, that worked on it.

Mr. HORN. Well——

Mr. KOSKINEN. The most critical involvement was from the program examiners, the people who are involved in monitoring the resources that go into the organizations that are, in fact, the budget examiners for those organizations.

Mr. HORN. Who signs off when legislation drafts come through, how many sign on that?

Mr. KOSKINEN. At OMB?

Mr. HORN. Right, on this draft.

Mr. KOSKINEN. On this particular draft, I would say 10 or 12 people.

Mr. HORN. Typically, who would they be?

Mr. KOSKINEN. They would be an examiner in the program examination division, the supervisor of that examiner, the program associate director, or PAD, for that division. Next, it would be someone out of the Office of Federal Financial Management, someone out of the Office of Federal Procurement Management, and ultimately it would come to me and then to the director.

Mr. HORN. Well, I assume the general counsel would be in there somewhere.

Mr. KOSKINEN. Absolutely. As you went along, the general counsel would be there, our legislative affairs head would be there.

Mr. HORN. But when you get down to the budget examiners, how many of the 530 are really spending most of their time on the budget?

Mr. KOSKINEN. I would say most spend a significant amount of time. Virtually all of them are spending a significant amount of time on the budget.

Mr. HORN. All of the 530? You are kidding me. How many people out of the 530——

Mr. KOSKINEN. 530 is everybody: 70 are support staff, 460 are professionals.

Mr. HORN. Out of the 460, how many are spending their time on the budget?

Mr. KOSKINEN. It depends on how you count them, but I would say off the top of my head about 300 are in the, what we call the resource management organizations. But as I say, those people are responsible for preliminary budget proposals but then all management objectives and all management reviews come through those divisions as well now.

Mr. HORN. Well, I would hope that would work since President Nixon made it OMB. I was one of the big advocates of that. I find I am wrong, and I admit these things. Not much has happened with respect to management.

Mr. KOSKINEN. Well, I would submit over the past 4 or 5 years there has been more management improvement and more focus on management both in the Congress, but also in OMB than any time in its history. So if that's a failure, I don't know what the measure is with which it's being compared.

Mr. HORN. Well, if you had a new Cabinet officer, like you had the Secretary of Labor, Transportation, Energy, so forth, and they wanted help on a team to come over and take a look at this Department, how are we going to reorganize ourselves to achieve the President's goals and so on. Who would they call on?

Mr. KOSKINEN. They would call on the director or me. In fact, we have what I call virtual agency teams that are working with a couple of agencies that I won't identify what the problems and the projects are, but basically we had a meeting last week with an agency that has management challenges and they called and we talked to them. That OMB team included people from their program examiners from the resource management operations, representatives from OIRA, OFFM, OFPP, and my office, all working together to deal with those management challenges. This is because the management challenges they have are not divorced from their programmatic issues. They are, in fact, issues that depend on resources, depend upon effectiveness.

Increasingly, the Government Performance and Results Act is leading us in that direction. Everyone understands better than they used to that it's not just a question of what the resources are that go into these organizations. The question is what do they do with the resources and what are the effects or the outcomes of their work.

In the last 3 weeks, I have had two long meetings with two separate agencies over what one could call management issues, and those decisions and discussions are significantly better because people sitting around that table include people out of the resource management organization who spend most of their time on budget but a significant amount of time worrying about how the organization is. We will have a meeting with one of the new Cabinet officers, and that meeting will be attended not only by people from the statutory offices, but again people from the RMO's who are going to talk about the management structure of that organization. The people who have sometimes the best information about that are the people who deal with and have for years dealt with the programmatic issues the agencies are dealing with.

Mr. HORN. Earlier, we discussed the issue of bright young people coming out of the policy-oriented schools. Now, I know OMB has a lot of those bright young people over the years. What are we doing to educate these people, to give them some perspective so when a Cabinet officer calls they have some background and experience? I dare say most of them are involved in budget analysis and reviewing the budget. That is what drives most people in OMB.

Mr. KOSKINEN. When you say most of them are involved and most of their time is on budget issues, my position is not that they are spending all of their time on management, but I will also tell you they are not spending all of their time on budget, either. For instance, on the Government Performance and Results Act, which we are responsible for overseeing and working with the agencies on, the working group at OMB that has been charged over the last 2 years with relating the agencies, developing guidelines and reviewing plans, is composed about 80 percent of the examiners from the budget operations, not from the management operations. That has allowed us to both on the one hand jointly train and develop

skills and expertise across the agencies, but more significantly make sure the strategic plans, goals, and objectives are not designed as abstract concepts that meet some, "management" concept. Instead, they are designed to reflect the actual work that the agencies do and are tied to the goals and objectives of their major programs.

The only way that's going to work, the only way GPRA will work, is if people see it in a wholistic manner. If GPRA implementation were being administered by a separate Office of Federal Management, the risk is it would be responded to in the agencies by what I call GPRA bureaucracies. They would fill out the forms and make sure that the Office of Federal Management got what it wanted. But the critical aspect of the act is what's it got to do with the allocation of resources and over time how does that information feed back into the budget process.

The major risk in Congress is that, if the appropriation process does not seize upon and enter into a dialog about performance information, we run the risk of losing a lot of momentum and potential out of the Government Performance and Results Act. Therefore, our goal has to be to ensure that people across the board always have management in mind, do not think that management is something somebody else does, all I am worried about is resources, because the resources have to be tied to the results.

Mr. HORN. Well, obviously resources have to be tied to the results, but how do you state the goal? How do you state the strategic aim that that agency is dedicated to? Where does a Cabinet officer go for help when he says, who around here has experience dealing with all the different Cabinet agencies, who is capable of formulating specific goals that are measurable, not just pie in the sky stuff, we will do this, but who can write those measurable goals?

I would argue that most Cabinet agencies don't have people that can do that. They haven't had the experience. So I would think it is in the interest of any administration, regardless of party, nothing to do with party, is simply to know how to put those goals so they are a standard. Let's say, by which, or a criterion, whatever you want to call it, by which one can measure progress, and that is what we are talking about with these laws.

Mr. KOSKINEN. The statute has an interesting and important concept that says you cannot hire somebody else to do your strategic planning and goals for you. And that's a critical aspect of the act.

When a Cabinet officer calls us—and we are in conversation with the Cabinet secretaries and deputies about GPRA a lot—one of the things we keep reminding them is these goals aren't somebody else's goals. These goals have to grow out of the understanding of the programmatic people in the department about what they are doing and where they are going, and they have to grow out of a consultation with the Congress. So the art form is not to get somebody else outside the agency to come in and draft and write the goals for you. The art form is to encourage a process within the agency by which you end up with a consensus about the mission of the agency, its goals and objectives, and the appropriate performance measures.

We engage with that work group that I said has 25 or 30 members across OMB, and have been engaging for the last 2 years in a dialog with every agency about the appropriateness of the definition of their goals, objectives, and measures. Again, if our response to an agency was we had 3 or 10 or 12 people over on the side who are great at drafting goals, what we would get is wonderful abstract goals on the side and we would have no understanding about that process by the people who actually relate to the day in and day out resources for that department and its management issues.

We think it's critical that the people who know best ultimately about an agency's goals and objectives at OMB will be the program examiners. We have some very good experts. We have people who helped write the statutes and they can talk about the goals and have been able to do that for the last 5 to 8 years. But the important thing at OMB now is, I can tell you that there are, for every agency and every program, there is a program examiner, a budget officer as you would say, who understands what those goals are and has been engaged over the last 2 years in the dialogs about those goals. Those are the right people to do it. What I don't need is more people working directly for me who are experts on performance goals. What I need is more people in OMB and more people in the agencies who have worked their way through this and understand what the process is and ultimately understand why they came up with the goals and measurements they did and what their impact is going to be in the future.

Mr. HORN. Well, the review oversight role of OMB is one thing. The question is, What kind of facilitators can be available that have some indepth experience that someone can call on not to write the goals specifically, but to go out and help ask the right questions that deal with the writing of the goals. However when it gets down to the writing, in terms of measurable goals, to have someone that said there is some comparability here with what other agencies are doing, there is some experience to be shared. And you don't get that if you are besieged with all the budget questions involved, which is what drives OMB basically, and there isn't much time left to worry about some of the tough management decisions unless you have some focus. So it's fine to say 530 people are involved; I think you are going to be lucky if 30 are involved, and I notice you did say 25 to 30 at one point in your testimony.

Mr. KOSKINEN. The point I would make is there is an assumption about what drives OMB today and what it does today as if that's the same as what it may have been in the past. All I can say is the assumption is erroneous if it is that the vast majority, 90 percent you would assign to it, of OMB's time is spent on budget. If you look at GAO's report 2 years ago, at the "Director's Review" papers, in the first year we actually implemented OMB 2000 and discovered there was far more management discussion in those review papers than there had ever been before. I will guarantee you that if they looked at last year's and next year's, they will be, perhaps not stunned or surprised, but a major part of the director's review of the budget for the agency is going to be focused on what the agency is doing with its resources, what its major management challenges, are and what our objectives are, not just the manage-

ment part of OMB, but what OMB's management objectives and goals are for those agencies.

Every operating division at OMB has now an operating plan that they are finalizing. We did a stand-down for the agency, and every division, RMO, program examiners, has a set of goals for what they are going to accomplish. A significant number of those goals are management objectives in the agencies. The right place at OMB for people that have management objectives for the agencies is in the division of program examiners, not in a separate group of people who are the "management" people.

Mr. HORN. Well, we will send a letter over to the director and lay out various categories just to see what the response is to file after you, since you won't be around in 2 days and I don't want you to sweat it out worrying about the answer. So we will work it out with staff to get a picture as to who is doing what in various types of management, quote, unquote.

Mr. KOSKINEN. I think that is very helpful, but my bottom line answer again is similar to measuring how the agencies are doing. The proof is in the pudding.

The question is, What has happened in management issues in the last 4 or 5 years, how much attention is given to them in the executive branch and the Congress, and what kind of progress are we making? And I would submit that with the work of the Vice President, with the work the National Performance Review, and with the work in OMB across the board there is more focus on management in this administration than there ever has been and that has all been done without a separate Office of Federal Management. It is my firm view that, if we want to marginalize management, what we should do is set up a separate operation somewhere and say you guys worry about management. The rest of us are going to get swamped by the budget. If we allow that to happen, you will undermine the concept of OMB 2000 and I think you will undermine our ability as we go forward to leverage everybody's interest in management improvement.

Mr. HORN. Well, I hope you are right. It hasn't so far as we have looked at it for 20 years, between what, 1972, roughly, and the present time. It is really 25 years. I hope you are right.

But we do want to find how many really know something about management, even spend any time on. So we thank you for appearing and wish you well.

We are now moving to panel two. Panel two will be Christopher Mihm, the Acting Associate Director, Federal Management and Workforce Issues, and Herb Jasper, fellow with the National Academy of Public Administration.

OK, gentlemen, you know the routine.

[Witnesses sworn.]

Mr. HORN. Both witnesses have affirmed.

Why don't we begin with Mr. Mihm, U.S. General Accounting Office, General Government Division, Acting Associate Director in charge of Federal Management and Workforce Issues. Please proceed.

STATEMENTS OF J. CHRISTOPHER MIHM, ACTING ASSOCIATE DIRECTOR, U.S. GENERAL ACCOUNTING OFFICE, GENERAL GOVERNMENT DIVISION, FEDERAL MANAGEMENT AND WORKFORCE ISSUES; AND HERB JASPER, FELLOW, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. MIHM. Thank you, Mr. Chairman. With your permission I would ask that my prepared statement be submitted in the record and I will hit the highlights this morning.

Mr. HORN. Right. Without objection, all statements are in the record immediately after introduction. You may summarize it as you please.

Mr. MIHM. Thank you, Mr. Chairman, Mr. Davis, I am pleased to appear before you today to discuss the British Next Steps initiative, a model that the administration used in crafting its performance-based organization, or PBO proposal, and the lessons that the Next Steps experience suggests for Congress as it considers whether to create PBO's.

Since 1988, the British Government has been actively implementing the reform initiative known as Next Steps. This effort has sought to improve the delivery of Government services, obtain better value for the taxpayers' money, and give staff more satisfying work and working conditions in agencies. According to the British, Next Steps was launched to have the public sector provide services through market or marketlike arrangements and to streamline the central government which was seen as being burdened by high operating costs and a work force that was too big and insufficiently focused on results.

Under Next Steps, a Government department's service delivery functions, such as the payment of Social Security benefits, repairing military vehicles, doing inspections to enforce regulations and others, are separated into distinct organizational units referred to as agencies. Agencies are then responsible for delivering those services and are accountable to their parent departments for performance, while departments continue to be responsible for policy decisions. In exchange for being held accountable for meeting specific, agreed upon performance goals, agencies generally are given broad flexibility in managing their operations.

The administration's proposed PBO's have some important similarities in design with Next Steps agencies, many of which were noted by you, Mr. Chairman, in your opening statement, and by Mr. Koskinen as well. For example, both are intended to separate the delivery of services, the agency's role to department's role. Also, consistent with Next Steps agencies, the administration proposes that PBO's be granted flexibility, and there's been quite a bit of discussion on that. Both Next Steps agencies and PBO's are to be led by a chief executive officer. In the case of PBO's, they will be called chief operating officers. This executive is to be selected competitively and evaluated annually on the basis of his or her agency's performance, with pay and job security directly tied to the agency performance. The executive is to be held accountable to the head of the parent department, who in the case of Britain is accountable to the Parliament, and in our case, of course, to Congress and the President.

From the British perspective, Next Steps is not an experiment; it is the way the Government does business. Since 1988, Next Steps agencies have become the British Government's predominant form of service delivery. About 75 percent of all British civil servants are employed in one of the approximately 130 Next Steps agencies or in agencies that operate along Next Steps lines. The largest agency is the Social Security Benefits Agency, which has about 75,000 employees. Other large agencies include those responsible for the prison system, employee training, and defense evaluation and research, each of which has over 10,000 employees. Many of these agencies provide services directly to the public, for example, the United Kingdom Passport Agency or the Social Security Benefits Agency. A third or more of the agencies, however, provide services to other parts of Government such as those agencies that provide information technology support or logistic support to defense forces. As Mr. Koskinen suggested, this is one phase where at least the initial phase of the PBO effort will differ from Next Steps.

Next Steps agencies also cover a range of program and service types. For example, several agencies have a research focus while others have a regulatory focus over the United Kingdom. Next Steps agencies have reported that over the years performance has improved, in some cases substantially. For example, the passport office reported that since 1993 it has made significant and consistent improvements in the timeliness of its processing of passport applications.

Overall, the British Government's most recent annual summary of the Next Steps initiative notes that 79 percent of agencies' key performance goals were met for the 1995–96 time period. This level of accomplishment generally is consistent with the levels reported in previous years. However, the performance improvements have not been universal. Fourteen agencies reported that they had failed to achieve at least half of their key performance targets for the 1995–96 reporting year.

Some agencies have also reported significant cost reductions as measured by savings in running costs, which essentially include employee pay, benefits, and other administrative costs. For example, the National Health Service Pensions Agency reported that it reduced its running costs by 11 percent from 1994 to 1995. The Scottish Office Pensions Agency reported it reduced its 1995–96 running costs by 17 percent, and the United Kingdom Passport Agency reported that it reduced the unit cost, a key measure of passport services, by between 4 and 7 percent in each of the last 3 years.

I would note, Mr. Davis, in light of the concern that you were raising in terms of the human resource management implications of this, over the Next Steps agencies, these improvements in performance and reductions in cost have been done with basically the same people that were there before. They have been downsizing, but it's not as though there have been wholesale changes and bringing in a whole slew of new people and getting rid of the traditional civil servants that have been there.

In moving forward with the Next Steps agencies, the British Government has confronted some difficult and continuing imple-

mentation issues that we believe Congress may wish to consider as it assesses the PBO concept. These issues include: First, a lack of clarity in the relationship between agencies and their parent departments; second, uncertainty concerning accountability for performance; and, third, difficulties in developing and setting performance goals. I will touch briefly on each one of these in turn.

First, clarifying agency and department roles, the British have found that the roles of Next Steps agencies and their parental departments often remain unclear because of the inherent problems in trying to delineate such responsibilities. This is an age-old issue in public administration, which of course picked up in the public administration as opposed to the public policy school that I went to, Mr. Chairman. Management decisions made by agencies sometimes have had an impact on policy choices made by the parent departments. For example, if a——

Mr. HORN. I just want to say on that comment, when I did a book on the Senate Appropriations Committee, I noted that OMB, then BOB, back in the 1930's, 1940's, and 1950's, picked a different type of person than GAO had. GAO was much more practical. So proceed.

Mr. MIHM. Thank you, sir. I will make sure I take that back.

For example, if one of the agency's goals is to reduce Government costs, it may propose to do so by creating a user fee. While this proposal may be viewed as a decision by the agency, it's a management decision on how best to implement the policy. It clearly has policy implications in that it states an appropriate type of program where the user fee may be appropriate.

A second challenge is targeting accountability. The lack of clarity concerning the respective roles of agencies and departments also affects accountability for results. Because policies and their implementation are inherently linked, it is difficult at times to distinguish who is truly responsible for a result, the department administrator who makes a policy or the agency chief executive who implements it. This is especially contentious when goals aren't met as to whose fault it is.

Finally, and perhaps most important, is setting performance goals. The British experience with Next Steps has underscored the fact that public sector performance measurement is a complex, iterative process involving a number of competing considerations. A British evaluation suggested that three major concerns have arisen in connection with Next Steps' goal-setting.

Let me add as an aside, Mr. Chairman, that these challenges will not be news to this subcommittee because they are precisely the same ones that agencies here are facing in implementing the Government Performance and Results Act.

These three challenges are, first, goals are not often sufficiently ambitious. This was a point that Mr. Davis and Mr. Koskinen were making in response to your question about the lessons learned from the United Kingdom. That is, the goals often consist of no more than adding incremental improvements over last year and, therefore, consistent attention is needed to make sure that we are really forcing agencies to stretch to improve performance and not doing last year plus 1 percent and claiming that is a heroic achievement.

The second challenge to performance measurement is the difficulty in determining exactly what to measure. Performance measures frequently have been found in the United Kingdom to focus on what agencies can measure rather than what is most important in assessing performance.

Again, this is a common problem here as well. An example here would be an enforcement agency that measured the number of enforcement actions. While such information may be useful for managing programs, it does not speak to the core issue: What effect did we get from these various enforcement actions? Did we actually get a reduction in illegal activities? Further complicating the determination of what to measure is the fact that some goals, such as efficiency and quality, may be in conflict with one another and careful balancing is required.

Finally, a third issue related to performance measurement is the need to ensure that performance measurement is put in its proper context and appropriately used. Agency chief executives interviewed for a British study believe that the goals and performance information should be the basis for decisionmaking and resource allocation, but only as a starting point and tool for subsequent discussions. These executives reported that using unmet goals to criticize agencies, rather than attempting to examine the reasons the goals were not reached and developing strategies to meet those goals, may simply lead agencies to establish more easily achievable goals, creating powerful incentives, in other words, against what we are trying to accomplish.

In summary, Mr. Chairman, the PBO's would seek to emulate Next Steps agencies in important ways in both intent and design. In fact, as I mentioned, were the explicit model that the administration has used. Both are to operate in a more businesslike manner, gaining flexibility and freedom from constraints in exchange for greater accountability for results. Because of their similarities, unresolved issues from Next Steps agencies can provide lessons for the U.S. effort, such as the need first to focus on the clarity of the relationships between agencies and their parental departments. Second, certainly concerning who is accountable for performance, and, third, how best to develop and set good performance goals.

Mr. Chairman, this concludes my prepared statement, and I would be pleased to respond to any questions you or any member of this subcommittee may have.

Mr. HORN. Well, we thank you. It is a fine statement.

[The prepared statement of Mr. Mihm follows:]

Performance-Based Organizations:
Lessons from the British Next Steps Initiative

Summary Statement of J. Christopher Mihm
Acting Associate Director, Federal Management and Workforce Issues
General Government Division

The administration has proposed the creation of performance-based organizations (PBOs), modeled after British Next Steps agencies. PBOs, like Next Steps agencies, seek to separate service delivery functions from policy functions. In exchange for flexibilities from certain governmentwide requirements, the head of the agency is to be held directly accountable for the agency's performance.

Next Steps agencies are the British government's predominant form of service delivery. As of March, about 75 percent of all British civil servants were employed in one of the 130 Next Steps agencies or agencies that operate along Next Steps lines. These agencies have reported that, over the years, performance has improved, in some cases substantially. Some agencies have also reported significant cost savings.

The British government has confronted some difficult and continuing issues Congress may want to consider as it considers the PBO concept. These are:

First, a lack of clarity in the relationship between agencies and their parent departments. The British have found that the roles of the Next Steps agencies and their parent departments often remain unclear because of the problems inherent in trying to delineate responsibilities. Management decisions made by Next Steps agencies can have an impact on policy choices made by their departments.

Second, an uncertainty concerning who is accountable for performance. Lack of clarity in roles between agencies and departments affects accountability. It is sometimes difficult to tell if a poor result was due to poor policy or inadequate implementation of that policy.

Third, difficulties in developing and setting performance goals. British evaluations identified three areas of concern regarding performance measurement. First, goal setting does not always reflect what is realistic as much as adding incremental improvements to prior results. Second, it can be difficult to determine exactly what to measure. And third, it is important to ensure that performance information is put in a proper context and used to improve performance.

GAO reported to Congress in May 1997 on the administration's proposal to convert the Saint Lawrence Seaway Development Corporation to a PBO. GAO found that such a conversion would result in significant changes in the Seaway's management structure, funding mechanism, and relations with Congress. However, since PBOs must be created through the enactment of enabling legislation, Congress has an opportunity to define its role with regard to the Seaway or any other PBO.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the British Next Steps initiative, a model the administration used in crafting its performance-based organization (PBO) proposal, and the lessons that the Next Steps experience suggest for PBOs in the United States.

According to the British government, the aim of the Next Steps initiative has been to improve the delivery of government services, obtain better value for the taxpayers' money, and give staff more satisfying work and working conditions. Under Next Steps, a government department's service delivery functions, such as paying social security benefits, repairing military vehicles, and doing inspections to enforce regulations, are separated into distinct organizational units, referred to as agencies. Agencies are responsible for delivering those services and are accountable to their parent departments for their performance, while departments continue to be responsible for policy decisions. Agencies generally are given broad flexibility in managing operations while being held accountable for meeting specific, agreed-upon performance goals.

The administration's proposed PBOs have some important similarities in design with Next Steps agencies. For example, both are intended to separate the delivery of services--the agency's role--from policy functions--the department's role. Also, like the Next Steps agencies, the administration proposes that PBOs be granted flexibilities to deviate from some governmentwide requirements, such as certain personnel and procurement

processes. Both are to be led by a chief executive–to be called a chief operating officer in a PBO–who is selected competitively and evaluated annually on the basis of his/her agency's performance. The chief executive's pay and job security are to be directly tied to annual agency performance. The chief executive is to be directly accountable to the head of the parent department, who, in Great Britain, is accountable to Parliament, or, in our country, to Congress and the President.

The administration expects that the orientation of management and accountability in PBOs will shift from a focus on processes to a focus on customers and achieving program results. This shift in focus is to be achieved by establishing clear measures of performance which are also required by the Government Performance and Results Act of 1993. According to the administration, PBOs are to commit to clear management objectives, measurable goals, customer service standards, and specific targets for improved performance. These clearly-defined performance goals, flexibility in managing operations, and direct ties between the achievement of performance goals and the pay and tenure of the head of the PBO, are intended to lead to improved performance. The administration expects that, in most cases, the creation of a PBO will require statutory changes.

As agreed with the Subcommittee, today I will first provide an overview of the Next Steps initiative, including the number and size of British agencies participating in the Next Steps program and the reported performance of those agencies. Second, I will discuss the

lessons the British have learned about the Next Steps experience that we believe are most relevant to PBOs. Finally, I will highlight some of the major issues that Congress may wish to examine as it considers the administration's proposal to transform the Saint Lawrence Seaway Development Corporation into a PBO.

My statement today is based on our May 1997 report on the PBO initiative and the Saint Lawrence Seaway Development Corporation's candidacy.[1] It also is based on our continuing efforts to track reinvention initiatives overseas. Our work in this area began with our May 1995 report on management reforms other counties were undertaking and the insights those reforms provided for reform efforts here in the United States.[2]

NEXT STEPS IS THE CENTERPIECE OF BRITISH MANAGEMENT EFFORTS

The Next Steps initiative was launched in 1988 under then Prime Minister Margaret Thatcher. According to the British government, Next Steps was undertaken in response to the government's desire to have the public sector provide services through markets or market-like arrangements, managed by people with the resources and authority to provide those services. The reforms were also carried out to streamline the central government,

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[1]Performance-Based Organizations: Issues for the Saint Lawrence Seaway Development Corporation Proposal (GAO/GGD-97-74, May 15, 1997).

[2]Managing for Results: Experiences Abroad Suggest Insights for Federal Management Reforms (GAO/GGD-95-120, May 2, 1995).

which, the government concluded, was burdened by high operating costs and a workforce that was too big and insufficiently focused on results.

Beginning with the first Next Steps agency–the Vehicle Inspectorate of the Department of Transport which was created in August 1988–Next Steps agencies have become the British government's predominant form of service delivery. As of March 1997, about 75 percent of all British civil servants were employed in one of the 130 Next Steps agencies or in agencies that operate along Next Steps lines. Nearly one-third of the agencies employ 250 or fewer staff, and more than half the agencies employ 700 or fewer staff.

However, some agencies are fairly large. The largest agency is the Social Security Benefits Agency, which has about 75,000 employees. Other large agencies include those responsible for the prison system, employment training, and defense evaluation and research. Each of these agencies has over 10,000 employees. While not formally Next Steps agencies, Inland Revenue (which administers income and other taxes) and Her Majesty's Customs and Excise (which, among its responsibilities, enforces import and export restrictions) operate fully along Next Steps lines. Each of these organizations has over 20,000 employees.

Many agencies provide services directly to the public–for example the United Kingdom Passport Agency and the Social Security Benefits Agency. Other agencies provide services to other parts of the government, such as those agencies that provide

information technology support or logistics support for the defense forces. Next Steps agencies also cover a range of service and program types. For example, several agencies have a research focus, such as the agencies that do research on agricultural issues, while some other agencies have regulatory responsibilities, such as those concerning food and vehicle inspection.

Next Steps agencies have reported that, over the years, performance has improved, in some cases substantially. For example, the United Kingdom Passport Agency reported that since 1993 it has made significant and consistent improvements in the timeliness of its processing of passport applications. Overall, the British government's most recent annual summary review of the Next Steps initiative notes that 79 percent of the agencies' key performance goals were met for the 1995-1996 time period.[3] This level of accomplishment generally is consistent with the levels reported in previous years. Eight agencies reported that they achieved at least 80 percent of their goals for 1995-1996, even after they had set at least 80 percent of those goals at a more stringent level than in previous years. Not all goals are comparable from one year to the next, but for those that are quantified and are comparable, about 60 percent reported the same or better results for 1995-1996 as compared to 1994-1995. On the other hand, 14 agencies reported that they had failed to achieve at least half of their key performance targets.

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[3]Next Steps Agencies in Government, Review 1996, London, The Stationary Office, Cm 3579.

Some agencies also have reported significant cost reductions. For example, both the National Health Service Pensions Agency and the Scottish Office Pensions Agency showed significant savings in their "running costs," which essentially include employee pay, benefits, and other administrative costs. The National Health Service Pensions Agency reported that it reduced its running costs by 11 percent in 1994-1995, and the Scottish Office reported that it reduced its 1995-1996 running costs by 17 percent. In addition, the United Kingdom Passport Agency reported that it had reduced the unit cost of passport services by 4.3, 5.2, and 7.25 percent over the past 3 years, respectively.

ASSESSMENTS OF NEXT STEPS PROVIDE INSIGHTS FOR PBO PROPOSALS

In moving forward with the Next Steps initiatives, the British government has confronted some difficult and continuing implementation issues that Congress may want to consider as it assesses the PBO concept. These issues include (1) a lack of clarity in the relationship between agencies and their parent departments, (2) an uncertainty concerning who is accountable for performance, and (3) difficulties in developing and setting performance goals.

Agency and Department Roles

The British have found that the roles of the Next Steps agencies and their parent departments often remain unclear because of the problems inherent in trying to delineate

responsibilities.[4] For example, while in theory departments make policies and agencies implement those policies, a British evaluation found that there has not always been a clear separation between policymaking and implementation. Management decisions made by Next Steps agencies sometimes have had an impact on policy choices made by their parent departments. For example, if an agency's goal is to reduce an operating deficit, it may propose to do so by creating a user fee. While this proposal may be viewed as a decision by agency management on how to implement the policy of reducing costs, it could also be viewed as making a policy decision about the type of public program for which user fee funding is appropriate.

The British government has taken steps to address the issue of unclear department and agency roles, but with limited success, according to published studies. One step taken by the British government has been the establishment of the "Fraser Figure," a senior official who is to improve coordination between the agency and the department. The Fraser Figure is used in about 40 percent of the Next Steps agencies. However, evaluations suggest that this approach has not worked well because (1) the Fraser Figure rarely is able to represent the views of both the department and agency in a balanced way, and (2) this official does not have sufficient staff to coordinate activities. In addition, advisory boards have been established in about 30 percent of the Next Steps agencies, but they too are reported to have had limited success. Available reports indicate that the boards tend

[4]Trosa, Next Steps: Moving On (Feb. 1994) and After Next Steps: The Massey Report (Jan. 1995).

to be unbalanced in their advisory and monitoring responsibilities, generally emphasizing one over the other.

Accountability

The lack of clarity concerning the respective roles and responsibilities of agencies and departments also affects accountability for results. Since the distinction between administration and policy often remains unclear, one British evaluation described the task of assessing accountability as a "complex web of issues."[5] For example, because policies and their implementation are inherently linked, it is difficult at times to distinguish who is truly responsible for a result--the department minister who makes the policy or the agency chief executive who implements the policy. Questions have arisen about whether a poor result was due to poor policy or inadequate implementation and about who was ultimately accountable for the resulting performance. To mitigate this concern, the British government has encouraged greater collaboration between ministers and chief executives, facilitated by Fraser Figures--an approach that, as I have noted, has had limited success.

[5] After Next Steps: The Massey Report (Jan. 1995).

Performance Goals

The British experience with Next Steps has underscored the fact that public sector performance measurement is a complex, iterative process involving a number of competing considerations. A British evaluation suggested that three major concerns have arisen in connection with Next Steps goal-setting.[6] First, goal-setting does not always reflect what is realistic; it often consists of no more than adding incremental improvements to prior results. As a result, targets are sometimes set simply to reflect an improvement on the previous year's achievement rather than being based on an assessment of what might be possible. Tensions can arise between the agency and department over target magnitude, with departments generally favoring more ambitious improvement targets.

A second challenge to performance measurement is the difficulty of determining exactly what to measure. The evaluation showed that performance measures frequently focus on what agencies can measure, rather than on what is most important in assessing performance. For example, one enforcement agency had established a performance measure to count the total number of enforcement actions. However, the agency had no information about how many infractions actually occurred, so the agency did not know to what extent, if at all, its enforcement actions contributed to reducing illegalities. Further complicating the determination of what to measure is the fact that some targets, such as

[6]Trosa, Next Steps: Moving On (Feb. 1994).

efficiency and quality, may even be in conflict with one another, requiring a careful balance.

Finally, a third issue raised by the study was the need to ensure that performance information is put in a proper context and used to improve performance. The study stated that all the chief executives interviewed believed goals and performance information should be the basis for decisionmaking and resource allocation, but only as a starting point and tool for subsequent discussions. Using unmet targets to criticize agencies, rather than attempting to examine the reasons why the targets were not reached and developing strategies to meet unmet goals, may simply lead agencies to establish more easily achievable targets. For example, one British official commented that the goal-setting process can be discouraging when an agency is criticized for reaching 98 percent of a 100 percent target without considering how much effort the 98 percent represents.

The British government has initiated several efforts to address the performance measurement issues it, in company with other governments, confronts. For example, in an attempt to provide a basis for making summary judgements on the overall performance of agencies, Next Steps agencies are moving to what the British are calling "indexation." Indexation is a method of measuring an agency's overall performance whereby each performance goal is given a score that is weighted to its level of priority. The scores of all goals are then combined to produce an overall score for an agency. By comparing

overall scores over time, ministers of departments and agency chief executives can tell if overall performance is improving and whether targets are becoming more challenging. Some agencies are already adopting this approach in reviewing performance and setting targets, and reporting will begin in the Next Steps' 1997 annual summary report.

POTENTIAL ISSUES WITH THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION PBO PROPOSAL

The administration's proposal to transform the Saint Lawrence Seaway Development Corporation into a PBO suggests how the Next Steps experience can be illustrative for Congress as it considers the administration's initiative. We reported to Congress in May on the administration's proposal to convert the Seaway into a PBO. We noted that a such a conversion would result in significant changes to the Seaway's current management structure, funding mechanism, and relationship with Congress. I will briefly highlight the points we raised with regard to each of these issues:

- First, as a result of the Seaway's conversion to a PBO, the Seaway's leadership would change from an administrator appointed by the President and confirmed by the Senate to a contracted-for chief operating officer (COO) selected by the Secretary of Transportation. The COO would be directly accountable to the Secretary of Transportation who would, in turn, continue to be accountable to

Congress and the President for the activities and performance of the Seaway PBO.

British evaluations of Next Steps have shown that developing and monitoring a chief executive's contract is a long-term and iterative process. We noted that, since the Seaway is a relatively small part of the Department of Transportation (DOT), the Secretary may have to spend a disproportionate amount of time in crafting and monitoring the COO's contract with specific and measurable performance goals. This degree of oversight and accountability has not been applied before to the Seaway. However, if the Seaway is one of the first PBOs, administration architects of PBOs may pay particular attention to the development of the contract, since it could be a model for other PBOs.

Although the PBO would remain part of DOT, it would have greater autonomy in its relationship with its parent department. The Seaway proposal follows the Next Steps program in attempting to separate policymaking from the carrying out of services. The Seaway has started to work on this separation by drafting a list that divides the functions to be performed between itself and DOT under the PBO concept.

- Second, the Seaway is currently funded through the annual appropriations process. However, as a PBO, the Seaway is proposed to be funded through a mandatory payment, whose amount will be determined by a formula based primarily on the

tonnage of cargo moved through the Seaway. Because of its design, Seaway officials told us that they believed the formula would provide a more predictable funding mechanism than annual appropriations, and that this would allow them to operate in a more businesslike manner and better plan Seaway operation and maintenance functions. We noted, however, that the proposed funding mechanism raises a potentially significant issue of budget policy, in that funding would shift from a discretionary account to mandatory funding.

- Third, the relationship between Congress and the Seaway PBO would fundamentally change. Congress would no longer have a direct role in funding the agency or in selecting the agency head. It is also unclear what type and level of oversight Congress would have over the Seaway. However, since PBOs must be created through the enactment of enabling legislation, Congress has an opportunity to define its role with regard to the Seaway or any other PBO.

In summary, PBOs would seek to emulate Next Steps agencies in important ways in both intent and design. Both are to operate in a more businesslike manner, gaining flexibility and freedom from constraints in exchange for greater accountability for results. Because of their similarities, unresolved issues from the Next Steps experience can provide lessons for the U.S. effort, such as the need to focus on clarity in relationships between

agencies and their parent departments, certainty concerning who is accountable for performance, and developing and setting good performance goals.

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

(410148)

Mr. HORN. We now will go to Mr. Jasper, who admits that he has been a management consultant and knows something about management. He has had the rich experience as a fellow at the National Academy of Public Administration, service on the Hill, service with Congressional Research, service in the Bureau of the Budget, and service in the private sector. So we are glad to have you again as a witness, Mr. Jasper.

Mr. JASPER. Thank you, Mr. Chairman. I, of course, will not summarize my prepared statement, but I will skip over some of the things you have heard about in detail from Mr. Koskinen and Mr. Mihm.

As you stated, I am Herb Jasper, a fellow in the National Academy of Public Administration. Academy fellows have long supported the objectives of the Government Performance and Results Act. As you know, the PBO concept builds in part on the development of performance measurements for Federal programs.

In 1996, an academy panel recommended that the nautical charting and geodesy functions of the National Ocean Service of NOAA be assigned to a PBO. I have a copy of the report here. If you don't already have it, we can furnish that.

While the views that follow are my own, and do not necessarily represent those of the academy as a whole, they do draw upon work done by the various academy panels that I have referred to. As you know, the President has proposed that nine Federal programs be transformed into PBO's. And as Chris has indicated, he spoke about the United Kingdom experience but Australia and New Zealand are also among those experimenting with new forms of government organization, all intended to be more businesslike and entrepreneurial. In an appendix to this report we have a description of the experience of Australia, Canada, and the United Kingdom.

In the United Kingdom, as was indicated, there are about 130 Next Steps agencies which are said to have achieved savings of about 4 percent each year since their formation. Apparently encouraged by that success, the President envisioned that there would be hundreds of such agencies in his second administration while he was on the campaign trail last year.

While I personally favor the use of PBO's where appropriate, I will focus today on their limitations as well as on the obstacles to getting them up and running. As you know, a recent GAO report indicated that performance measurement in the Government is off to a halting start, my phrase, not theirs, and quoting them, will lead to highly uneven governmentwide implementation of GPA in the fall of 1997.

So since performance measurement is still in its early learning stages in many respects, I think having Congress accept PBO proposals that are based on the existence of full-blown performance measurement systems is not going to be an easy sell. Indeed, none of the nine candidates the President has proposed has attracted much support in the Congress. The House, in fact, just passed a bill to make the Patent and Trademark Office a Government corporation rather than a PBO, although it did include a few features from the PBO concept, and the Senate Judiciary Committee has favorably reported a quite similar bill. Because PTO was perhaps the

administration's strongest candidate for PBO status, the congressional response to that proposal may be quite instructive.

Since Congress has not been persuaded to adopt either generic or specific legislation to establish PBO's, I would suggest the administration ought to have modest expectations about assigning a significant number of Federal programs to that, unless of course it follows the recommendations that I make later in my testimony.

In my prepared statement, I list some six things the administration needs to do if they are to make a sale on PBO's. I will skip over them now. But I think it would be useful to consider the PBO concept in relation to other forms of organization as has been done in some of the previous colloquy, and to other ways of making Government operations more efficient and effective.

We have for decades now created businesslike entities in the form of authorities or corporations. Those that are legitimately called or classified as Government corporations are, in fact, a form of PBO's. Two of the PBO candidates are already Government corporations, GNMA and the Seaway Corporation. Three others have for some time been candidates for conversion into corporate status, that's FHA, the NTIS, and Patent and Trademark.

While the PBO concept overlaps with Government corporations, there is an important distinction as you've heard. Corporate status should be reserved for programs that are or could become financially self-sustainable. Under the administration's concept, PBO's need not produce revenues at all. I am going to skip over the PBO characteristics which you heard about but I will return to them later.

Whenever the executive branch or Congress proposes innovative management practices, there is a tendency to ignore similar practices that already exist, to overlook yesterday's innovations, and to describe the proposals as new and different. This not invented here syndrome means that executive and congressional actors are often not content to build on the past, but seek to be seen as introducing original or revolutionary ideas.

This seems especially applicable to the way in which the administration has declined to rely on a 60-plus-year history of Government corporations. NPR and Mr. Koskinen for OMB have disfavored the corporate form, in part, because Government corporations are typically governed by boards, and often independent agencies. But a Government corporation is a Government agency under a different name. There is no inherent reason that such an agency should be governed by a board nor why it can't be in a department.

In the 1981 report for OMB, an academy panel recommended that a model corporation would have a single executive and at most be assisted by an advisory board. It would also have a policy link at the least to a Cabinet board. In fact, neither GNMA nor the Seaway Corporation has a governing board and both are in departments. Congressional action on the PTO legislation suggests that the administration may have been better advised to propose corporate status for those organizations that meet the well understood and well established criteria for Government corporations.

As Mr. Koskinen said in his colloquy with you, some corporations are called such when they are not, others are not called corpora-

tions when they really are. Still others are called mixed ownership when they are wholly owned. Some are subject to the Government Corporation Control Act, GCCA, and some are not. All this suggests that it's time for Congress to revisit the GCCA, as was proposed to this subcommittee last year by another academy fellow, Harold Seidman, that is that you revisit this act. Harold Seidman proposed something which is labeled the Government Enterprises Standards Act, and I understand that is something you will be considering.

The condition affecting the chief operating officer's employment in the PBO may require, I emphasize may require, legislation, either specific to each PBO or through a generic statute. The temptation for some agency heads to hire someone for a high paid position who lacks the requisite qualifications will be great.

Over the years, the record is not encouraging for appointing and confirming highly qualified individuals to specialized positions, even when the authorizing statute demands such qualifications. Accordingly, Congress may well be wary of authorizing this series of new highly paid positions. Since the academy's revitalizing Federal management report in 1983, there has been substantial acceptance of the idea that hamstringing Federal managers with detailed controls, constraint, and second-guessing is a hell of a way to run a railroad. Yet the solution is still not at hand.

There are obstacles to empowering managers to carry out their missions effectively. Some procurement officers and inspectors general or their staff are more concerned with heading off criticism than they are with program accomplishments, and Members of Congress, yes, media critics, and taxpayers who are unwilling to accept the fact that Government activities, like private activities, will from time to time be accompanied by fraud, waste, or abuse, no matter how tight the rules and oversight. The constant challenge is to find the right level of oversight to minimize abuse and maintain public confidence while not inhibiting good managers from doing their job.

PBO's are a promising innovation. But the key to successful implementation is not to overestimate their benefits and underestimate the obstacles to their creation. The administration's proposals, in my view, still appear to be ahead of the necessary preparatory work. I don't think they have yet developed a persuasive rationale to explain why these PBO's should be established with all these flexibilities while the rest of the Government should be bogged down under the constraints of other legislation. This is a matter that Mrs. Maloney went into with Mr. Koskinen.

Further, I think the administration needs to reach out more effectively to Congress in a way that has not so far characterized its reform or reinvention experts if it expects to have even a dozen at the end of the President's term, let alone the hundreds that he spoke of last year.

I was pleased to hear Mr. Koskinen comment on his intention that the administration should work with the committee and others on these proposals. But I would remark that with NPR one and subsequent administration efforts, if the Congress had been in at the launching, perhaps more progress would have been made, and the First Lady herself admitted that that was a significant reason

r the failure of the health reform legislation, because the Con-ess had not been involved in its development.

Now, there are a number of things I would like to point out that ıe administration could do administratively to adopt certain fea-ıres of the PBO concept, as in fact, we recommended that the Na-onal Ocean Service do in our 1996 report, without waiting for leg-lation. For example, obviously developing performance measures; stablishing a framework agreement, a performance agreement or ontract between the cabinet Secretary and the head of the PBO; 5-year strategic plan with goals and objectives; and promoting a ıstomer service. None of these depends on legislation.

The chief elements of the PBO concept that cannot easily be chieved without legislation are a fixed term for the COO, higher vels of compensation and incentive pay, and greater flexibility in rocurement and personnel management. However, the fixed term ın effectively be accomplished through a performance agreement, nd sufficient flexibility probably exists already under existing pro-ırement reform laws and delegations of personnel authority. That aves only higher pay and incentive pay, which would clearly re-uire legislation.

Agency timidity to use authority already available under pro-ırement reform statutes and OPM delegations stems in major art from the gotcha environment in which agencies operate. Thus, ıere may be equal or greater promise in pursuing the possibilities r managers throughout the Government to manage resources ıore effectively and without undue fear of attack by oversight offi-ers or bodies. That's probably a more daunting challenge than es-ıblishing new PBO structures whose managers would have in-eased flexibility. And I would note that the PBO's under the ad-ıinistration's template would in no way be exempt from scrutiny y IG's.

There are promising approaches to the problem of government-ide improvements. Instead of constraining managers with FTE eilings and detailed appropriations prescriptions, agencies and ıanagers need to be liberated and empowered—popular words ıese days. They should be given freedom to manage their re-ources in the most effective way in fulfilling their missions. One ıethod is called "manage to budget," under which a manager ould have a pot of money, no FTE ceilings, and he or she could llocate the money under different headings, whether to contract, o things in-house instead of contracting, transferring money allo-ıted for higher grade personnel to people at lower grades or the verse.

In addition, I would like to comment that even with the three re-ent procurement reform laws that Congress has enacted, there re-ıains a need to change agency cultures so program managers are ot effectively subordinated to procurement officers, and if PBO's re to be established with increased procurement flexibility, the ob-ctive will be to enable them to respond quickly to opportunities. ı such circumstances, the risk-averse attitude by many IG's may rove to be a significant inhibiting factor. I suggest therefore that ongress consider possible changes in the IG act if it is going to nsider reform legislation such as PBO creation.

Thank you very much. I would be pleased to answer any questions.

Mr. HORN. I thank you for that helpful statement.

[The prepared statement of Mr. Jasper follows:]

Mr. Chairman and Members of the Subcommittee:

I am Herb Jasper, a Fellow of the National Academy of Public Administration, and I appreciate the opportunity to offer my comments on Performance-Based Organizations (PBOs). The Fellows of the Academy passed a resolution in 1991, two years before the enactment of the Government Performance and Results Act (GPRA), endorsing efforts to use performance measurement in order to improve the management of government programs. For the past several years, the Academy has followed and supported the implementation of GPRA, primarily through the panel on Improving Government Performance, on which I serve. The PBO concept builds in part on the development of performance measurement for federal programs.

In 1996, an Academy study, for which I was the project director, reviewed the nautical charting and geodesy functions of the National Ocean Service (NOS) of NOAA. The panel recommended that those functions be assigned to a PBO. In February of this year, the Academy furnished you and other Members of Congress a paper called "Making Performance-Based Organizations Work" that was developed in the Academy's panel on Executive Organization and Management. It was one of twelve papers in a package called "Making Reform Work." While the views that follow are my own and do not necessarily represent those of the Academy as a whole, they draw upon work done by the three Academy panels to which I referred.

The President has proposed in his 1998 budget that nine Federal programs be transformed into PBOs. A PBO is an entity which would be assigned functions that are

especially suitable for measurement so that clear goals can be set for both the entity and its Chief Operating Officer (COO). The current draft of the National Performance Review (NPR) guidebook for PBOs says that PBOs must have "measurable services" and a "performance measurement system in place or in development." Therefore, it may be necessary to carve out certain measurable functions from the organizations where they now reside in order for the Administration to propose a significantly larger number of PBOs since there may not be measurement systems in place for the other functions. The PBO would be expected to operate in a more entrepreneurial style, and be freed from some of the management controls that hamstring other agencies, because it could be held accountable for achieving the agreed-upon goals.

In 1994, the Academy's Improving Government Performance Panel wrote a report, "Toward Useful Performance Measurement," setting forth the "lessons learned" from the first round of agency pilot applications of performance measurement. The panel's report revealed that the state of the measurement art was still somewhat primitive and warned that "There is a risk that shortfalls in meeting the act's requirements could jeopardize continued executive and congressional support for the effort." Since then, interest in both branches has increased substantially, but there are already indications of congressional impatience with the progress of the agencies' work on strategic plans and performance measures. As you know, the June 1997 GAO report on GPRA implementation indicates that agency efforts "achieved mixed results, which will lead to highly uneven government-wide implementation in the fall of 1997." So gaining congressional acceptance of PBO proposals may not be easy.

The President had proposed eight PBO candidates in his 1997 budget, none of which has yet been approved. Perhaps it is significant that, in the frequent meetings that NPR and the Office of Management and Budget (OMB) had with possible candidates during 1996, the number had grown to some 20 or 30, but most of the new candidates "fell by the wayside," often because they opted out

None of the nine candidates that the President has proposed in his 1998 budget has attracted much support in the Congress. Indeed, the House has passed a bill to make the Patent and Trademark Office (PTO) a government corporation, rather than a PBO, although several PBO features were incorporated in the bill, such as a fixed term for the chief executive, salary and incentive pay provisions, and additional procurement and personnel flexibilities. The Senate Judiciary Committee has favorably reported a quite similar bill. Because PTO was, perhaps, the Administration's strongest candidate for PBO status, the congressional response may be quite instructive.

Some democratic nations, especially British Commonwealth countries, have enjoyed success in converting certain government programs to a more business-like and entrepreneurial style of operations. These are called "Next Steps Agencies" in the United Kingdom (UK) and "Special Operating Agencies in Canada." Australia and New Zealand are other examples, as is Sweden. An Appendix to the Academy panel's report proposing a PBO to carry out some of the

NOS functions describes the experience of the UK, Canada and New Zealand with similar organizations.

Since 1988, the UK has created about 130 "Next Steps Agencies" which are, in many respects, the prototype for the PBO proposals here. It is said that they cover three-fourths of the government and that the agencies have achieved savings of about 4 percent each year since their formation. Apparently encouraged by that success, the President envisioned that there would be "hundreds" of such agencies in his second Administration when he was on the campaign trail last year.

I'd like to emphasize that I personally favor the use of PBOs wherever appropriate. But I don't think it would be the best use of our time for me to promote their use. Rather, I think it would be most helpful to both the Congress and the Administration if I focused on the limitations on their use *in* this country, as well as on the far greater difficulties here, as contrasted with the UK, in getting them up and running.

So far, Congress has not been persuaded to adopt legislation–either generic or agency-specific–that is required to establish PBOs along the lines of the Administration's proposals. Further, the difficulty in developing good performance measurement systems suggests that the Administration, as well as Congress, should have modest expectations about assigning a significant number of Federal programs to PBOs.

The Administration's challenge is to define the concept more precisely, develop a cogent rationale for PBOs, choose the candidate programs carefully, demonstrate why corporate status is not preferable for self-sustaining programs, develop the measures by which performance will be judged, determine what flexibilities or exemptions are needed under or from government-wide management statutes for each PBO, and provide assurance that PBOs will be accountable for their actions. NPR has been working on a guidebook for establishing PBOs since the Vice President's March 1996 speech in which he announced this Administration initiative.

Drafts of the guidebook have been circulating for some time, and the April 1997 version can be accessed by anyone from NPR's web site. The quality and completeness of that guidebook when it is finished will likely be critical in setting a path for successful pursuit of this innovative approach to Federal management.

As I noted earlier, the 1998 budget proposes nine candidates for a more nimble and responsive style and structure in the Federal government. They are:

- Department of Commerce
    1. Seafood inspection
    2. National Technical Information Service (NTIS), and
    3. Patent and Trademark Office (PTO);
- Department of Defense
    4. Defense Commissary Agency

- Department of Housing and Urban Development
    5. Government National Mortgage Association (GNMA)
    6. Federal Housing Administration (FHA)
- Department of Transportation
    7. St. Lawrence Seaway Development Corporation (SLSDC)
- Department of the Treasury
    8. United States Mint
- Office of Personnel Management
    9. Retirement Benefit Services

It might be useful to consider the current and varying status of these agencies and to examine how they relate to other forms of organization as well as the various characteristics of PBOs.

Related Agencies. The United States has for several decades created business-like entities in the form of "authorities" and government corporations. In fact, two of the PBO candidates are already government corporations, namely, GNMA and SLSDC. Three others have for some time been candidates for conversion to corporate status: FHA, NTIS and PTO. In project reports of the National Academy of Public Administration, it was proposed that these agencies be converted to government corporations, as would be the case for PTO under the bill passed by the House. Legislation (H.R. 2159) was considered and unanimously reported by the

House Committee on Science, Space and Technology in the 100th Congress to give corporate status to NTIS.

While the PBO concept overlaps with government corporations, there is an important distinction. Corporate status should be reserved for programs that are or could become financially self-sustaining (or nearly so). Under the Administration's concept, PBOs need not produce revenues.

PBO Characteristics. Certain characteristics would distinguish a PBO from a conventional Federal agency:

- a clear operational mission (i.e., without policy or regulatory responsibilities), with policy responsibilities vested in its parent agency
- a "framework agreement" (for about four years) that describes the terms and conditions under which the PBO will operate and includes annual, measurable performance goals
- a five-year strategic plan
- measurable, annual goals and objectives
- a principal focus on "customer" service
- a chief executive appointed under a contract providing for a fixed term (such as four years) on the basis of qualifications, held accountable for performance, and paid at competitive rates

- incentive compensation for superior performance, but with total compensation not to exceed that of the President
- flexibility in personnel, contract, and financial administration tailored to the agency's mission and activities

Limitations and Risks. Whenever the Executive Branch or Congress proposes innovative management practices, there is a tendency to ignore similar practices that already exist, to overlook yesterday's innovations, and to describe the proposals as new and different. That discredits earlier initiatives, makes the proposals harder to sell, and encourages their proponents to promise too much. The result is usually unrealized expectations which lead to another round of "innovations" by those who next control the Executive Branch or Congress. This "Not Invented Here" syndrome means that executive and congressional actors are often not content to build on the past, but seek to be seen as introducing original ideas.

This seems especially applicable to the way in which the Administration has declined to rely on a 60-plus-year history of government corporations. As I have noted, two of its PBO candidates are already government corporations, and two others meet the generally-accepted criteria for such status. But the NPR has disfavored the corporate form, in part, because government corporations are typically governed by boards. Thus, NPR concludes that the corporate form is incompatible with the need to hire a chief executive under a performance contract with an agency head.

A government corporation is a government agency under a different name. There is no inherent reason that such an agency should be governed by a board. In a "Report on Government Corporations," prepared for OMB by an Academy panel in 1981, it was recommended that a model corporation would have a single executive, and that, at most, it be assisted by an advisory board. In fact, some government corporations, such as GNMA and the Seaway corporation, do not have governing boards. Both are on the President's list of candidates for PBO status.

Some corporations are called such when they are not, others are not called corporations when they are scarcely distinguishable from corporations. Still others are called mixed-ownership when they are wholly-owned by the government. All this suggests that it is time for Congress to revisit the Government Corporation Control Act (GCCA) of 1945, as was proposed to this subcommittee last year by another Academy Fellow, Harold Seidman. I understand that you may be considering action on the proposed Government Enterprises Standards Act that he recommended to supplement the GCCA.

A good case can be that self-sustaining corporations might more readily warrant exemptions from various management statutes because their "bottom line" will be the ultimate test of accountability. Congressional action on the PTO legislation suggests that the Administration might have been better advised to propose corporate status, a well-established and well-understood model, for those agencies that meet the criteria for incorporation. Those were spelled out in the Academy panel's 1981 report for OMB and in a project panel report on PTO in August 1995.

Separating operations from policy. Whether policy and administration are separable has long been debated in public management circles. If such a separation is intended to deprive the PBO of all policy authority and responsibility, it will prove to be unproductive, as all operational functions involve some degree of discretion and, therefore, policy making. So it is necessary to describe with some precision the policy characteristics that are deemed unsuitable for PBOs. That has not yet been done in the NPR's draft guidebook. I assume it will be done for each PBO as the proposed bills are drafted, as was the case for the Patent and Trademark proposal.

Measurable performance goals. Setting up a PBO should depend on assurance that there are or will be measurable goals (preferably, outcome measures) to which the agency and its chief executive can be held accountable. I believe that outcome measures for many, if not most, government programs will be hard to develop. Further, developing validated measures will be labor-intensive and take a considerable length of time. For a number of possible PBO candidates, therefore, it will be difficult to persuade Congress that the time is ripe for their conversion to PBO status.

Focus on "customer" service. Great strides have been made since the first NPR report, and since Executive Order 12862 of September 11, 1993, in establishing customer service standards. A handful of agencies or programs with large numbers of "customers" (such as the Internal Revenue Service, the Immigration and Naturalization Service the U.S. Postal Service,

the Department of Veterans Affairs, the Social Security Administration, recreation services of Interior and Agriculture, air traffic control functions of the Federal Aviation Administration, and the Small Business Administration) directly serve or interact with the end user. But note that none of them is an Administration candidate for PBO status. There is confusion in many programs as to how many different sets of customers or stakeholders there are to be considered. Among them are the immediate recipients of Federal services or funds, such as those served by the agencies listed above. In addition to them, the recipients of Federal funds from other programs may be intermediaries, such as state and local governments, or non-profit groups which play significant roles in carrying out many Federal programs. So reliance on customer service standards as a measure of a PBO's performance could be somewhat difficult.

The ultimate customers of all programs may be taxpayers, since they pay for them. The Congress and its committees and subcommittees must also be considered as either customers, since they vote to spend the public's money, or alternatively as the "Board of Directors." Any agency that fails to recognize Congress' role when it is thinking of "customer service" does so at its peril. Yet, E.O. 12862 does not identify Congress as a customer and OMB does not intend that states be regarded as customers. Other customers or stakeholders include interest groups, some representing industry, and some representing sub-sets of providers of service or recipients of service. All of these entities, not just customers in the traditional sense, must be taken into account if the PBO is to be held accountable for performance. It will be hard to find performance measures, particularly outcome measures, that reflect the adequacy of service to all those persons or groups.

Term appointment (based on qualifications), potential for removal and competitive compensation for the Chief Operating Officer. The conditions affecting the COO's employment and tenure require legislation, either specific to each PBO, or through a generic statute. The temptation for some agency heads to hire someone for a high-paid position who lacks the requisite qualifications will be great. The "track record" is not encouraging on appointing and confirming highly qualified individuals to specialized positions, even when the authorizing statute calls for such qualifications. Accordingly, Congress may well be wary of authorizing such highly-paid positions which would **not** be subject to Senate confirmation. Constitutional provisions require that the COOs be appointed by agency heads or lesser officials because their fixed-term contract and other conditions of employment are not consistent with those pertaining to presidentially-appointed and Senate-confirmed positions.

Flexibility in personnel, contract and financial administration. Since the Academy's "Revitalizing Federal Management" report in 1983, there has been substantial acceptance of the idea that hamstringing Federal managers with detailed controls, constraints, oversight, and second-guessing is "a hell of a way to run a railroad." Yet the solution is still not a hand.

There are obstacles to empowering managers to carry out their missions effectively: some procurement officials and Inspector General (IG) staffs who are more concerned with heading off criticism of the agency than they are with program accomplishments; and Members of Congress, media critics, and taxpayers who are unwilling to accept the fact that government

activities, like private activities, will from time to time be accompanied by fraud, waste or abuse, no matter how tight the rules and oversight. The constant challenge is to find the right level of oversight to minimize abuse and maintain public confidence, while not inhibiting good managers from doing their jobs.

The President, NPR and OMB are promoting a promising innovation in program management. But, the key to successful implementation is not to overestimate the benefits of PBOs and underestimate the obstacles to their creation. Indeed, if the Administration is to succeed in advancing this new application of alternative, business-like structures for programs that are suitable for evaluating on the basis of "outcomes," there is a great deal of work to do.

The Administration's proposals for PBO status still appear to be ahead of the necessary, preparatory work. The Administration needs to work closely with Congress in a way that has not so far characterized this Administration's reform or "reinvention" efforts. Further, refinement and completion of the guidebook for PBOs being developed by NPR may significantly influence the prospects for the successful launching of this innovation.

The Administration has not yet developed a rationale by which to convince Congress that it makes sense to establish PBOs as a whole new category of agencies with exemptions from a number of "housekeeping" statutes. The idea that meeting goals will substitute for conformance with long-established policies in personnel, procurement and financial management may need further development.

Other obstacles to congressional approval of PBOs will have to be overcome. The Administration's optimism about the possibly large number of PBOs seems unrealistic considering the significant differences between the governmental systems in the UK and the U.S. In a parliamentary system, the executive can launch a bold experiment without having to sell it to the legislature. And there is more forbearance for agency mistakes in a parliamentary system. The circumstances are quite different in this country. I would suggest, therefore, that the Administration has a lot more "homework" to do, and that it needs to reach out more effectively to Congress if it expects to have even a dozen PBOs at the end of the President's term, let alone the hundreds that he spoke of last year.

If it turns out that Congress is not receptive to approving legislation to launch the initial series of proposed PBOs, there are a number of things the Administration could do to adopt certain features of the PBO concept, as the Academy panel recommended (on p. 86) in its study of certain NOS functions. For example, developing performance measures; establishing a "framework" agreement setting the organization's terms of reference, and a performance agreement or "contract" between the Cabinet secretary and the head of the organization; developing five-year strategic plans with annual goals and objectives; and promoting a customer service focus; do not depend on legislation.

The chief elements of the Administration's PBO concept that can not be achieved without legislation are a fixed term for the COO, higher levels of compensation and incentive pay, and

greater flexibility in procurement and personnel management. However, the fixed term can effectively be accomplished through the performance agreement, and sufficient flexibility probably exists already under recent procurement reform laws and delegations of personnel authority.

A related issue to be confronted is the rationale for freeing PBO managers to manage more effectively, while allowing the rest of the government to continue to be bogged down through excessive controls and interventions by officials who do not have line management perspectives or responsibilities. Some attention to such government-wide problems has been given through procurement streamlining legislation, and the elimination of the Federal Personnel Manual accompanied by delegations of personnel management authorities to departments and agencies. Yet these steps seem limited or halting in practice, as many agencies have not fully used the new flexibility that has been authorized.

Agency timidity to use authority that is available stems in major part from the "gotcha" environment in which agencies operate. The June 29 Washington Post carried an insightful article by Paul Offner, Administrator of the District of Columbia's Medicaid program, about the millions of dollars lost because of tardy contracting. Many Federal agencies face similar obstacles to effective contracting. Thus, there may be equal or greater promise in pursuing the possibilities for enabling managers throughout the government to manage resources more effectively. That is probably a more daunting challenge than establishing new PBO structures

whose managers are given the necessary flexibility. It should be noted as well that PBOs will not be exempt from IG scrutiny, even if they are accorded personnel and procurement flexibility.

There is a promising approach to this problem. Instead of constraining managers with FTE ceilings and arbitrary prescriptions, agencies and managers need to be liberated and empowered. They should be given freedom to manage their resources in the most effective way in fulfilling their missions. One method is to allow managers to **"manage to budget."** Under this concept, **FTE ceilings would be abolished**. The same savings sought by any personnel ceiling could be accomplished more effectively through the budget and appropriations process.

Managers, in turn, would have flexibility and authority to use the funds in the most efficient and effective manner. Congress has been urging or requiring agencies to contract for many of their functions. More flexibility for managers in the use of funds would not only enable, but encourage, them to contract or "outsource" where it will save money, **while retaining appropriate oversight capacity**. It would also allow them more readily to end a contract in favor of in-house performance if that would be more cost-effective.

Even with the three recent procurement reform laws that Congress has passed, there remains a need to change agency cultures so that program managers are not completely subordinated to procurement officers. To accomplish that end, it may be timely for Congress to revisit the Inspector General Act. If PBOs are to be established with greater procurement flexibility than that given to other agencies, the objective will be to enable them to respond

quickly to opportunities that may arise. In such circumstances, the risk-averse attitude of many of the IGs may prove to be a significant inhibiting factor. I would suggest, therefore, that Congress consider possible changes in the IG act together with any action it may take on PBO legislation.

Mr. Chairman, that concludes my prepared statement. I would be pleased to answer any questions that you or other members of the subcommittee may have.

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HERBERT N. JASPER

Herb Jasper specializes in public policy and public management, including executive branch organization, legislative-executive relations, congressional operations, quality management and reengineering. He is a management consultant with McManis Associates and a Fellow of the National Academy of Public Administration (Academy). He was the author of a chapter on coping with the deficit in the Academy's report to President-elect Bush on executive management. He was the project director for an Academy panel study of the nautical charting and geodesy functions of the National Ocean Service of NOAA. The panel recommended that those functions be assigned to a Performance-Based Organization. He also serves on the Academy's Panel on Improving Government Performance. He has performed a number of *pro bono* assignments as panel chair or panel member for Academy projects.

He worked both as personal and committee staff in the U.S. Senate, where he played a key role in formulating the Congressional Budget Act of 1974. He was instrumental in conceiving and having included in it the Impoundment Control Act. He has served on a number of White House task forces, including those on reorganization of the executive branch, creating the Communications Satellite Corporation, and reorganizing the Office of Education. He chaired an interagency committee whose work led to the enactment of the Joint Funding Simplification Act.

He served for more than eight years as the Executive Director of an industry association representing AT&T's long distance competitors before committees of Congress. Its chief objective was to forestall legislation advanced by AT&T in concert with some-2000 independent local telephone companies. This legislation, which initially had very broad co-sponsorship, was never enacted although related bills were passed in each house in different congresses.

At the Congressional Research Service (CRS), he conducted studies and wrote papers on issues of congressional organization and operations. He made significant, ground-breaking studies and proposals, including on scheduling of Senate business, organization, procedures, administrative and technological support, and the functions of Members and committees. He coordinated all CRS work in support of the Commission on the Operation of the Senate.

He was Research Director and Acting Chief Counsel of the Senate Committee on Labor and Public Welfare. As an Assistant Director in the former Budget Bureau's Office of Legislative Reference, he coordinated development of the Administration's legislative position on a wide variety of subjects and resolved interagency conflicts at the Cabinet and sub-Cabinet level.

He testified before the House Subcommittee on Management, Information and Technology during the last Congress on: executive branch restructuring; the National Performance Review; performance measurement and reengineering; and budget and financial management improvement.

He has an A.B. in Political Science from the University of Pennsylvania and a Master's degree in Public Administration from Wayne State University. His recent publications include "Organizational Options for the Federal Aviation Administration," "Down the Quality Road," and "The National Performance Review: The Good, the Bad, the Indifferent."

Mr. HORN. When you got into the discussion of relations with Congress, I am reminded of the great line of Senator Arthur Vandenberg to his friend Harry Truman. Vandenberg, being the leader of the Republican Internationalists in the 80th Congress, a Republican Congress, and Truman being his longtime friend, now President of the United States, he said, "Harry, we simply want to be in on the takeoffs, not just the crash landings." And of course we have had a lot of crash landings from all administrations at one time or another that forgot that simple rule, and of course that was the basis for the bipartisan foreign policy, which basically, except for Vietnam, this Congress and a succession of Presidents followed. So your advice is well taken.

I yield 10 minutes to the gentleman from Illinois, Mr. Davis.

Mr. DAVIS of Illinois. Thank you very much, Mr. Chairman.

Mr. Mihm, in your testimony, you note some difficulties of development in setting performance goals, and I guess these problems are pretty similar to the same ones that practically all agencies would face in meeting the statutory requirements of the Government Performance and Results Act.

GAO has currently undertaken a review of the agency's strategic plans at the request of the House leadership. Can you give us a brief overview of that review and where the agencies are in the process and how they are meeting the requirements?

Mr. MIHM. At this point, Mr. Davis, we haven't issued a single one of the reports yet so I am not able to speak about where agencies are. The leadership did ask us to issue a series of reports. We will be issuing at least 25 of them over the next month or so on the major departments and independent agencies assessing the quality of the strategic plans that were provided for Congress under the Government Performance and Results Act. They asked us to look at the extent to which the goals and mission statement met statutory authorities, to comment generally on the quality of the goals and other key elements within the strategic plans, to look at the attention paid to crosscutting issues, and other management and information and financial management issues in those plans. So within the next month or so, I will be happy to provide your office with the information. I will make sure your office gets copies of those and also some summary information.

Mr. DAVIS of Illinois. Thank you very much.

You also indicate in your testimony that the British have had some difficulty in separating policymaking from operational implementation. I mean, that also seemed to be a problem that we are going to face in the PBO concept.

Since to some extent operations usually include policy decisions, would you give us your views on this particular issue and how you might separate or keep separated, to the extent necessary, the two?

Mr. MIHM. As you mentioned, this is a challenge that the British have had. Every expectation is it would be just as difficult here with the performance-based organizations. The British have used a couple of mechanisms to try to address this challenge. First, they use what they call "Fraser Figure," which is basically an ombudsman which acts as an interface between the departments which set policy and the agencies that are responsible for the service delivery mechanism. They have also used advisory boards, which I know is

an interest separately of this subcommittee. Neither of those have been entirely successful, and what that tells us is that it's not as though you are going to get a technical fix that all of a sudden everyone says, gee, if we had done that earlier we would have been able to melt away some of these contentious issues on policy and administration.

What they have found out, however, is there has been limited discussion in dealing with that; it's not something that precludes the effort from going forward. It's just something that makes it difficult and needs constant attention in setting goals. As agencies are making management decisions, they can have extremely profound policy implications, and governments need to be aware of those and of having appropriate oversight. So this is, in essence, an argument for vigilant oversight over the PBO's after they are created.

Mr. DAVIS. Is the ombudsman used as a troubleshooter or problem solver?

Mr. MIHM. That's part of the problem, sir, is that they have had a variety of roles and haven't been consistent with the application. In some occasions, yes, they have been used as a troubleshooter. In some cases, they have been used as the eyes and ears of the department to basically make sure that the agency was towing the line. In other cases, they favor more the agency perspective on things. There hasn't been a consistent approach other than to say we want this person in place to see if they can help us resolve some of these issues.

Mr. DAVIS of Illinois. Next Step agencies now make up about 75 percent, I understand, of the British civil service. Is the Government continuing to form new agencies or have they pretty much admitted a determination that maybe this is——

Mr. MIHM. They are getting close to the end, sir. In 1988, when they first launched the Next Step initiative, they estimated that up to 90 percent of the, at that time, British civil service could be in Next Steps agencies.

And let me put a little bit of a caveat around this so we don't make an automatic translation to the United States system, and that is the national Government over in the United Kingdom provides many services that aren't provided at the Federal level here, so they would probably get a higher percentage of their civil service in Next Step agencies.

Nevertheless, they are getting near the end. They have about 28 other candidate agencies out there or candidate organizations that may become agencies in the future, but they understand they are getting toward the end. As a result, they are beginning to shift their emphasis or its focus a little bit away from creating new agencies and more toward evaluation of the agencies that are in place, making sure that they are getting honest and robust performance improvements out of those, reviewing those agencies periodically to see if those situations have changed, that they should be privatized or that the framework documents that Mr. Jasper discussed should be amended. So they are now moving away from a wholesale effort of creating more agencies to a much greater focus of are they really getting the performance they need out of the agencies they have in place.

Mr. DAVIS of Illinois. And so is it a very vibrant process that is constantly ongoing, turning over, changing, reviewing, analyzing, looking, with the idea that this activity keeps generating improvement? Is that kind——

Mr. MIHM. Absolutely, sir, and I think a part of the additional piece of evidence for your point there is that one of the things they do with the Next Steps agencies is they have a fairly structured review process at 3 to 5 year intervals, no later than every 5 years, for the agencies in which they go in and look at them again, see whether or not the basic foundation documents need to be adjusted, see whether or not the organization needs to be privatized, or has the situation changed that led to it being created as an agency. They have done about 30 of these so far. They have privatized some. They have another 25 that they are beginning the reviews on now.

So as you mentioned, it is a vibrant process of looking for opportunities to improve performance in the agencies that are operating now and also where appropriate to move some of these agencies into the private sector.

Mr. DAVIS of Illinois. Thank you very much.

Mr. Jasper, you suggest that some inspectors general have what you call a risk-averse attitude, which may be an inhibiting factor for the department of potential PBO's, and that Congress should consider changes to the act to address the situation.

Could you be a bit more specific and what changes would you have in mind?

Mr. JASPER. I think there are essentially a couple that would make a big difference. One would be a very major change in the concept of the IG act, and that is that a hotly disputed feature of the IG act was to take internal audit staffs of the departments and put them under the IG.

Many of my colleagues believe that the internal audit is one of the most powerful tools that a cabinet Secretary should have at his disposal, and the fact that this is vested in a person who is not his subordinate but one who equally reports to the Congress and the Cabinet head, means that the audit staff is not fully responsive to the administrative management of a department. So that while I recommend that you consider this, I do not suggest that this would be easily accomplished. This would be very hotly contested. But it is a significant element of attempting to balance better the role of an independent inspector general and the role of a department manager who does not have authority over the inspector general.

The second thing is something that is probably more easily accomplished. I haven't had the chance to look at exact phraseology of the act in preparation for this testimony, but I would urge that the act be amended to add a more positive flavor to the role of the inspector general, focusing on helping to achieve the mission of the organization. Because that is what all Federal employees are hired to do, to achieve the mission. Auditors, inspectors, procurement officers, personnel officers, inspectors general, are all there in the final analysis to help achieve the mission of the agency, and we need to have the IG's focused a little more on program accomplishment, mission accomplishment, than on finding fault. That would be my suggestion.

Mr. DAVIS of Illinois. That is kind of a switch, I would think, than what many people perceive the function as being. Are you suggesting also that the internal audit might be perceived as much of a management tool as an oversight?

Mr. JASPER. That's exactly correct. And because it is an internal management tool, some of the proposals I think, indeed, from the MPR, suggested that IG's have their roles broadened to include agency management. I think that would compound the felony.

Mr. DAVIS of Illinois. I think that is very interesting. Certainly it is an interesting concept, and I think perhaps one that people will begin to look at a bit more.

Let me just ask you one more question. You talked about the possibility of changing the culture of agencies to the extent that perhaps procurement officers don't have more impact or authority relative to programs than what they were intended to have. Is that an accurate description?

Mr. JASPER. Well, I don't know that I would support the idea of what they were intended to have. I think the authority they have is perhaps far more than was ever intended.

Mr. DAVIS of Illinois. And you want to make sure that the program officers drive the action?

Mr. JASPER. Exactly.

Mr. DAVIS of Illinois. As opposed to the procurement officer?

Mr. JASPER. Right. And I should add that under the procurement reform laws that I referred to, I do see progress in the agencies. I have been working particularly with one Cabinet department in their procurement streamlining effort and they are making great strides using the authorities which you have conferred. But it's a long road to travel and it does require a change in the mindset of procurement officers in the same manner as I described for IG's. They have to understand they are there to achieve program accomplishments, not just throw up roadblocks in order to keep someone from criticizing the agency for perhaps moving too fast.

Mr. DAVIS of Illinois. And finally, you suggest in your statement that there is sufficient flexibility under recent procurement reform laws that delegates personnel authority and that perhaps there isn't need for any additional legislation.

Mr. JASPER. The procurement, the personnel authorities that have been delegated have not been delegated pursuant to new legislation. They have been delegated by the Office of Personnel Management. But by and large, agencies have a great deal more flexibility now than they did before this legislation under those delegations. One of the problems we find is that agencies are slow to take advantage of new delegations. For example, in this study that I referred to for a part of NOAA, we found that the personnelists who were reviewing our report were very surprised that we reported that the managers whom we interviewed felt constrained and didn't have flexibility, and we found when we investigated that authority had been delegated down to the subagency level but not further, so the people at the operating level didn't have the flexibility which the personnel managers intended them to have. So that's part of the culture change. You have to get people more oriented toward program mission accomplishment. That's one of the nice things about the Government Performance and Results Act. It's

trying to get people more interested in achieving what we are here to do rather than the mechanics, the procedures, and red tape. And we have to get the procurement people and IG's fully on board in that respect.

Now, as to your question on procurement, the new authority that I referred to does come from three statutes, the Federal Acquisition Reform Act, the Federal Acquisition Streamlining Act, and the Clinger-Cohen Information Technology Reform Act. All of those have greatly increased the opportunities to procure things in a more expeditious and still fairly competitive fashion, and some agencies are doing better in implementing those new flexible authorities than others.

Mr. DAVIS of Illinois. I thank you very much, Mr. Chairman. I have no further questions. Gentlemen, I thank you.

Mr. HORN. That is a very interesting discussion.

Mr. Jasper, you were here when we had an exchange with Mr. Koskinen in terms of the role of management in OMB.

Mr. JASPER. I was hoping you would ask.

Mr. HORN. And the role of management to aid cabinet officers that have very difficult jobs, and most of them come not well prepared by heading major organizations. They have often been Members of the Congress, or they may have been their managing partner in a law office in a small town. What is your feeling on this? You have been around this town a long time?

Mr. JASPER. Yes, and as you mentioned in your introductory remarks, I did serve in the Bureau of the Budget for a number of years, 9 of which were in what was called the Government Organizations Branch, whose business was exactly the kinds of things I have been talking about today.

At the time I worked in the Government Organizations Branch, there were approximately 9 percent. There are zero persons working on those matters in the Office of Management and Budget, or, indeed, any place in the executive branch.

As you may recall, when you had hearings 2 years ago on executive branch restructuring, as I recall, you didn't have an administration witness. They didn't have any position; they didn't have any experts. You had people from the National Academy of Public Administration. As a matter of fact, I testified on that subject.

So one thing I would like to emphasize is that in OMB 2000, in which there was a diaspora of management persons to the resource management offices in OMB, I will support a part of it, and that is to the extent that you are teeming with agency-specific management problems. I think it is appropriate that the resource management examiners, the program examiners, become conversant with those internal agency management problems.

The deficiency in OMB 2000 is that the entire general management staff, with the exception of a single person who is here in the room with us today, was dispersed. So it isn't, as Mr. Koskinen said, he has only a few people reporting directly to him. So the mistake was not to reassign agency-specific management functions, but not to retain a central staff, small though it might be, to worry about governmentwide management problems, and that's where I come to the answer to your question. Such a staff would be conversant with the history, the precedents, the problems of reorganiza-

tion and management issues of a governmentwide character, which would allow a cabinet officer to learn about from a staff that had a governmentwide perspective, which as you properly indicated, you are very unlikely to get from a program manager who is familiar with only a particular agency or cluster of agencies.

So if I were to be in charge of the Office of Management and Budget, I would not reverse OMB 2000, but I would establish a small staff, probably not more than 5 to 10, with governmentwide general management and organizational responsibilities, and those people who have the expertise to respond to the kinds of requests for assistance that you asked about.

Mr. HORN. Well, I appreciate that answer. It is very helpful.

Let me ask you a few things about your testimony. In your written statement, you said new candidates for the performance-based organizations sort of fell by the wayside, often because they opted out. What reasons did organizations opt out of becoming a performance-based organization?

Mr. JASPER. I can only tell you of one of which I have specific knowledge, and that's the National Ocean Service. After this academy panel report was delivered, the Commerce Department, NOAA, and the National Ocean Service, appointed a task force to review our recommendations, and among the reasons, I think a significant one, by which they concluded they would not pursue this recommendation, was that, "it required legislation."

Of course it required legislation; that was obviously what the administration had in mind all along. But as I indicated, I think perhaps on further reflection the administration might conclude that it could do a great deal of what it has in mind with performance-based organization without legislation. But that was the reason this organization gave for rejecting it.

As for the others, I cannot speak to it because the discussions were within the administration. Even I was not privy to that.

Mr. HORN. In your written statement you say you personally favor the use of PBO's wherever appropriate. What is your best rationale for that? You cited the rationales we know for the British and others; Mr. Mihm cited those, also. How would you easily explain that if someone asked you?

Mr. JASPER. Well, in the first place, I would start with the exceptions, and that is where an agency is a candidate for corporate status. I would opt for that rather than for the new concept, which is going to be difficult to sell. The corporate concept is not difficult to sell. We have, depending on whose report you read, somewhere between 30 and 45 Government corporations, and that illustrates the difficulty in the classification and nomenclature. So I would say if an entity meets the criteria that have generally been accepted by this administration as well as those recommended by the National Academy of Public Administration panels over the years—namely, that it should be self-sustaining or nearly so or have the capability of becoming so, have a large number of transactions with the public—that it would be a candidate for corporate status. So I would keep those out of the PBO basket.

As to those that belong in the PBO category, I would say that you would start with the premise that the administration has used, and that is that they have to be peculiarly susceptible to measure-

ment, and there I would urge caution, because, as we have discovered, agencies are not finding that it's all that easy to make all their programs subject to quantifiable measures by which you could judge outcomes. So where there is a discrete part of an agency that can be carved out and where its programs are peculiarly susceptible to measurement, I would think there is utility in giving that status, call it a PBO, call it what you will, whether you do it administratively or with the benefit of legislation, and try to inculcate into that organization the cultures of customer service and entrepreneurialism and so forth. So I am in favor of that.

As a matter of fact, in my private management consulting, I welcome the phrase "customers" to describe how Government agencies interact with what used to be called with clients or beneficiaries or taxpayers. It's not always the most obvious term. Take, for example, the Internal Revenue Service. They do use the word "customers." But I think just using the term "customers," for taxpayers whom you're auditing, helps change your mindset about your relationship with that person, makes you remember that this is a person who however indirectly is paying for what you are doing to him or her.

So I think names do help, labels do help, and, therefore, call it a performance-based organization, that's OK with me, and I think it does help create the proper culture. But I think, as I said, that you can achieve 95 percent of what the administration has in mind without legislation.

Mr. HORN. Isn't it true that, over the years, most of the options for Government corporations were trying to get around the personnel laws as well as the procurement laws? Isn't that one of the basic reasons for that?

Mr. JASPER. That's a misconception that—that——

Mr. HORN. You mean there were more noble purposes than those two?

Mr. JASPER. No, the fact is——

Mr. HORN. Having dealt with both those policy areas, I think they're rather noble to figure out how to get around them for the recent legislation.

Mr. JASPER. The history does not support the contention that becoming a Government corporation is the way to get out from under various management statutes. In a study I did for the National Research Council in 1991, it was mainly oriented toward organizational options for the FAA which was a candidate for Government corporation status, and still is in my judgment. I identified only, I think, 11 corporations out of the 35 or 40 that had any significant exceptions from the 3 principal kinds of statutes I looked at, and that was personnel, procurement, and appropriation. And in procurement, there were only three, five, seven; and in personnel there were only four.

So by and large, Government corporations are not exempt from the various housekeeping statutes. And if that was the motivation of persons seeking or agencies seeking Government corporation status, they haven't done enough homework, because it isn't a free ticket to getting exemptions. You only get the exemptions if the enabling act that creates the corporation says you get exemptions. There's nothing in the Government Corporation Control Act except

for the business-type budget that gives you exemptions from any statutes whatsoever. And even the Government Corporation Control Act is not automatically applicable. You're only subject to the Government Corporation Control Act if the statute creating the corporation says you're subject to the Government Corporation Control Act.

So by and large, every one of these Government corporations is created by a single—well, without exception, is created by a single statute which specifies exactly what its rights, privileges, and flexibilities are. It is not—I cannot believe that it is the reason that agencies sought corporate status.

Mr. HORN. I'll ask both gentlemen this question. In terms of how best to pursue and encourage performance-based organizations, however named, this is just the latest in a long list of names of what we call some of these things, is it best to amend the Government Performance and Results Act and take some of the ideas in their draft bill that—such as the chief operating officer, things like that, and just amend that in the act? Is it the best way to go corporation by corporation or performance-based organization by performance-based organization through the authorizing committees, using the same route Government corporations did where somewhere in Congress relevant to that corporation, an authorization bill was drafted, prepared, sent to the President for signature veto? Or is it best, in your judgment, to give blanket authority to the President that, if they meet certain criteria or tests, they would have reorganization authority to go ahead and do that; and you can say 10 pilots, whatever, and not have to come to Congress?

Now, we've had that fight over the years, as you know, where some Presidents were given that authority, while other Presidents weren't. And what is your thinking on the flexibility of creation of these and how they might best be done?

Mr. JASPER. Let me take off from the remarks I made earlier and start with the concept of a fixed term and a contract between agency head and the PBO head. We used to be a little uncomfortable with the idea of fixed terms for Presidential appointees on the grounds that it seemed to impair the President's right to remove people from office as well as to appoint them, and that that perhaps raised constitutional issues. However, the history and the constitutional cases seem to suggest that even if the head of an executive operating agency has a fixed term, that person is probably removable by the President for——

Mr. HORN. For cause?

Mr. JASPER. No, not for cause. A cause would deal with a member of a quasi-legislative or judicial body, like an independent regulatory commission. But the head of the National Science Foundation is one of the first who has a fixed term. The FAA Administrator, as you may know, now has a fixed term. And there are quite a few others, the head of the Office of Personnel Management. But most of the constitutional experts have now concluded, I believe, that the President could remove any one of them for—at any time for any reason without cause, even though they have fixed terms.

Now, on the other side of the coin, I did study the history of fixed terms again in this report I did for the National Research Council, and I found that of the half a dozen or so fixed-term appointments

that I dealt with, excluding the regulatory agencies, just the persons who headed agencies, by and large the tenure of persons in fixed-year appointments approached the statutory length of service it provided, so that indeed it does have the desired effect.

As you know, the average length of service of a Presidential appointee varies upward from 18 months to perhaps 20-odd months. It's better in this administration, by the way, than it was in its predecessors. But if you can get the service of persons particularly in highly technical organizations like the FAA to be 4 or 5 years instead of 2, I think management will improve.

So I would say that the fixed term is a good idea, but since the persons the Cabinet Secretary could appoint to PBO's would presumably be members of the senior executive service, if not subject to a higher political pay level, those people don't have tenure in their jobs anyhow. They can be reassigned under existing authority. So perhaps the person couldn't be fired, but he certainly could be reassigned, or she could be reassigned, so that I'm not sure you would need legislation even to create the fixed term for these people, which is a significant part of the performance contract, and the holding people responsible for performance.

Now, the one thing that I identified in my statement that I believe you cannot fix without legislation is if you want to pay these people—we lost our sound.

Mr. HORN. We lost sound.

Mr. JASPER. Thank you.

If you want to pay these people above the existing scales; that is, if you want to pay them more than would be available through a Presidential appointment to an executive pay level or more than would be available to an SES. In my view, you could accomplish that with a single statute that would authorize the administration to pay above the normal scales with incentive pay in addition, probably with the ceiling that the administration has proposed, certainly not to exceed the President's compensation, and that you would write some criteria by which the administration would be authorized to use that authority to pay above scales—above existing scales. And it, upon—upon reflection, in preparation of my testimony, I couldn't identify anything else that absolutely requires legislation.

Did you want to say anything?

Mr. MIHM. Mr. Chairman, in regards to our work, we haven't done the work which would allow me to comment on the most appropriate legislative vehicle. However, I do want to note that the intent behind your question is right on with what our work has shown, and that is that PBO concept will work best—in fact, I think we need to be stronger—will probably only work in an environment where we have pretty thorough and effective implementation of the Government Performance and Results Act. And when you take a look at the contracts that have been signed and have been successfully executed with Next Steps agencies, more often than not these are for outputs. That's pretty natural, and that's easy to understand. If you or I or anyone is a chief executive who has pay, tenure, and benefits tied to the achievement of goals, we want to make sure that all of the goals are within our area of span of control; in fact, direct control.

And so, for example, it's not uncommon to see research agencies not having goals to make progress in research, but having goals to make—to deliver research projects on time with customer satisfaction. Regulatory agencies and Next Steps agencies often have numbers of inspections. Job training agencies don't have goals to improve employment, but rather have goals to train a certain number of people. That would probably be a natural outcome of PBO's here as well.

What we would need is GPRA on top of PBO's, that is, with the Departments who would still be accountable for the Government Performance and Results Act, to take these various outputs and make sure that they result in societal outcomes. And so that's why we believe that the PBO concept, if we are going to proceed with it, it's vital that we have effective implementation of the Results Act as well.

Mr. HORN. Let me just ask you on the British experience, as a result of the periodic reviews they have in these Next Steps program, have any agencies left the Next Steps program, and under what conditions did they leave?

Mr. MIHM. Yes, sir. They've done about 30 of these reviews, or completed 30 of the reviews thus far. They've resulted in nine privatization. They've resulted in three or four other complete contracting out of the agency services, and then another half dozen or so significant restructuring of the agencies where functions were transferred to different agencies. And so what they are finding is that after a period of time, there are a number of these—of these Next Steps agencies that it—after they've been exposed to marketlike pressures and this entrepreneurial Government that Mr. Jasper talked about are able to compete in the private sector, and so they privatized those functions.

Mr. HORN. Moving to the Government Performance and Results Act, and GAO has done a lot of work there, in terms of performance measurement, does a PBO measure performance any differently than those performances we would measure under the Government Results and Performance Act? Do you see any particular difference?

Mr. MIHM. I guess if we use the Next Steps as a model, as we have in other cases, it would not be surprising to us to see that more often than not, the performance contracts would be output-driven as opposed to outcome or results-driven. And that's what was motivating the statement I made a few moments ago about the importance of having the Government Performance and Results Act in place.

However, even with those output measures in place, it's very important—or I would urge the Congress as you consider these individual candidates to take a careful examination to make sure that the agencies have a real track record in measuring performance. We're finding a number of agencies across Government, this isn't targeting PBO candidates, but agencies across Government are having real problems with just very basic aspects of performance measurement.

You notice from the hearing that you had on the Government Performance and Results Act just a few weeks ago where we—and John Koskinen testified—we reported on Federal managers' re-

sponses to a questionnaire that we did where a third or less were saying that they even had output data; that is, data that would tell them how many activities that they pursued. In that sort of environment, it raises real cautionary flags, I believe, for proceeding with Next Steps on a wholesale effort unless we are careful in examining individual agencies to make sure they have the ability to pull it off.

Mr. HORN. Let me ask you some specifics on the PBO's. You reviewed the St. Lawrence Seaway Development Corporation——

Mr. MIHM. Yes, sir.

Mr. HORN [continuing]. And their proposal. In your opinion, did the corporation make a compelling case to become a PBO? Why or why not?

Mr. MIHM. We think the case for the—obviously and ultimately it's a policy schedule for the Congress to decide. Ultimately, however, the case was somewhat mixed. On the one hand, we found that the PBO mechanism would be an effective approach for addressing the concerns that the Seaway raised, and those were basically threefold.

First, they're interested, as Mr. Sanders will no doubt testify, in a stable funding mechanism; second, for a more incentive-based performance system with the head of the agency and that they hope will cascade throughout the agency; and third, relief from Department of Transportation administrative requirements, that the PBO concept would be effective in that. However, on the other hand, it's certainly not a necessary mechanism for that. Congress could, you know—has—the normal appropriation process can grant more stabilized funding approaches if the Seaway had a compelling case.

We also would note that there's a difficult policy call for Congress to consider in regards to the Seaway application in moving from discretionary funding to a mandatory account; that even though the dollars are small, it is something that—for you and your colleagues, the appropriators, and throughout the Congress to consider carefully.

Mr. HORN. Well, you note there might be a change in Congress' level of oversight. Is that simply because of the difference in the type of appropriation level? Because I would think regardless of what their status is, it would be a little difficult to say Congress can't hold a hearing and have them all up here and get it out on the table. So I don't know that oversight changes. What else would change there? I mean, the selection of the chief executive would certainly be a changed process, I suspect.

Mr. MIHM. Yes, sir. I mean, that's one of the major ways. Right now the Administrator of the St. Lawrence Seaway, and presumably other PBO candidates as well as a Presidentially appointed individual, and therefore, the—as the nomination comes through the Congress and oversight in that regard, that that would be different under the PBO concept where they would be selected by the head of the agency, the performance contract would be drawn up between the chief operating officer, that is the head of the PBO, and the political appointee back at the agency. And so there would be the potential for a loss of direct congressional intervention at those

two angles, both in terms of the selection of the individual, and in the writing of the performance contract.

However, I would note that certainly that these are proposals working their way through Congress, and then Congress will do as it needs to do to make sure that its views are included both directly in legislation and certainly in the guidance that it provides in hearing records and elsewhere to ensure that, if these PBO's are launched, that the congressional oversight would be considered.

And in regards to the Seaway, in the discussion that we had with them about the appropriations issues, they pointed out that often they don't get appropriations hearings. They're at a small enough level of funding, and they have been willing, and they anticipate that the head of the PBO would be willing as well, to go up and, as you indicated, Mr. Chairman, meet with appropriators and discuss with them how the money is being spent and where it's going and what they're trying to achieve.

Mr. HORN. Well, under the performance organization concept here, are we likely to have a chief executive that's hanging out there or a board that's out there, all of which would be Presidentially nominated, Senate-confirmed, and then you've got a chief operating officer designated by the chief executive and/or the board, one role or the other? Does this mean we have one person that isn't doing much, the chief executive, and all power in essence is being given to the chief operating officer? What does it look like, and how do the British deal with that?

Mr. MIHM. Well, your chief executive is your political appointee. In the case of the Seaway, it would be the Secretary of the Department of Transportation who the chief operating officer would report to. This has been a bit of a contentious issue at times with the Next Steps agencies, and it could raise its head here as well.

As I mentioned, one of the challenges that they faced overseas is when performance goes bad, whose fault is it? Is it the responsibility of the what they call chief executive officer, what we would call chief operating officer with our PBO? Also—I'm sorry for the jumping back and forth on the names here. Is it the responsibility of the head of the agency, or is it the responsibility of the head of the parent department or the political appointee that they report to in the department?

I know there's been some discussions and concerns expressed within Parliament about that, and I assume that there would be similar concerns here, if there was an attempt to say that, well, you know, Congress either can only deal with the head of the agency, or Congress can't deal with the head of the agency. I haven't heard that being the case, but that is something that if the oversight or consideration of these proposals continues that we would urge the Congress to flesh out.

Mr. HORN. Mr. Jasper, would you like to comment on that?

Mr. JASPER. Yes, I would like to add a few words about the Seaway, not directly responsive to your question, but some of the history of the Seaway Corporation is relevant to some of the other points I mentioned in my testimony. And that is when the Seaway was originally created as a Government corporation, it certainly didn't meet the criteria that we generally agree with, that it should be self-sustaining, because it's never been self-sustaining. As a

matter of fact, when I was Senate staff, I helped Senator Mondale craft a bill that was the first refinancing of the Seaway bill, and it was refinanced several times since. So it was never self-sustaining, but it is a good model in the way in which a Government corporation can be established with a policy link to a Cabinet Secretary.

When it was created, it was made subject to the direction of such agency head as the President might designate. He initially designated the Secretary of the Army because the Corps of Engineers was principally involved in construction and had that kind of capability. When the administration tried to focus transportation programs in the Commerce Department, at which time there was an Under Secretary for Commerce, the supervision of the Seaway was transferred from the Secretary of the Army to the Secretary of Commerce. And when the administration proposed the Department of Transportation, it contemplated that the Seaway supervision would be transferred from the Secretary of Commerce to the Secretary of Transportation when that Department was created.

Congress, however, wasn't—how shall I put this, didn't pay too much attention to that nuance and simply put the Seaway in the Department as if it were a model administration. Thus, it became subject to the potential for micromanagement that Chris alluded to earlier, I think, as one of the reasons they're now looking for more flexibility. However, if the original model had been continued, that it would have been an agency that was technically freestanding but subject to policy guidance from the Secretary of Transportation, it would have been just like the kind of PBO the administration is calling for; because they propose that the head have policy responsibilities in a superior agency and he have operational responsibilities or she have operational responsibilities.

Now, that doesn't deal with the question of the performance contract, but as I said earlier, even with a Presidential appointment, but certainly with a Cabinet Secretary appointment, you could have a performance contract, and if it turns out that at the end of 1, 2, 3 or 4 years the head of the PBO was not performing adequately, I dare say that if it were a Cabinet Secretary appointment, that Secretary could simply terminate that appointment. If it were a Presidential appointment, you, of course, have to negotiate with the White House to get the President's acquiescence. But I think that's illustrative of the concept that a Government corporation first could be in the department, as some are; second, it need not be in a department to get policy guidance from an appropriate Cabinet Secretary.

Mr. HORN. Are there any other Departments that you're familiar with the statute where they give the President the authority to move a particular entity one way or the other without coming back to Congress? This is a rather unique language I would think.

Mr. JASPER. I don't know of another case just like that.

Mr. HORN. No.

Mr. Davis, any further questions?

If not, we thank both you gentlemen——

Mr. JASPER. Thank you.

Mr. HORN [continuing]. For your usual depth of knowledge that the GAO brings and the Academy brings. We appreciate it from both of you. Thanks for coming.

Mr. JASPER. Thank you, Mr. Chairman.

Mr. HORN. We are now on panel three, and we are going to put in the record at this point correspondence from the St. Lawrence Seaway Pilots Association that Congressman McHugh, who regrets he can't be here because he would like to introduce one of the next witnesses, and without objection it will be put in the record at this point.

[The information referred to follows:]

JOHN M. McHUGH
COMMITTEE ON NATIONAL SECURITY
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
COMMITTEE ON INTERNATIONAL RELATIONS

Congress of the United States
House of Representatives
2441 Rayburn House Office Building
Washington, DC 20515-3224

July 7, 1997

The Honorable Stephen Horn
Chairman, Subcommittee on Government Management, Information and Technology
House Committee on Government Reform and Oversight
B373 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As you know, the St. Lawrence Seaway Development Corporation maintains its operations headquarters in Massena, New York, which I represent in Congress. While most of the Corporations' 154 employees are located in Massena, its Administrator and a staff about a dozen are based here in Washington.

In conjunction with your July 8 hearing on Performance-Based Organizations (PBO), you graciously invited Mr. Craig Bolick, President of AFGE Local 1968, to present testimony. In this regard, I have received the enclosed correspondence from the St. Lawrence Seaway Pilots Association in which they outline their views and concerns about proposals establishing the Seaway Corporation as a PBO.

I would appreciate your assistance in having the Pilots Association comments included as part of Tuesday's hearing record, as I believe it will be helpful to your Subcommittee to have the benefit of the views of all interested parties during your review of the PBO proposals.

Thank you for your time and attention to this matter.

Sincerely yours,

John M. McHugh
Member of Congress

JMM/jmb
Enclosure

ST. LAWRENCE SEAWAY PILOTS ASSOCIATION

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Cape Vincent, New York 13618
(315) 654-2900 Fax (315) 654-4491

VIA FACSIMILE
VIA CERTIFIED MAIL

July 6, 1997

Congressman John M. McHugh
2441 Rayburn HOB
Washington, D.C. 20515

Dear Congressman McHugh:

I understand the Government Management, Information and Technology Subcommittee of the House Government Reform and Oversight Committee will hold a hearing on Tuesday, July 8, 1997, regarding performance based organizations (PBOs.) I know of your personal interest in this subject, both as a member of that Committee and as the representative of a district that could be directly impacted. I speak, of course, of proposals to establish the St. Lawrence Seaway Development Corporation (SLSDC) as a PBO.

I offer the following comments on behalf of the St. Lawrence Seaway Pilots Association, based in Cape Vincent, New York, and the Western Great Lakes Pilots Association, which represent pilots on the western end of the Great lakes. As you know, representatives of the American Federation of Government Employees ("AFGE") and the General Accounting Office ("GAO") have recently raised serious concerns about plans to establish the SLSDC as a PBO. We share those concerns and oppose the PBO as currently drafted.

If appropriate, I would be grateful if you would submit our comments to the Government Management, Information and Technology Subcommittee for inclusion in the hearing record.

Summary

We oppose the PBO as currently drafted for several reasons. First, we agree with the GAO that "there are no clear indications of how PBO status would

improve the SLSDC's performance." (The AFGE shares this concern.) Second, we object to elements of the PBO that would dramatically reduce Congressional oversight of the SLSDC. Third, we believe many issues cited by the SLSDC in support of the PBO proposal could be addressed *administratively* if necessary, without legislative changes. Fourth, we find the SLSDC's arguments in support of the legislation uncompelling. Fifth, we object to a provision in the bill that could substantially increase the jurisdiction of the SLSDC, something opposed by many Great Lakes interests.

The GAO Report

The GAO report, released to Congress on May 15, raises numerous issues regarding PBO status at the SLSDC. Among the findings of the GAO are the following:

- "There are no clear indications of how PBO status would improve SLSDC's performance." GAO Report at 4.
- The PBO would dramatically limit Congressional oversight of the SLSDC and "reduce Congress' ability to adjust program priorities and to allocate resources for other purposes." GAO Report at 3.
- The PBO's new mandatory funding formula "raises an issue of precedence in budget policy that Congress may view as a greater concern." GAO Report at 3.
- Under the PBO, funding for the SLSDC would be "offset by cuts in other mandatory programs or increases in taxes." GAO Report at 17.
- The performance-based contract required by the PBO could require the Secretary of Transportation "to spend a disproportionate amount of time developing and monitoring the activities of the SLSDC." GAO Report at 18.

In particular, we join the GAO (and the AFGE) in raising concerns about the SLSDC's failure to provide "indications of how PBO status would improve SLSDC's performance." Indeed, the three arguments for the PBO, which we address in detail below, are unsupported and unconvincing. This is not a minor failure. *The SLSDC is promoting a radical change of its existing funding and administrative structure, but cannot identify in any meaningful way why the change is beneficial or necessary.*

The SLSDC's Three Arguments in Support of PBO Status

According to the GAO, the SLSDC has identified three reasons why it believes PBO status will be beneficial. The SLSDC says a PBO will provide:

1) a more predictable and stable funding mechanism, 2) an accountable senior management structure working under a performance contract with clear incentives to improve efficiency and service, and 3) increased autonomy from day-to-day DOT activities and reporting requirements.

We find these three arguments unconvincing:

PBO Status would provide the SLSDC "a more predictable and stable funding mechanism."

The most dramatic element in the PBO is a change in the SLSDC's annual funding mechanism. Instead of operating under annual appropriations by the Congress, the SLSDC would receive its funding from "mandatory, formula-based payments based in large measure on the tonnage moved through the Seaway," according to the GAO. The SLSDC has argued that it needs "such stability to better plan operations, maintenance, and capital improvements." GAO Report at 12. The SLSDC said this mandatory funding formula "is a major reason for pursuing PBO status." GAO Report at 12.

Changing to a mandatory funding formula would dramatically reduce congressional oversight of the SLSDC. According to the GAO:

> Congress' role would be reduced in setting SLSDC's funding levels and determining how those funds should be used once the formula has been enacted. Further, this mandatory funding would reduce Congress' ability to adjust program priorities and to allocate resources for other purposes.
>
> GAO Report at 3.

Neither DOT nor the SLSDC has provided any reason why the SLSDC among all federal agencies requires a more "stable" funding source. While the SLSDC faces infrastructure maintenance and improvement issues, so do many other federal agencies. In fact, the SLSDC already enjoys the benefits of a Capital Reserve Fund to "smooth out fluctuations in appropriations," the GAO said. While the SLSDC may covet a more stable funding source, so would every other federal agency. If the SLSDC could make a convincing case that more stable funding was necessary, "Congress could provide a more stable funding stream through the annual appropriations process without making the SLSDC a PBO." GAO Report at 12.

Finally, neither DOT nor the SLSDC has provided any reason why the SLSDC among all federal agencies requires less Congressional oversight. (In addition to removing Congress from the annual funding process, the PBO would also

eliminate Congress' role in the selection of the agency's top official.) We believe the SLSDC would benefit from more, not less, Congressional attention.

PBO status would result in "an accountable senior management structure working under a performance contract with clear incentives to improve efficiency and service."

The SLSDC proposes that its Administrator enter into a performance-based contract with the Secretary of Transportation. The Administrator is eligible for a substantial annual bonus if the performance targets and other goals are met. The Administrator's annual salary with bonus may not exceed the salary of the President of the United States, the PBO says.

The GAO has identified a range of possible problems with this type of performance based contract. It notes that agencies in Britain, using a similar approach, have been "confronted [with] several difficult challenges with which [they] continue to grapple." GAO Report at 9. In addition, GAO raises concerns about the "disproportionate" amount of time the Secretary of Transportation will need to spend administering the contract. GAO Report at 18. GAO notes that the Government Performance and Results Act of 1993, federal agencies are already required to "set goals, measure performance, and report on their accomplishments." GAO Report at 20.

Translating broad goals into specific results will be difficult at best. For example, the SLSDC estimates that PBO status will result in "savings in excess of half a million dollars." GAO Report at 21. However, the GAO notes, "A definitive plan on how these cost savings will be achieved has not yet been developed." GAO Report at 21.

In short, it is unclear how the performance-based element of the PBO would benefit the SLSDC. Even without a PBO, the SLSDC already has, or should have, "an accountable senior management structure working under a performance contract with clear incentives to improve efficiency and service." PBO legislation should not be necessary to ensure accountable, goal-oriented leadership at the SLSDC.

PBO status would increase the SLSDC's "autonomy from day-to-day DOT activities and reporting requirements."

The SLSDC believes its "personnel are being pulled into departmental initiatives and away from the primary mission of the SLSDC." GAO Report at 18. The agency has been required to participate in 60 DOT committees within the last year, according to a SLSDC official. GAO Report at 18.

PBO status is not necessary to address this issue. If DOT believes the SLSDC would benefit from increased autonomy and fewer reporting requirements, the Department could administratively permit increased autonomy and exempt the SLSDC from certain reporting requirements. As the GAO said:

> Because the DOT imposes many of the requirements from which the SLSDC is seeking relief, the department has the authority to grant the SLSDC relief without PBO status. However, department officials are reluctant to do so.
>
> GAO Report at 4.

In short, the same Department that is arguing for more freedom has authority to grant that freedom.

Expansion of the SLSDC's Jurisdiction

We find particularly objectionable a provision in the PBO designed to expand the SLSDC's jurisdiction on the Lakes. Many Great Lakes interests have opposed expansion of the SLSDC's narrowly defined role. The following provision within the PBO increases the Secretary's authority to transfer missions to the SLSDC:

> The Corporation [SLSDC] shall perform such additional duties of the Secretary that the Secretary deems to be related to the Saint Lawrence Seaway and as may be delegated to it by the Secretary.
>
> Amending 33 U.S.C. 983.

This provision is a backdoor attempt to increase the jurisdiction of the SLSDC and should be opposed.

Conclusion

Thank you for your interest in this matter. We would be pleased to discuss these and other objections at your convenience.

Sincerely,

Roger S. Paulus

Captain Roger S. Paulus
President

Mr. HORN. In addition we have the written statement of the Information Industry Association, IIA, and they would like to have been here, and we will put their statement in the record without objection. Hearing none, those statements are in the record at this point.

[The information referred to follows:]

The Information Industry Association (IIA) appreciates the opportunity to offer comments for the Subcommittee's consideration as part of its oversight hearing on proposals regarding Performance-Based Organizations (PBO's) as defined by the Administration's National Performance Review (NPR). IIA and its members are supportive of the overarching concept encompassed in the Administration's PBO proposal, which is to improve the performance of government agencies and cut their costs. Additionally, we believe there is some merit to the idea of allowing agencies managerial flexibility to help achieve these results. However, with respect to one very important function of the government -- disseminating government information to the public -- IIA believes that there should be no flexibility in an agency's legal obligation. Close inspection of the PBO materials available from the NPR World Wide Web Site, raises questions about the Administration's intent with respect to dissemination obligations. We are concerned therefore, that without clear congressional direction, agencies might try to avoid or abuse their information dissemination responsibilities if designated as PBO's. Our testimony will focus on these specific concerns.

We commend the Subcommittee for holding this oversight hearing and believe that our comments are especially relevant in light of your recent oversight hearing regarding the Government Printing Office and Executive Branch information dissemination, as well as your important work last year on amendments to the Freedom of Information Act.

The Information Industry's Interest in Government Information Access

IIA is the trade association of leading companies involved in the creation, distribution and use of information products, services and technologies. Our 550 corporate members range from large multinationals to entrepreneurial start-ups. The Association includes traditional and electronic publishers that provide a wide variety of information products and services covering nearly every subject matter imaginable, as well as interactive service providers, computer manufacturers, software developers, and telecommunications companies. Many of IIA's members obtain information from government agencies and incorporate this data into products and services that are then sold to the general public. The private sector information industry therefore plays a key role in promoting and enhancing public access to public information.

IIA member companies help serve the needs of a broad segment of society that obtains information from sources other than government itself, whether for reasons of convenience, privacy, or efficiency. Thus, when discussing increased access to public records, it is important to remember that users of private sector information products and services are also part of the public. To ensure that this significant segment of government information users continues to have access to the information products and services on which they rely, IIA believes it necessary for government to adopt policies which will encourage a diversity of sources for data generated by public institutions. As a result, IIA has long supported a set of sound information policy guidelines that encourage government to provide unfettered access to its information. Many of these principles are now codified in Title 44 as a result of the *Paperwork Reduction Act of 1995 (PRA)*.

As stated in IIA testimony before the Subcommittee earlier this year, PRA brought to closure nearly ten years of effort to fashion a set of sound information policies to govern federal executive agency dissemination of government information. Representatives of the information industry, the library community, and consumer groups, together with executive and legislative branch officials, all participated in the process of crafting the dissemination principles contained in PRA and supported its adoption. Because it was instrumental in the adoptions of PRA, the Subcommittee is aware that in many respects, PRA is a landmark statute, establishing rules for federal officials to follow as they proceed toward an era where the provision of government information will be greatly affected by the advent of new technologies and new demands by the public.

However, as IIA also expressed to the Subcommittee during the May 8 hearing, we are very concerned that despite all the effort and time involved in crafting this statute, its spirit and mandates are being ignored. IIA can report that the Office of Information and Regulatory Affairs ("OIRA") has failed to fulfill its duty to provide clear direction to agencies about their obligations and responsibilities under the law. This has led to numerous major and minor violations of both the intent and the clear language now contained in Title 44 of the U S. Code. If the trend continues, government activities will threaten a number of private sector information providers and their customers will decrease, rather than increase, the amount of information available to the American public.

Therefore, as the Subcommittee considers proposals which give agencies more autonomy and flexibility with respect to statutory obligations, such as the Administration's PBO proposal, it is critical to ensure that there is no erosion in agency information obligations under the PRA dissemination rules.

Specific Concerns

In studying the details of the PBO proposal, as outlined on the NPR Web site, IIA discovered two troubling pieces of information which raise concerns about the Administration's intent with regard to agency information dissemination obligations.

First, within the Performance-Based Organization Web page there are several sections. One of those sections is entitled "Flexibilities." Under the Flexibilities section, there is an ambiguous reference, with no further details, entitled "Paperwork Reduction Flexibilities." We have attached for the Subcommittee's review a printed copy of the reference. We urge the Subcommittee to have the Administration explain further what it envisions in using this terminology. If it is the intent of the Administration to allow PBO's to exempt themselves from current dissemination responsibilities, IIA would urge Congress to state clearly that agencies are not exempt from such responsibilities.

IIA's concern is heightened in light of the fact that OMB -- which as mentioned above, has been lacking in its enforcement of the PRA dissemination principles -- is one of

the three organizations (along with the NPR and the Office of Personnel Management) anointed by the Administration to help agencies mastermind how they can become PBO's.

The second reference in unambiguous and gives IIA significant concern. In a document entitled "The Blair House Papers", which were forwarded by President Clinton and Vice President Gore in January of this year, there is a list of the Administration's potential PBO candidates. One of the candidates listed is the Department of Commerce's National Technical Information Service (NTIS). As the Subcommittee is aware, NTIS is engaged in information dissemination activities that are in direct violation of PRA. While we have thoroughly documented our concerns regarding NTIS in our submission for the Subcommittee's May 8 hearing on executive branch dissemination activities, it is worthwhile to reiterate our overarching concern regarding NTIS' philosophy and operations with regard to their information dissemination responsibilities. It is relevant to focus on NTIS because its philosophy goes to the core of the type of behavior Congress should help ensure does not infuse PBO's.

National Technical Information Service (NTIS)

In general, NTIS, which is required to be self-sustaining, has adopted the philosophy that the business of government is to be *in* business. The fact that it must be self-sustaining has driven this philosophy at NTIS and its attendant actions. NTIS has undertaken actions that seem to go far beyond its mandate to operate on a self-sustaining basis. Not only do some NTIS policies stretch the boundaries of its legislative authority, in some instances NTIS is acting in direct opposition to information dissemination policies contained in PRA -- such as duplicating private sector products already available in the market. As such, these actions threaten to impair public access to government information.

NTIS was created and exists today strictly to collect and disseminate scientific, technical and engineering information ("STEI") which is generated by various federal government agencies. In effect, NTIS acts as a central repository for such information, which is originally collected by the agencies using taxpayer dollars in order to fulfill the essential dissemination responsibilities which are a part of those agencies' missions.

The governing statue that provided NTIS with this special role for STEI is the American Technology Preeminence Act ("ATPA" P.L. 102-245). By mandating that all federal agencies transfer to NTIS all STEI that results from federally funded research and development ATPA sought to increase American participation in technology development.

The mandate for transfer of STEI was intended to allow NTIS to become an efficient service to provide information to the American people to aid the drive for increased American competitiveness. However, NTIS' profit-making approach to its operations, aggravated by its monopoly position, threatens to reduce access and thwart the very goal it was designed to accomplish. Rather than fulfilling the crucial role of granting wider access to scientific, technical and engineering information, NTIS has

undertaken steps that serve in some instances to forestall broad dissemination of this material and in others unnecessarily duplicate the dissemination efforts both of the private sector and other governmental bodies.

In a business-like effort to expand its inventory to make it more attractive to potential users, NTIS has adopted a very broad, 1954 Comptroller General's Opinion definition of "technical information." This broad definition creates a situation whereby the originating agencies are transferring whole classes of information to NTIS for dissemination and in some cases then refusing to provide it directly to users.

PRACTICES

Below, we have listed some of the practices of NTIS which are in conflict with PRA requirements. We have done so to reinforce the negative consequences that could occur in granting general flexibility to PBO's with respect to PRA requirements.

Exclusive Arrangements: The purpose for restricting agencies from entering into exclusive information dissemination activities is to ensure that no agency, private company or other non-governmental entity can establish monopoly control over public information. Public information should be available to all.

Nonetheless, in an effort to promote its joint venture opportunities, NTIS has suggested in at least two publications that an exclusive arrangement for information dissemination might be made. In its two-year business plan produced in 1992, NTIS stated: "[T]he joint venture program enables NTIS to enter into *exclusive* non-competitive partnerships with private sector organizations to invest resources and share benefits." In its 1993 joint venture guidelines, NTIS wrote: "[C]ompanies making investments to enhance NTIS information products and services may also need *exclusivity* to warrant their level of investment and to ensure that they can capture some benefit from their investments."

Restrictions on Redissemination: If an agency *can* disclose government information, then an agency *should* disclose it. To ensure the free flow of information afforded by the First Amendment, governmental authorities should not restrict or regulate the use, resale or redissemination of public information. Unless the government can justify restricted access to its information under tightly controlled procedures to protect national security, no legitimate governmental purpose can be served by limiting the use of government information.

Copyright statutes are a means for originators of information to assure a fair return for their creative endeavors and to protect against misuse of their information through restrictions granted to the owner of the information. However, in the United States, Section 105 of the 1976 Copyright Act expressly prohibits, with very limited exceptions, federal government assertion of copyright in its works. This prohibition exists both to prevent a surreptitious means by which government might seek to control information

about itself and to protect the First Amendment guarantees of freedom of speech and press.

Yet, despite the long-standing acceptance of Section 105 of the Copyright Act and the restatement of this principle in PRA, NTIS continues to enforce copyright-like controls over the information it has available. In 1995, NTIS offered to provide the bibliographic database which it creates and maintains to Depository Libraries at no cost. Acting like a profit-making business rather than a governmental agency, NTIS issued regulations which placed copyright-like, downstream use restrictions on the information. The regulation stated: "[I]mproper disclosure of this valuable information could seriously erode NTIS' ability to operate on a self-sustaining basis... [I]mproper dissemination of the list of products could significantly reduce the rental value of NTIS's bibliographic database as an income producing asset."

Another more permanent and long-term example of NTIS' prohibitive dissemination practices is shown through the evolution of its contracting agreements over the past 25 years. Throughout the 1970's and most of the '80's, NTIS' database user contracts consisted of approximately seven pages of text and several schedules. Today, in contrast, NTIS employs a private sector, copyright-like license agreement which consists of 18 pages of text and was adopted -- according to one of IIA's member companies -- from perhaps the single most restrictive database copyright license agreement utilized anywhere in the world.

Royalties: Governmental imposition of royalty fees for resale or redissemination of publicly available information represents another copyright-like control over data and as such violates the PRA. Again, the Copyright Act's limitations on the government's ability to copyright public information confirms the premise that any person who has acquired the information may use it, resell or redisseminate it without paying any additional fees or royalties to the government.

The bibliographic databases mentioned in the example above are the NTIS products most often used by the information industry in its information products. Again, these databases are created from information that agencies are mandated to give to NTIS under the ATPA -- information that is created at taxpayer expense. Yet, anyone in the public wishing to use the agency information must enter into a licensing agreement with NTIS that requires a payment of a flat fee and payment of an additional royalty fee based on the amount and frequency of use of the information.

Over the years, the royalty rate and other downstream use restrictions in NTIS' licensing agreements have steadily increased -- so much so that in some instances information companies are contemplating abandoning redissemination of the information. Thus the goal of increasing American participation in technological developments has the potential to be seriously undermined, as NTIS policies force private sector participants to reduce either the number or scope of their products and services. This is a prime example

of how bad information dissemination practices defeat the primary objective of government to inform its citizens through broad dissemination of information.

User Fees in Excess of Cost of Dissemination: A practice that some agencies employ that looks suspiciously like the controls granted exclusively to non-government owners of copyrighted materials is the imposition of a fee that is based on perceived market value rather than the cost of dissemination. Copyright owners operate in a competitive marketplace, and their investment in creative and innovative materials can continue only if they receive fair compensation for their goods and services. However, government must and should act differently in a free and open society. To encourage the widest possible dissemination of public information, agencies should make their information available at the cost of dissemination -- that is the cost of making a copy available in any existing format requested by the user. The Freedom of Information Act (FOIA), for example, limits agencies to recovering only the "direct costs" of searching, duplicating, and reviewing records found to be responsive to a request.

Based on the notion that its mission is to disseminate information, and that it is to be self-sustaining, NTIS argues that *all* of its costs should be included in the cost of dissemination and thereby charges high fees for obtaining information. Moreover it appears to add more costs on high-volume, popular information. In some instances the user has no lower-cost option for obtaining the information because the originating agency believes it is fulfilling its dissemination obligations through NTIS.

While the previous comments have been restricted to problems relating to information dissemination activities, it is also important to note here concerns relating to the fact that NTIS is a fee-funded agency.

Normally when an agency collects fees for services it provides, the revenues go into the U.S. Treasury. If an agency wants to establish a dissemination activity, it must justify it to Congress, which in turn will appropriate the funding only after it deems the agency request necessary and justified. This process provides an opportunity for Congress and the public to examine the proposal as it relates to the agency's mission as well as its relation to other dissemination activities in the public and private sectors. However, Congress yields some of its important oversight role and reduces the agency's public accountability when it authorizes fee-funded dissemination operations.

When an agency is funded directly from collected fees -- as in the case of NTIS -- it has an incentive to generate fees even if it means disregarding long established and widely supported information dissemination policies. One example of NTIS' disregard of dissemination policies has the potential to roll back a very important method of obtaining information -- FOIA requests. NTIS is marketing itself to agencies as a new means for fulfilling FOIA requests. Because it is fee-funded, NTIS is not obligated to return fees in excess of cost of dissemination to the Treasury. Thus, NTIS can charge much higher fees for fulfilling the request and keep all of the revenue generated.

Because FOIA requests are viewed as a burdensome process by some agencies, many are all too glad to turn over such responsibilities to NTIS, in effect making NTIS the *de facto* FOIA disseminator. This practice is contradictory both to FOIA and to PRA, and it has the potential to create a bureaucratic nightmare as a potential requester of information is sent by the agency to NTIS for the information only to find the cost at NTIS is prohibitively high. This "FOIA-for-profit" process is antithetical to the purpose and promise of FOIA and will ultimately lead to less public access to government information.

Other PBO Models

There are examples of at least two executive branch agencies that are fee-funded that have incorporated sound policies into their information dissemination practices. Specifically, two agencies that have characteristics similar to those outlined for a PBO are the Patent and Trademark Office (PTO) and the Securities and Exchange Commission (SEC). These two agencies, which collect and disseminate information that is of significant importance to our economy, have worked very closely with Congress, users -- including the private sector -- and public interest groups when initiating new information products or services in the market to ensure that those products and services not violate the letter or the spirit of PRA.

Although IIA and its member companies have not always agreed with every specific action taken by these two agencies, they have generally acted very responsibly. It is because Congress took very careful steps to craft the statutory authority for these agencies in a manner that stressed the importance of their information dissemination obligations that they have acted responsibly. Furthermore, Congress has maintained vigilant oversight of SEC and PTO by continuing to have a hand in the amount of appropriations provided the agencies..

For example, Congress is currently considering, and the House has already approved, legislation which would turn PTO into a government corporation. Recognizing the important role that patent information plays in the economy and society, the legislation lists as one of the new corporation's responsibilities information dissemination. The House Judiciary Committee also included in its report (House Report 105-39) language which recognizes the important role that information companies have played in disseminating patent information to the public and directs PTO, in accordance with its responsibilities under PRA, to ensure that it does not take steps that would "undercut the value" of the private sector products and services now sold.

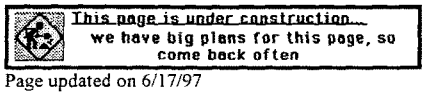
The SEC has been moving rapidly to electronic collection and delivery of securities information. However, unlike NTIS which sees its information as a commodity, the SEC has initiated a careful process to solicit the views of Congress and users before developing any new information dissemination products or services.

Some have explained that the difference between a PBO and a government corporation is simply semantics. However, according to the NPR Web site, it is not a matter of semantics. The NPR Web site explains that government corporations must be self-sustaining whereas PBO's do not. They Web site goes on to explain that it is a much more difficult process to move a government corporation forward because they typically need legislative approval. The site seems almost to suggest that agencies should attempt to attain PBO status instead of government corporation status because there will be less congressional intervention in converting to a PBO. This is an important distinction the Administration has drawn and IIA believes it suggests that there should be legislative oversight of *all* agencies whether they are seeking PBO or government corporation status.

Conclusion

IIA appreciates this opportunity to provide the Subcommittee with our views on Performance-Based Organizations. While we cannot argue with the concept of giving government agencies more flexibility so that they can operate more efficiently and effectively, we do believe that Congress should move cautiously especially where government information is concerned. Moreover, Congress should continue to provide stringent oversight of the conversion process to ensure that agencies are not given latitude to abandon important societal obligations such as disseminating government information to the public. We commend the Subcommittee for holding this hearing and urge you to continue your oversight.

Performance Based Organizations



Page updated on 6/17/97

Welcome to our Performance-Based Organizations (PBOs) web page. You will find the initial collection of documents related to PBOs. This collection will expand as our experience grows.

The concept of PBOs was launched in Vice President Gore's speech at the National Press Club on March 4, 1996. In that speech, he spoke of ways agencies could deal with the reality of "Governing in a Balanced Budget World." The first of six basic concepts was PBOs.

On January 11, 1997, at the Blair House retreat, the President and the Cabinet discussed second-term priorities, including PBOs. (See Blair House Papers, January 1997.)

Performance Based Organizations

- What Is a PBO?
- What Are the characteristics of a Potential Candidate?
- How to Be Selected as a Potential Candidate? (Coming Soon)
- Current PBO Candidates

Model PBO Legislation

- Short Summary Explanation
- Model PBO Legislation
- Section by Section Analysis of the Legislation

Speeches

- 03/04/96: Vice President Gore's Speech On "Governing in a Balance Budget World" (includes information on PBOs)

Announcements

Publications

- "Reinventing's Next Steps: Governing in a Balanced Budget World," March 4, 1996
- "The Blair House Papers," January 1997
- NEWBudget of the United States Government, Fiscal Year 1998, "Section IV: Improving

Performance in a Balanced Budget World
Download the PDF version

Converting to a PBO

(coming soon)

- NEW Conversion Guide
- Conversion Teams

Draft Agency Legislation

- NEW 5/5/97: St. Lawrence Seaway Development Corporation

Administrative Waivers

(coming soon)

- What are Administrative Waivers?
- Samples
  - Defense: Defense Commissary Agency

Framework Agreements

(coming soon)

- What are Framework Agreements?
- Samples:
  - Transportation: St. Lawrence Seaway Development Corporation

Performance Agreements

(coming soon)

- What are Performance Agreements?
- Samples:
  - Transportation: St. Lawrence Seaway Development Corporation

Flexibilities

- Personnel Flexibilities
  - NEW Model Bill
  - Existing
  - "Demonstration Projects: Beyond Current Flexibilities," May 1996
- Procurement Flexibilities
  - NEW Model Bill
  - Existing
  - "A Guide to Best Practices for Past Performance" May 1996 -- booklet

- "A Guide to Best Practices for Performance-Based Service Contracting," January 1996 -- booklet
- Paper Work Reduction Flexibilities
  - Existing
  - Special PBO Process
- General Service Administration Flexibilities
  - Real Property
  - Personal Property
  - Information Technology
  - Travel

Other Countries

- NEW Summary of "Next Steps," The United Kingdom's Central Government Management Reform, prepared by Scott Quehl, OMB, January 1996.

For more information on Performance-Based Organizations, contact Mary Mozingo, National Performance Review, (202) 632-0219 or e-mail: mary.mozingo@npr.gsa.gov.

Mr. HORN. And gentlemen, I think you know the routine here. If you would, please stand. Raise your right hand.

[Witnesses sworn.]

Mr. HORN. All four witnesses have affirmed that, and we will begin with Maj. Gen. Richard E. Beale, Jr., U.S. Army, Retired, who is Director of the Defense Commissary Agency. Major General Beale.

STATEMENTS OF MAJ. GEN. (RET.) RICHARD E. BEALE, JR., DIRECTOR, DEFENSE COMMISSARY AGENCY; EDWARD KAZENSKE, DEPUTY ASSISTANT COMMISSIONER FOR PATENTS, PATENT AND TRADEMARK OFFICE; DAVID SANDERS, DEPUTY ADMINISTRATOR, ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION; AND CRAIG BOLICK, PRESIDENT OF LOCAL 1968, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

General BEALE. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, it's my pleasure to be here today.

Mr. HORN. Do you want to get that microphone a little closer.

General BEALE. Yes, sir.

Mr. Chairman, members of the committee, it's my pleasure to be with you today. With your permission I've submitted a statement for the record, which tells you of our hopes for DeCA, Defense Commissary Agency, as a performance-based organization. However, as a bit of a deviation, and perhaps to place the entire issue of DeCA as a PBO into a bit better perspective, I believe it might be useful to provide a little bit of background about the commissary as opposed to a shorter version of what I have in my written statement.

In short, commissaries are the grocery store for America's Armed Forces. They're located on 308 military installations around the world. The commissary was designed as a supplement to service members paid by selling food and household goods at cost. The commissary is paid for by both the taxpayer and the service member. DeCA receives about 75 percent of its operating costs through appropriation while the patron pays the other 25 percent.

The patron pays for all commissary store construction, renovation, equipment, and supplies necessary to operate these stores. Appropriated funds primarily cover labor, overseas transportation, and are used to reimburse other DOD activities for services provided.

Approximately 43 percent of the cost of operating the entire system is required to fund our overseas stores, which only generate about 22 percent of our sales. In fact, the primary difference between commissaries and commercial supermarkets is that commissaries must be located where the troops are, not in the most profitable locations. Thus it is not surprising that 80 percent of our $5.5 billion in annual sales occur in only 131, or 42 percent, of our stores. Selling groceries at cost has provided the savings—or provided a savings of approximately 29 percent on average of—from the service members' food bill. Thus, the taxpayer uses the commissary to place money in service members' pockets.

I would like to challenge a few myths that have existed for some time regarding commissaries. First, some would say that the com-

missary is too costly and cannot be supported with a declining defense budget. In fact, every study we've ever conducted indicates that it would cost the taxpayer more to increase pay and send the troops downtown than it does to underwrite the stores.

Second, DeCA is suggested of having an unfair advantage which adversely affects the private sector. In fact, DeCA's total worldwide sales represent less than 2 percent of the total grocery sales in the United States to date.

Third, many say that the private sector would be more efficient than DeCA. In fact, DeCA has exceeded all expectations. Before DeCA was created, the congressionally sponsored Jones Commission anticipated a $90-million reduction in operating costs over the first 4 years as a result of merging the four separate commissary systems of the armed services into a single defense agency. In fact, DeCA has actually saved $478 million in our first 6 years.

Finally, some would claim that a supermarket chain could operate DeCA's commissaries cheaper. In fact, somebody is going to have to fund the supermarket's cost of operation, its profits, as well as the Government's cost of contracting for such services. Without a substantial subsidy, a supermarket chain would close at least 177 of the 308 stores as not being profitable enough to operate, thereby denying the compensation the commissary provides to a large segment of America's fighting force. While there may be a more cost-effective way to compensate the troops than providing groceries at cost, it's not yet been found.

Change is not a new concept for DeCA. In fact, we've almost been in a constant state of change in order to generate the savings I mentioned earlier since the four separate systems were merged in 1991. DeCA is ready to accept the new challenges and opportunities offered by the concept or performance-based organizations to make the commissary work better for service members while costing the taxpayer less.

Mr. Chairman, I'll be happy to answer any questions you may have.

Mr. HORN. We thank you very much.

[The prepared statement of General Beale follows:]

Mr. Chairman and Members of the Committee, it is my pleasure to appear before you in my capacity as Director for Transition of the Defense Commissary Agency (DeCA).

As you know, DeCA was nominated as the Department of Defense candidate to be a Performance Based Organization (PBO). We were anxious to accept that mantle and pleased with the level of confidence the Department showed in DeCA in making that nomination. We were even more pleased when the Vice President formally designated DeCA as the Government's first transitional PBO on October 1, 1996. I appear before you today, confident that DeCA will succeed in this new role, thus safeguarding the commissary's important contribution to the total compensation package for the soldiers, sailors, airmen and Marines.

As a PBO, DeCA will be a discrete activity of the Department of Defense that commits to clear management objectives, measurable goals, customer service standards, and specific targets for improved performance. DeCA does not seek Government Corporation status. DeCA will remain under the policy guidance and direction of the Secretary of Defense. It will still be subject to government-wide regulations, rules, policies, and procedures, unless specific waivers are granted. With greater managerial flexibilities in personnel and procurement, DeCA will be able to improve organizational performance. As the PBO name implies, DeCA's agreement with the Secretary makes it accountable for meeting its performance goals. Finally, DeCA will be submitting an annual report to the Secretary and the Congress, which will include, at a minimum, an assessment of the organization's progress in achieving its goals, the results of an independent financial audit, compliance with various statutory reporting requirements, as well as other information on DeCA's operations and recommendations for further enhancements which may be required as we move down the PBO

path. What it takes is everyone's willingness to break out of the "Government as is" mold.

Becoming a full-fledged PBO will be a detailed and involved process, but we are on our way! I view our PBO process in essentially four steps. The first was to obtain relief from regulatory requirements that hamper DeCA's ability to adopt the best commercial practices. Second, was to identify required changes in the law and draft our legislative proposal, which if enacted by this body will make DeCA a full-fledged PBO. Third, is a complete review of our business practices. The fourth stage will be the implementation of the changes to current law and the findings in our business review.

Where are we at present? We've received some waivers, but are constantly looking for new opportunities to enhance DeCA's performance. Our legislative package has been submitted for your consideration. Our review of business processes to determine how we can improve and streamline each process is underway. The intent of this review is to move us from operating within the traditional government framework toward a more flexible business framework.

We are already beginning to receive benefits from the administrative waivers designed to further streamline our acquisition program. The Agency has been provided more flexibility by the Office of Secretary of Defense to deviate from acquisition regulatory requirements not dictated by statute which will result in both manpower and dollar savings. This gives DeCA authority to waive acquisition rules such as the limitations imposed on the term of basic ordering agreements DeCA uses to procure resale items. We also expect to generate additional savings as well as reduce the acquisition time line based upon our recent implementation of a waiver from the requirement to purchase commissary specific equipment through the Defense Logistics Agency.

Another waiver received exempts DeCA Information Technology procurements from the Department's Major Automation Information Systems Review Council (MAISRC) review process.

We have also capitalized on existing authority to enhance the commissary benefit. Three of these efforts are notable. The first is our adoption of the commercial grocery industry practice of entering into business agreements with manufacturers. Never before have sales been so important to the commissary. Most manufacturers budget funds to grow their market share. By focusing on sales, DeCA provides manufacturers the ability to grow their business. The manufacturers in turn, use these market development funds to provide a bonus if specific product sales performance goals are met. Industry partners have already begun to negotiate these agreements because they realize the potential for increased sales and market growth.

The second is the partnership we are forming with commercial banks to provide full banking service to DeCA's patrons inside our commissaries. We recently entered into arrangements with Nations Bank and the Fort Hood National Bank to open what are commonly referred to as "supermarket banks" at Charleston Air Force Base, South Carolina, Fort Hood, Texas and Bolling Air Force Base in the District of Columbia. I am proud to announce that our first bank opened at Charleston on the first of this month. In-store banks will not only benefit DeCA's patrons, but promise to reduce DeCA's costs for financial management.

Working with the Office of Personnel Management, the third effort uses the latest technology to create a "paperless" process to recruit and hire cashiers. This process has reduced our fill time from approximately 120 days to 8. I believe these three examples sum up the very essence of PBO--Operating Government like a business where it makes sense, will work better,

and cost less. How successful PBOs will be is directly proportional to how willing we are to loosen the reins of traditional Government control and slay those "sacred cows."

Further flexibilities we would look to the Congress for include the personnel and acquisition areas of DeCA's operations. The personnel flexibilities will operate as if they were demonstration projects under the authority already granted to the Office of Personnel Management.

We are hopeful that any legislation enacted would grant relief from personnel ceilings and authorize flexibility in performance management, classification and pay, and staffing. Personnel flexibilities would establish a performance management system which maintains individual accountability by establishing retention standards for employees that are expressed in terms of individual performance. They would also strengthen the Agency's effectiveness by establishing goals and objectives for individual, group, and/or organizational performance. We expect to achieve additional personnel efficiency by establishing such relatively complex systems as broad pay banding which would encompass employees from two or three current pay grades, to simpler approaches such as exempting the Agency from the 120-day limit on detailing employees to other jobs, giving us the flexibility required as we realign our work force and re-engineer our work processes.

Further flexibility would be granted in the acquisition area by expanding upon the provisions of the Federal Acquisition Streamlining and Clinger-Cohen Acts. A significant enhancement in our legislative proposal would provide the ability to collect overpayments, earned discounts, or other obligations, while paying for the service by using a portion of the funds collected by the contractor. Using this "contingent fee" approach is a significant deviation from the Government standard of paying for a service

whether or not the Government gets anything. Adopting standard business practices like these makes good business sense for DeCA.

I believe that becoming a Performance Based Organization will provide further opportunities for reducing the commissary system's dependence on appropriated funds. I believe becoming a Performance Based Organization will enhance DeCA to maintain a high level of customer satisfaction. I believe becoming a Performance Based Organization will afford DeCA greater operational flexibility and increased opportunities for cost efficiencies while holding the Agency accountable for its performance. I am convinced that becoming a full PBO is the best way to maximize the commissary benefit for the soldiers, sailors, airmen and Marines who so justly deserve it. In conclusion, PBO for DeCA makes good business sense!

I will be happy to answer any questions you may have.

Mr. HORN. We're going to have all the four witnesses, and then we'll throw it open to questions.

Edward Kazenske. Is it pronounced Kazenske?

Mr. KAZENSKE. Kazenske, Mr. Chairman.

Mr. HORN. Kazenske. Deputy Assistant Commissioner for Patents, Patent and Trademark Office, part of the Department of Commerce. Mr. Kazenske.

Mr. KAZENSKE. Thank you, Mr. Chairman. It's a pleasure to be here today to discuss with you the performance-based organization concept, and particularly how it relates to the U.S. Patent and Trademark Office. With the permission of the chairman, I will submit my full statement in the record.

Mr. HORN. Automatically all statements go in once you're introduced.

Mr. KAZENSKE. Thank you, Mr. Chairman.

As you heard earlier by Mr. Koskinen, he pointed out some of the unique characteristics of a performance-based organization: One, where policy and regulation would be separated from servicing and programming; two, where that organization will be led by a chief operation officer; and three, where that organization has specific goals for measuring productivity and customer satisfaction. I would like to spend a few minutes on how the PTO is unique in fulfilling those goals that were set by the Vice President, and one of the reasons why the PTO was one of the first choices for a PBO in a series of choices by the Vice President.

The Office today is led by an individual who is an Assistant Secretary of Commerce and a Commissioner, wearing dual hats. In one of those roles, he is exercising authority on the policy side. And all of us are well aware of many of the intellectual property issues that are now being addressed around the world in multiple forums. And as another part of that role, he is operating a business. This is a business that today has a budget of approximately—we collect fees of about $750 million. We issue over 105,000 patents every year and 90,000 trademarks. To just give you an example, in any single day, the PTO receives 57,000 pieces of mail.

With that as a background, in 1982, the Office was substantially paid for by taxpayer and appropriated funds. Less than 20 percent of our operating expenses at that time were from user fees. And in 1982, a significant change happened through legislation with this Congress in changing our fee structure. There was a dramatic fee increase to our customers at that point, which made the organization move toward a totally fee-funded agency. In the early 1990's, with the Omnibus Budget Reconciliation Act, we became 100 percent fee-funded as an organization—under that act. And today, we are projecting that we will receive over 500,000 patent and trademark applications next year.

Understanding that, structure has a lot to do with how we would fulfill that role in operating as a PBO. One, by ensuring that those day-to-day operations are under the coordination of a chief executive officer, with the magnitude of the business that the office is doing and two, under that concept, there would be an Under Secretary of Commerce for Intellectual Property whose duties would be specific to the policymakers dealing with intellectual property, particularly as it applies to the administration and the significant

goals of Congress and the administration on intellectual property issues.

In May, the House passed H.R. 400. Title 1 of that bill made the PTO a wholly owned Government corporation subject to the policy direction of the Secretary of Commerce. In that bill there was a director to run the operations of the Patent and Trademark Office, and Under Secretary of Commerce for Intellectual Property for policy matters.

That bill, H.R. 400, reflects very closely the administration's position in a PBO concept and how a PBO would operate. There are, however, what the administration believes, improvements that could be made to that bill. Particularly, the authority of granting patents and registering trademarks should be retained by the Under Secretary since it's a sovereign function of the Federal Government.

On the Senate side, we have a bill S. 507. It has cleared the Senate Judiciary Committee. It has significant differences between the administration's view on a PBO, however many of those differences are being addressed before that bill would come to the Senate floor. For one thing, the head of the wholly owned Government corporation in the Senate version would retain both responsibilities of operations and policy without separating those functions. The Under Secretary portion would be removed and the organization would only have direct policy oversight from the Department of Commerce.

I would say that the administration is working closely with the Senate side at this time. We believe that the administration advocates an organization that would retain the flexibilities of title 5 with certain flexibilities on classification, job evaluations, awards, and staffing goals. We believe that these flexibilities would be sufficient to address the PTO as an effective performance-based organization.

In summary, Mr. Chairman, the merger of the administration's position with that contained in H.R. 400 and S. 507 in the manner we've recommended and you've heard earlier from Mr. Koskinen will create an effective, cost-efficient, and high-quality patent and trademark system, while at the same time ensuring that intellectual property is considered at the highest levels of policy.

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

Mr. HORN. Well, thank you very much. It's very helpful.

[The prepared statement of Mr. Kazenske follows:]

STATEMENT OF

EDWARD R. KAZENSKE
DEPUTY ASSISTANT COMMISSIONER FOR PATENTS

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

July 8, 1997

Mr. Chairman and members of the Committee:

Thank you for providing me with the opportunity today to discuss with you the concept of performance based organizations and, in particular, how that concept applies to plans for conversion of the United States Patent and Trademark Office.

The Performance Based Organization (PBO) Concept

In 1995, Vice President Gore, as part of the Administration's efforts to reinvent the Federal Government, introduced the concept of the Performance Based Organization to the American public. The Performance Based Organization, or PBO, has the following characteristics:

- Separation of policy-making and regulatory functions from service delivery or program functions. The PBO focuses on programmatic operations.
- Performance contracts, established between the PBO chief operating officer and the Secretary of the larger organization in which the PBO resides, which is used to determine performance bonuses for the chief operating officer and may also be used as a basis for termination. The PBO chief operating officer is hired on a competitive basis and serves a five-year fixed term.
- Clear goals for measuring progress, productivity and customer satisfaction.
- Flexibilities in connection with personnel management and procurement.

The concept of performance-based organizations in the Federal government is based on similar initiatives undertaken in other countries, most notably the United Kingdom. The British have found that such specially designated organizations result in improved performance and reduction in administrative costs.

The PTO as a Performance-Based Organization: Why?

On September 14, 1995, Vice President Gore announced that the PTO would be among the first of a series of agencies to be transformed into a performance-driven, customer-oriented organization. Why was the PTO selected as one of the first PBOs? The answer lies in PTO historical practices and activities, and its vision for the 21st century.

In the late 1970s, the PTO was, quite frankly, in trouble. The amount of time taken to examine a patent or a trademark was on the rise. The quality of PTO products and services, most notably its patents, was declining. One news article called the PTO a "national disgrace."

A turn-around came in 1982 with the enactment of legislation which dramatically increased PTO fees, gave the PTO access to fees from incoming work and outgoing products and services, and paved the way for eventual financial self-sufficiency. More important to the PTO than financial solvency were the conditions for the increase in revenues. In return for higher fees from customers, the PTO would have to provide better service and products. As a result of this compact with the customer, four performance goals were established which have guided the PTO throughout the 1980s and early 1990s:

- to reduce the time required to examine and issue a patent to 18 months (achieved in 1989);
- to reduce the time required to issue a trademark first action notice to three months and to register a trademark by 13 months (achieved in 1985);
- to automate the operations of the PTO by the 1990s (on-going); and
- to strengthen the world-wide protection of intellectual property (on-going).

In order to measure achievement of these goals, the PTO set in place a system of performance measurement, principally output-oriented, that eventually grew to over 250 measures.

From 1982 through 1988, the PTO witnessed dramatic growths in its workload, in the number of employees, principally patent examiners and trademark attorneys needed to examine applications, and in revenues that depended not only on incoming work but increasingly depended on outputs. Today the PTO is totally funded by fees. Our 1998 budget projects nearly $750 million in earned revenue with the very real possibility of $1 billion of revenue in the first years of the 21st century. We also expect to receive over 550,000 patent and trademark applications in 1998. The PTO has become a significant Federal operation.

The dramatic growth in workload, in revenue, and in employment has spurred the PTO to look to the future. The PTO established for itself a 21st century vision of a world-class organization that would lead us to challenge and refine the practices, policies, and procedures that worked so well in the 1980's and early 1990s. We are changing and will continue to change in the future:

- Our resource management vision encompasses delegated responsibility, empowerment and accountability; is reliant upon automated systems for management information; and promotes business-like operations and mentality;

- Our planning tradition rests on the 1979 zero-based analysis and on the 1982 Automation Master Plan, and is now concentrated on strategic and operational planning.

- We have an historic bias towards performance measures: our budget requests have long been based on output and timeliness while our employee performance awards are based upon production.

- We supported and embraced the Government Performance and Results Act having been designated as a GPRA pilot in 1994, 1995, and 1996, and having sought GPRA management waivers in 1995.

- A PTO unit was designated as a Total Quality Management (TQM) model.

- A Trademark work-at-home pilot is currently underway and operates as a National Performance Review Reinvention Lab.

- Business Process Reengineering concepts and practices were adopted for our patent, trademark, human resources, planning, budget and evaluation, and procurement functions.

- We have implemented unique human resource management innovations including leadership competencies for senior staff; PTO University to prepare our technical and administrative employees for the PTO of the future; an award-winning strategic diversity plan; cooperative agreements with the Hispanic Association of Colleges and Universities and with the Lakota Nation; and functioning partnership councils with representatives of our three unions.

- The PTO has also expanded and formalized its relationships with its very important customers through customer focus sessions, annual surveys, public hearings, and the setting of customer service standards.

All of these activities and achievements made the PTO a perfect choice for a PBO.

S. 507, H.R. 400 and the Administration's Concept of Performance Based Organizations*

As you heard from Mr. Koskinen earlier, the structure for performance-based organizations envisioned by the Administration would ensure that the day-to-day functions of such

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*These comments relating to S. 507 and H.R. 400 are addressed solely to Title I of those two bills; the Administration continues to seek changes to other titles, which are unrelated to the organizational structure of the Patent and Trademark Office.

organizations are under the direction of an individual with proven business management experience. That person would serve for a fixed term of five years with the possibility of renewal. Applying this concept to the United States Patent and Trademark Organization (USPTO) would ensure that the USPTO has the stability and qualified leadership needed in today's world to perform its functions -- examination of patent and trademark applications and dissemination of information in the most efficient and cost effective way. The Chief Operating Officer (COO) of the USPTO would be held accountable for the performance of the Organization by the Secretary of Commerce, who would appoint the COO. The COO would enter into an annual performance agreement with the Secretary that would include agreed upon, measurable performance goals. The Secretary would use those goals to evaluate the COO's performance and, based on that evaluation, would decide whether to award a performance bonus and how much the bonus should be. To ensure that the COO would have the flexibilities necessary to meet the agreed upon performance goals, the Administration's concept of performance based organizations provides for flexibilities in connection with personnel administration and with procurement. These flexibilities would allow practices that differ from those of the Government as a whole, while still providing an overall framework that ensures the integrity of the process and the accountability of the organization.

Under the Administration's concept of performance based organizations, intellectual property policy matters would be dealt with by an Under Secretary of Commerce, appointed by the President, with the advice and consent of the Senate. Having a Presidentially appointed policy official responsible for intellectual property policy will ensure that the overall plans and

programs of the Administration are taken into account when policy questions are being considered and, at the same time, that intellectual property is considered at the highest levels of government when plans and programs in other areas are being developed.

The United States Patent and Trademark Organization (the Organization) that would be created by S. 507 would differ from the Administration's vision in several important ways. The Administration is continuing to work with the Senate Judiciary Committee in an effort to resolve some of these differences before the bill is considered on the Senate floor.

S. 507 would create the Organization as a wholly owned government corporation (*in* accordance with 31 U. S.C. § 9101 et seq.) separate from the Department of Commerce, but subject to the policy direction of the Secretary of Commerce. Under the bill, the Director of the Organization, who would be appointed by the President, would be responsible both for the daily operations of the Organization and for advising the President, through and under the policy direction of the Secretary of Commerce, on activities of the Organization and on changes in domestic law and policy related to patents and trademarks. The Director would appoint a Commissioner of Patents and a Commissioner of Trademarks who would head separate administrative units of the Organization, the United States Patent Office and the United States Trademark Office respectively.

The Administration is concerned that the structure that would be created by S. 507 would inhibit seriously the ability of the Secretary of Commerce to provide the required policy guidance on

intellectual property issues to the Director because the bill would remove from the Department the very officer who would be needed to oversee the formulation and development of intellectual property policy. At the same time, S. 507 would place on the Director both the time-consuming burden of day-to-day administrative oversight of the operations and responsibility for formulating policy involving patents and trademarks writ large, including advising the President on such matters, proposing changes in legislation, and representing the United States in international fora.

For over a decade, in a wide range of international intellectual property issues, the individual holding the position of Assistant Secretary of Commerce and Commissioner of Patents and Trademarks (the Commissioner) has led negotiations or has provided support to other agencies, such as the U.S. Trade Representative and the Secretary of State, in such negotiations. Giving responsibility for these matters to a Director who has no clearly defined role in the Cabinet structure would limit that official's effectiveness.

For these reasons, we believe that S. 507 would be strengthened if it were amended to include creation of an Under Secretary of Commerce for Intellectual Property Policy who would be responsible for granting patents and registering trademarks, advising the President on patent, trademark and related policy matters, and participating in or leading delegations in international negotiations involving intellectual property . Such a position would raise the stature of the official who would often be heading U.S. delegations in international negotiations on patent, trademark and related matters over that which exists today.

S. 507 also would create two separate administrative units within the Organization, the United States Patent Office and the United States Trademark Office, each headed by a Commissioner. We believe that, in addition to appointing the Director of the Organization, the Secretary of Commerce should be made responsible for appointing the Commissioners, to avoid any questions whether the two commissioners would be properly appointed pursuant to the requirements of Article II, Section 2, Clause 2 of the Constitution.

We know that some have criticized by asserting that the USPTO must labor under constraints imposed by the Department of Commerce in connection with personnel, procurement and other miscellaneous matters. The Administration, however, enthusiastically advocates allowing the business operations of the Organization to proceed with significant new flexibilities in the areas of greatest concern to the private sector -- personnel and procurement. Where personnel is concerned, the Administration's concept would provide security for employees under title 5's provisions, while allowing considerable flexibility in connection with classification, pay, job evaluation and awards, and staffing when the Organization has a written agreement with the unions representing the employees who will be affected. Where procurement is concerned, the concept would continue the application of Federal procurement laws and regulations to the procurement of property and services but would provide shorter time periods and simplified procurement procedures in particular circumstances. We believe that these flexibilities in connection with personnel and procurement should be substituted for the procurement and personnel provisions of S. 507.

Title 1 of H.R. 400, which passed the House in May of this year, also would convert the U.S. Patent and Trademark Office (USPTO) into a wholly owned government corporation in accordance with the Government Corporation Control Act, subject to the policy direction of the Secretary of Commerce, but separate from the Department's administrative control. The Office would be headed by a Director who would be appointed by the Secretary of Commerce. The bill also provides for an Under Secretary of Commerce for Intellectual Property Policy, appointed by the President with the advice and consent of the Senate, who would, among other things, advise the President on patent and trademark and related matters, works with other government agencies on issues involving patent and trademark and related matters, and participate in or head U.S. delegations in international negotiations involving patent and trademark and related matters.

H.R. 400 reflects the Administration's vision in many areas but we believe improvements are needed in two. First, we believe that the authority of the Under Secretary should include the granting of patents and the registration of trademarks since these are sovereign functions. In addition, we are concerned that the bill does not provide the necessary flexibilities in connection with personnel matters and procurement to allow the Director of the Office to meet the goals that would be established with the Secretary and by which the Director's annual performance would be measured.

We believe that the merger of the Administration's vision with those contained in H.R. 400 and S. 507 in the manner we have recommended will create an efficient, cost-effective, and high quality patent and trademark examination system, while, at the same time, ensuring that intellectual

property is considered at the highest levels in policy planning in this and future Administrations and that the influence and stature of officials representing the United States in bilateral and multilateral international activities and negotiations related to intellectual property are the highest possible.

Mr. HORN. Our next witness is David Sanders, Deputy Administrator, St. Lawrence Seaway Development Corporation.

Mr. Sanders.

Mr. SANDERS. Good afternoon Mr. Chairman, Mr. Davis. As the other panelists, I would like to submit my testimony for the record and summarize for you.

Mr. HORN. Could you get the microphone a little closer?

Mr. SANDERS. Yes, sir.

Mr. HORN. It's hard to hear.

Mr. SANDERS. The St. Lawrence Seaway Development Corporation is a wholly owned United States Government corporation created by Congress on May 13, 1954, through Public Law 358, working cooperatively with the St. Lawrence Seaway Authority of Canada. The Corporation is dedicated to offering and managing a safe, reliable and efficient deep-draft shipping route between the Great Lakes and the Atlantic Ocean.

We operate and maintain two locks on the St. Lawrence River in Massena, NY. The Corporation is also responsible for regulating U.S. Great Lakes pilotage within the U.S. territorial waters of the St. Lawrence River and the Great Lakes pursuant to the provisions of the Great Lakes Pilotage Act of 1960.

The agency is also responsible for the international promotion of trade and traffic through the Seaway. The SLSDC, jointly with its Canadian counterpart, promulgates and enforces regulations related to navigation in the St. Lawrence Seaway system.

The Corporation employs 156 people, of which almost 90 percent are located in Massena, NY, at the Massena, NY operation center. The Corporation appropriation in fiscal year 1997 was enacted at a level of $10.3 million. Since April 1, 1987, pursuant to the provisions of the Water Resources Development Act of 1986, the Corporation no longer receives tolls from commercial vessels as its Canadian counterpart does. However, our funding for operations and maintenance is still user-fee-based.

The Corporation's annual appropriation is derived from the Harbor Maintenance Trust Fund, which is made up of user fees paid by importers and exporters of international cargo, domestic cargo movement, and passenger vessels calling at designated ports throughout the United States. The Corporation also generates income from other sources, such as interest on its emergency cash reserves, entrance fees to its visitor's center, and tolls on recreational boaters. In fiscal year 1996, the Corporation derived from these other revenue sources a total of $1.2 million.

On March 4, 1996, as part of its proposal to reinvent Government, the administration announced an initiative to restructure Federal agencies as PBO's. Initially eight candidates were identified. The SLSDC was one of these eight.

As was said earlier, the Corporation already has a corporate structure and possesses numerous independent businesslike legal authorities. We are a separate legal entity. We may adopt, amend, and repeal bylaws, rules, and regulations. We may sue and be sued in our corporate name, acquire, sell, and lease property. We may determine the character and necessity for expenditures. The agency has a focused mission that is primarily operational in nature: To

provide for the efficient transportation of vessels through the system and the long-term preservation of the infrastructure assets.

These attributes satisfy the stated prerequisites for becoming a PBO candidate, which state that an agency should have a clear mission, measurable services, and a performance measurement system in place or in development; a focus on external, not internal customers; and have a clear line of accountability to an agency head who has policy accountability for its functions; top level support to transfer a function into a PBO; and have predictable sources of funding.

Immediately after the March 4 announcement, the Corporation staff began to work with, as Mr. Koskinen said, the NPR PBO advisory group; the SLSDC conversion team, which included people from the National Performance Review, the Office of Management and Budget, the Department of Transportation, and SLSDC staff. By the end of April 1996, the SLSDC conversion team had prepared the first draft proposal to transfer the agency to a PBO.

The Corporation's employees, I would stress both union and nonunion, have been active partners in development of the SLSDC's PBO plan, and that process is ongoing. For the past 16 months, SLSDC management has consulted with and sought the input of our union, the American Federation of Government Employees 1968, on each proposal. Previous Administrator Gail McDonald met numerous times with our employees on this subject, and I also have made myself available to meet with every employee in our Massena and Washington office to discuss the PBO proposal. One of the advantages of being a small agency is you actually have the ability to talk to every single employee, and we've made ourselves available to do that both in person and in writing to discuss the PBO proposal.

That work, however, Mr. Chairman, I'll remind you, is not done yet, as you'll probably hear from our next witness, but I would say this, that Mr. Mihm was correct in describing a couple of the key reasons for why the SLSDC wants to become a PBO. And I will say in all candor that at the beginning of the process, the SLSDC was not sure we wanted to become a PBO. We approached this process with, I think, a very healthy degree of skepticism and concern about the agency's future through the development of this proposal, and we have come to embrace it, at least from the management side, and I think from the majority of our employees for the following reasons: One, it provides us with a predictable and stable source of funding. Under our PBO proposal, the agency's funding would for the first time be directly tied to the amount of national benefit that accrues from Seaway commerce. Seaway funding would be tied to a 5-year rolling average of U.S. international tonnage on the lakes.

We think this makes sense from a policy standpoint in that, since the United States has decided to invest in this activity, running a deep-draft waterway from the Great Lakes to the Atlantic Ocean, that the more commerce, the more economic activity that flows from that activity, the more the United States should consider investing in that activity. And similarly, should that level of activity decrease, perhaps a need for the United States to continue investing in that might decrease at some point. But very frankly,

we don't foresee that because we've seen the level of international trade on our waterway growing, and we could see that trend continuing into the foreseeable future.

Second, Mr. Mihm was correct in describing the management incentive provisions as being key to what we think makes the Seaway Corporation's PBO proposal work. To incentivize managers and to focus them on the agency's key missions, which are safety, long- and short-term reliability or maintenance of the system, trade development and fiscal and management accountability. We think these are the key goals necessary to get top performance out of top managers. And we also believe that this philosophy, if you will, this mission orientation in senior management, will filter out throughout the Corporation, as Mr. Jasper said in his remarks.

The other flexibilities, if you will, or ancillary benefits, which may accrue to the Corporation and its managers as a result of becoming a PBO, is the statement about freedom from DOT requirements, the personnel, and procurement flexibilities, I think have correctly been pointed out by other witnesses on other panels as not having a great impact on the Seaway Corporation. Our procurement needs tend to be very small. We really never sought and still don't see any great need for broad-scale personnel revisions in any way. And third, we think that the interlinking of the model agencies, the intermodel nature of transportation in the 21st century, is something that necessarily ties us to the rest of the Transportation Department.

I would be happy to answer your questions.

Mr. HORN. Thank you very much.

[NOTE.—The GAO report entitled, "Performance Based Organizations," GAO/GGD–91–74, can be found in subcommittee files or obtained by calling (202) 512–6000.]

[The prepared statement of Mr. Sanders follows:]

WRITTEN TESTIMONY OF
THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
DEPUTY ADMINISTRATOR DAVID G. SANDERS
BEFORE THE HOUSE COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT -- SUBCOMMITTEE ON GOVERNMENT
MANAGEMENT, INFORMATION AND TECHNOLOGY

July 8, 1997

Introduction

Chairman Horn, Ranking Member Maloney, thank you for the opportunity to appear before you today to discuss the proposal to convert the Saint Lawrence Seaway Development Corporation (Corporation or SLSDC) into a Performance Based Organization (PBO) The Corporation has been actively involved in all aspects of the PBO initiative since it was first announced as a PBO candidate on March 4, 1996. Over the past 16 months, the Corporation has worked closely with its employees and with officials from the National Performance Review (NPR), the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), the Department of Transportation (DOT), and the Department of the Treasury to craft a proposal for the SLSDC that will achieve the goals of more responsive and less costly government. It is a proposal that places more emphasis on results and accountability than is normally the case for a government agency.

The PBO initiative offers the Corporation and its employees a rare opportunity to transform the way that government operates. It provides a radically new approach to using incentives to promote agency and individual performance, and it would sharpen the Corporation's focus on providing exceptional customer service. Funding of the agency as a PBO would be linked to performance and would thus provide a powerful incentive to all employees, not just senior managers, to be productive and creative. We at the SLSDC are excited about this proposal

because for the first time in our agency's history, it gives every employee a direct stake in the agency's future.

Overview of the SLSDC

The SLSDC is a wholly owned U.S. government corporation created by Congress on May 13, 1954 (Public Law 358). Working cooperatively with The St. Lawrence Seaway Authority of Canada, the Corporation is dedicated to operating and managing a safe, reliable, and efficient deep-draft shipping route between the Great Lakes and the Atlantic Ocean. We operate and maintain two locks on the St. Lawrence River in Massena, New York. The Corporation is also responsible for regulating U.S. pilotage within the U.S. territorial waters of the St. Lawrence River and the Great Lakes pursuant to the provisions of the Great Lakes Pilotage Act of 1960. The agency is also responsible for the international promotion of trade and traffic through the Seaway. The SLSDC, jointly with its Canadian counterpart, promulgates and enforces regulations related to navigation in the St. Lawrence Seaway System. Its operations units are responsible for a broad range of related activities, ranging from emergency oil spill response to providing assistance to federal, state, and local law enforcement agencies.

The Corporation employs 156 people, of which almost 90 percent are located in Massena. The Corporation's appropriation in FY 1997 was enacted at a level of $10.3 million. Since April 1, 1987, pursuant to the provisions of the Water Resources Development Act of 1986, the Corporation no longer receives tolls from commercial vessels. However, its funding for operations and maintenance is still user-fee based; the Corporation's annual appropriation is derived from the Harbor Maintenance Trust Fund (HMTF), which is made up of user fees paid by importers and exporters of international cargo, domestic cargo movement, and passenger vessels

calling at designated ports throughout the United States. The Corporation also generates income from other sources such as interest on its emergency cash reserves, entrance fees to its visitor's center, and tolls on recreational boaters. In FY 1996, the revenues derived from these other sources totaled $1.2 million.

Development of SLSDC's PBO Legislation

On March 4, 1996, as part of its proposal to reinvent government, the Administration announced an initiative to restructure federal agencies as PBOs. Initially, eight candidates were identified. The SLSDC was one of the eight agencies chosen and was a logical choice to become a PBO. It already has a Corporate structure and possesses numerous independent, businesslike legal authorities: it is a separate legal entity; it may adopt, amend, and repeal bylaws, rules and regulations; it may sue and be sued in its corporate name; it may acquire, sell, and lease property; it may determine the character and necessity for expenditures; it is subject to independent financial audits; and it is required to present business-type budgets. The agency has a focused mission that is primarily operational in nature: to provide for the efficient transportation of vessels through the system and the long-term preservation of the infrastructure assets. Moreover, the SLSDC has a proven track record of performance.

These attributes satisfy the stated prerequisites for becoming a PBO candidate, which state that a candidate agency should: have a clear mission, measurable services, and a performance measurement system in place or in development; generally focus on external, not internal, customers; have a clear line of accountability to an agency head who has policy accountability for the functions; have top level support to transfer a function into a PBO; and have predictable sources of funding.

Immediately following the March 4 announcement, Corporation staff began work with three groups: the NPR PBO Advisory Group; the SLSDC Conversion Team, which included NPR, OMB, DOT, and SLSDC staff; and an internal Corporation work group led by the SLSDC Administrator. In coordination with these groups the SLSDC developed options and recommendations for proposed management, organizational structure, performance indicators, administrative waivers, and a financial plan. This phase of the process required significant communication and negotiation among the involved agencies and individuals within the Administration. By the end of April 1996, the SLSDC Conversion Team had prepared the first draft of a proposal to transform the agency into a PBO.

The Corporation's employees, both union and non-union, have been active partners in the development of the SLSDC's PBO plan. For the past 16 months, SLSDC management has consulted with and sought the input of the union (American Federation of Government Employees Local 1968) on each proposal. Past Administrator Gail C. McDonald met numerous times with our employees on this subject. I have also traveled to Massena to meet with employees on the PBO proposal. The response from SLSDC employees to the plan has been generally supportive.

OMB approved the draft SLSDC PBO plan on June 3, 1996. Legislation was then drafted that adapted the SLSDC's existing statute (found at 33 U.S.C. 981, et seq.) by modifying existing provisions (such as the selection of the Administrator and financing) and by adding provisions provided by NPR, OPM, and the General Services Administration (GSA). This draft legislation was submitted to Congress on July 16, 1996. On July 31, 1996, the Senate passed the DOT appropriations for FY 1997, which included a sense of the Senate amendment to consider legislation to establish SLSDC as a PBO beginning in FY 1998. The Conference Committee

deferred consideration of the SLSDC PBO proposal, however, and directed the GAO to conduct a review of the PBO concept, with special emphasis on the SLSDC.

The SLSDC PBO bill submitted to Congress this year is substantively similar to the one submitted last year. The title of Chief Executive Officer was changed to Chief Operating Officer (COO). The sections of the bill were organized differently to conform with an NPR directive that all PBO bills follow a standard format, and, where possible, include template language provided by NPR, OPM, and GSA. It is our understanding that these changes were developed in consultation with national federal employee union representatives. In agreement with the Office of Management and Budget, SLSDC implemented a change to the application of the Consumer Price Index element of the PBO financial plan to calculate more accurately year-to-year inflation.

This year's revised PBO legislation was resubmitted to Congress on May 5, 1997. Since early May, Department and SLSDC officials have met with members of Congress and their staffs from the relevant House and Senate Committees to explain and discuss the SLSDC PBO proposal. We have also met with individual members and staff who have a specific interest in this initiative, particularly members from the Great Lakes states.

Description of Provisions in SLSDC PBO Bill

Under the proposed bill, the SLSDC would maintain its tie to the Department for policy oversight, but to accomplish its goals and objectives, it would operate within a framework that provides independence from a variety of Departmental constraints. To operate in a more effective, businesslike manner, it would be financed in a way that relieves it from dependency on annual appropriations. It would also be relieved from contributing to certain expenses shared by operating administrations within the Department.

The SLSDC would be headed by a COO, who would be appointed by the Secretary of Transportation, after a competitive selection process, to serve a five-year, renewable term. The COO would possess all the authority currently residing in the position of Administrator, but with the change in the selection process, the addition of financial incentives, and the penalty of termination, the position's effectiveness will be increased. These new measures will attract additional qualified candidates; they will reduce the learning curve needed to manage the agency effectively; and they will place emphasis on management of the assets. The COO will enter into a five-year performance contract with the Secretary that is subject to annual review. It is anticipated that senior managers will enter into performance contracts with the COO, and that all employees will have the option to enter into performance contracts, but they will not be required to do so.

The performance contract will set out measurable targets in four performance areas. Progress made in achieving these goals will be reviewed annually by the Secretary and an annual management report will be submitted to Congress. The four performance areas are: 1) Safety; 2) Long- and Short-Term Reliability; 3) Trade Development; and 4) Management Accountability, including customer service and fiscal performance. Safety measures will apply to vessel and workplace safety, the first priorities of the SLSDC, as well as to environmental protection. Reliability will be measured by ensuring that navigation delays to ships going through the Seaway are minimized and by maintaining the long-term reliability of U.S. navigation facilities. To achieve trade development goals, the SLSDC will work to increase the international tonnage through the Seaway, and to encourage greater System utilization, which benefits the national economy and increases System competitiveness. Under Management Accountability, the SLSDC must provide direct mechanisms to ensure that customers will have a voice in evaluating its performance and

contributing to business decisions. The SLSDC will ensure that the capital reserves are adequate to keep U.S. Seaway navigation facilities in good working condition. Human resources must be managed in a way that promotes the health and productivity of the organization.

The COO will be eligible for an incentive bonus and contract renewal based on performance. A bonus, however, is not guaranteed; bonuses are subject to review by the Secretary and OMB. The bonus concept is not meant as a windfall to the COO or senior management, but as a reward for achieving efficiencies and providing improved service. Incentive pay for meeting performance goals will be made available to other Corporation employees in addition to the COO.

The proposed bill would give the SLSDC certain personnel flexibilities not standard in federal personnel law. These would allow it to develop innovative performance and pay systems as they become necessary to accomplish business goals, while having employees continue to receive the same benefits as other federal workers and to have the ability to move between the SLSDC and other government agencies. Similarly, procurement flexibilities are proposed to allow the Corporation to meet its responsibilities more efficiently and expeditiously. Significantly, the legislation requires the Corporation management to negotiate with its union before personnel flexibilities may be implemented. The union must agree to the implementation.

The financing portion of the SLSDC's PBO plan is central to the future success of the SLSDC as a PBO. One of the prerequisites for becoming a PBO is to have a predictable source of funding. This predictability allows a COO to plan strategically over a period of years instead of reacting to events on a month-to-month basis. Strategic planning allows for the most efficient use of resources and provides the means and assurances needed to achieve long-term goals. In exchange for improved performance, PBOs provide increased flexibilities to allow the PBO to

manage to results rather than be process-bound

The financing plan proposed in the bill is the result of intensive discussion among the SLSDC, the Department, and OMB. It provides for a stable funding source, but it does not provide a guaranteed amount of funding. The level of funding is directly linked to performance and to the contribution of the Seaway to the national economy. If the SLSDC fails to meet its performance goals, its level of funding will suffer.

Under the proposal, the SLSDC would be funded, beginning in FY 1998, through an automatic payment (FY 1998 through FY 2002) from the HMTF. We considered establishing a direct user fee (similar to that in effect prior to the HMTF), but we felt that it was important to have a stable funding source that was invisible to the customer. In the event that the challenge to the HMTF is upheld, we would need to develop an alternative funding mechanism. The proposed payment would be a dollar amount equal to the rolling five-year average of U.S. international metric tonnage moved through the Seaway, adjusted by a factor of 1.076, and adjusted for inflation by the percentage difference between the Consumer Price Index for all urban consumers (CPI-U) for the first quarter of calendar year 1996, and the CPI-U for the first quarter of the calendar year in which an annual payment is determined. The Corporation would have flexibility to use the funds and other resources to meet the performance targets specified in the COO's performance contract. Any revenues in excess of the Seaway's annual needs would be held in a Seaway maintenance reserve fund to ensure the timely repair of unanticipated problems that might arise during the operating season.

Congress will have substantial opportunity to shape the direction of the SLSDC as a PBO. Through the enabling legislation, which will require Congressional approval, Congress has the opportunity to implement appropriate mechanisms to the extent it maintains is necessary to

provide complete and effective communication, consultation, and oversight of the organization Due to the small size of its budget, the SLSDC has not had an appropriations hearing before Congress for several years. Yet, the SLSDC has historically worked very closely with Congress, and this relationship will continue. It will be particularly important for the Seaway to work with the Congress to ensure that lessons learned from this PBO initiative are effectively disseminated throughout the government.

Challenges Encountered During the Process

One of the most significant challenges faced during this process was to devise a proposal that incorporated the PBO concepts and apply them to an existing agency and statute -- with no actual U S. model to look to for guidance. The NPR was extremely helpful in providing assistance and direction, but each agency and mission is different. While general template language can be incorporated in some substantive areas, each PBO proposal must ultimately be fashioned to fit the particular mission and goals of the agency in question. The process last year of devising the SLSDC's PBO plan and legislation required extensive interaction among several agencies with numerous individuals involved. The process of reaching consensus was time-consuming. In part, this was due to the unfamiliarity of the PBO concept. As a consequence, the legislation last year was not approved until July and ultimately not submitted to the Congress until mid-July. The lateness of the submission made it extremely difficult to inform members of Congress on the provisions of the bill.

The situation this year was dramatically different. Working with last year's SLSDC PBO bill, the interagency process proceeded smoothly and expeditiously. Moreover, the SLSDC has been able to work with other candidate agencies to inform them of what we have learned from

devising the SLSDC's PBO proposal.

Another challenge early on in this process was the issue of how the SLSDC should be funded, and specifically, whether or not it should be through tolls. It was crucial that we devise a stable financing scheme for the SLSDC without returning the agency to tolls. In 1986, Congress eliminated U.S. tolls for commercial vessels transiting the Seaway, and it has spoken forcefully against the reimposition of tolls many times since then. It was a difficult challenge to develop a plan that was user-fee based, linked to performance, and did not include tolls. It was also difficult to develop a funding mechanism that would remain invisible to the customer. There were those who argued strongly for the reimposition of tolls. In the end, the financing plan that has been devised provides for stable funding and is linked to a user fee, yet avoids the reimposition of tolls.

It was also a challenge to overcome the "If it's not broken, why fix it?" mentality held by some of the participants in the planning process. Yet, as we began to look at opportunities, we began to see how the PBO initiative offered real change. While it is true that we could accomplish some of the goals of the PBO proposal without the proposed statutory changes, such a course would not provide the fundamentally new relationships and thinking that are critical to real success in reinventing government.

Conclusion

The PBO initiative is a bold experiment, and the Saint Lawrence Seaway Development Corporation is excited about being at the forefront of this initiative. This is an experiment that is worth trying. It offers the possibility of a new paradigm where government agencies and employees would be more oriented to results rather than process; where there would be more accountability; where consequences would matter; and where managers, employees, and users

would be motivated to succeed. The SLSDC PBO plan redirects the principal relationship from one between DOT and SLSDC to one between SLSDC and its Users, and it provides the agency with the means to provide the best service at the lowest cost. This is about fundamentally changing the way our government operates.

While no experiment is without risks, this is a measured and considered proposal that promises tremendous benefits to the nation and to the agency and its employees. Significant thought and effort went into the SLSDC PBO proposal. Every precaution has been made to limit the exposure to risk of the SLSDC's employees. The PBO legislation provides more opportunities for SLSDC employee success, recognition, and advancement than have ever existed in the 43-year history of the Corporation. This PBO initiative poses a great challenge to the Corporation. Yet, I am personally confident that this plan will work, because I know first-hand of the talent and dedication of the Seaway's employees. I have seen them accept challenges many times in the past and rise to meet those challenges to achieve a level of success that is rare in any sector--public or private.

Mr. HORN. As I mentioned, Mr. McHugh, one of my fellow subcommittee Chairs, unfortunately cannot be here. He would have liked to introduce both of you gentlemen, and Mr. Bolick in particular, who is from—do you pronounce it Massena, NY?

Mr. BOLICK. Yes, sir.

Mr. HORN. And as president of the Local 1968 of the American Federation of Government Employees. We're glad to have you here. Please proceed summarizing your statement.

Mr. BOLICK. Mr. Chairman and distinguished member, Mr. Davis, I would first like to thank you for the opportunity to speak before you today. My name is Craig Bolick. I'm president of Local 1968, representing the employees of St. Lawrence Seaway Development Corporation in Massena, NY.

Sitting behind me and not testifying today is Gary Harding, national representative of AFGE, the American Federation of Government Employees, representing more than 700,000 Federal workers worldwide.

My comments today will be confined to the detrimental impact that will result should the proposed legislation concerning the St. Lawrence Seaway becoming a PBO be enacted.

In short, we have grave concerns about the PBO concept as it relates to the Seaway. Attached for the record are copies of detailed letters I sent to Congressman John McHugh, our distinguished Representative, outlining the AFGE's concerns about the proposed legislation. Given the limited time available today and the broad mission of this subcommittee, I will not attempt to address every concern, but rather only those that are most significant.

Deputy Administrator David Sanders recently sent a letter to Congressman McHugh discussing the PBO, and also sent a copy of this same letter to all Seaway employees. In that letter, it was alleged that I have never shared my concerns about PBO with him, that most Seaway employees support PBO, and that AFGE national office supports PBO. None of these things are true.

In the meeting of May 1997 at the maintenance building with the maintenance employees that Mr. Sanders recounted in his letter, I conveyed the union's deep concern with the PBO concept. As an elected official of the Seaway employees, I can also convey to you categorically that my employees are not in favor of PBO. Think about it. What employee would support legislation that would reduce their hourly wages from $4 to $6 per hour? Furthermore, I would agree that AFGE nationally does support the use of PBO where it is appropriate. I would strongly disagree with Mr. Sanders' assessment that the national office of AFGE in this case endorses PBO. I should also point out the Seaway has had the authority to enter into a demonstration project for 5 years, from 1990 to 1995. If PBO could be such a positive, why no action taken during this time?

I would also ask you, Mr. Chairman, to receive Mr. Sanders' testimony today with caution. Mr. Sanders has been very vocal in his desire to become the first COO under PBO. He will be speaking as someone with nothing to lose and everything to gain if the Seaway is made a PBO.

I would only say we agree with many of the concerns raised by the GAO. In particular, we are extremely concerned that no credi-

ble case has been raised to justify the need for the Seaway to become a PBO. To our knowledge, no one has determined there is anything wrong with the operations at the Seaway and subsequently how PBO will provide any improvement. In fact, the finding in the GAO report that concerns us most is that there are no clear indications of how PBO status would improve the Seaway's performance.

The union is very concerned about portions of the PBO that significantly reduce congressional oversight under current proposed legislation. Congress would have a dramatically reduced say over the amount of funding the Seaway receives each year. In addition, Congress would no longer have input in the selection of Administrator or chief operating officer of the agency as the Senate confirmation process would be eliminated. The head of the agency would be appointed directly by the Secretary of Transportation.

Finally, the enactment of PBO will quickly lead to the merger of the SLS and the Canadian Seaway Authority as a single binational entity. Senior management of the Seaway, in particular David Sanders, has had several meetings and exchanged correspondence with Canadian counterparts in relationship with this anticipated merger. Mr. Sanders has consistently told the union that PBO status is the necessary first step to the enactment of binational merger. The union has been provided also little information about the substance of the binational merger, and at this point the union is not prepared to support any legislation that encourages the formation of a single Seaway authority. This gives us more reasons to be wary of PBO.

I would like to thank you once again for the opportunity to testify here today. It is indeed a great honor. No one from Local 1968 has ever been extended this opportunity before. We look forward to working with you as you consider, hopefully with skeptical eyes, plans to make the St. Lawrence Seaway a PBO.

This concludes my overview with respect to PBO, Mr. Chairman, and we welcome the opportunity to answer any questions you may have for the record.

Mr. HORN. Well, we thank you for that testimony.

[The prepared statement of Mr. Bolick follows:]

American Federation of Government Employees

St. Lawrence Seaway Local 1968

Affiliated with the AFL CIO

Massena, New York 13662

July 8, 1997
TESTIMONY OF CRAIG MARTIN BOLICK
PRESIDENT OF LOCAL 1968 OF
THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

BEFORE
THE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY, OF THE HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

REGARDING ESTABLISHMENT OF THE ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION AS A PERFORMANCE BASED ORGANIZATION

Mr. Chairman and Distinguished members of the Subcommittee, I would first like to thank you for the opportunity to speak to you today. My name is Craig Bolick, and I am President of AFGE Local 1968 representing the employees of the St. Lawrence Seaway Development Corporation in Massena NY. The American Federal of Government Employees represents more than 700,000 federal employees worldwide.

I understand that the overall purpose of this hearing concerns the concept of Performance Based Organizations generally; However, my comments today will be confided to the detrimental impacts that will result should the proposed legislation concerning the St. Lawrence Seaway becoming a PBO come to fruition as proposed.

In short, we have grave concerns about the PBO concept as it relates to the SLSDC.

In short, we have grave concerns about the PBO concept as it relates to the SLSDC. Attached for the record are copies of detailed letters I sent to Congressman John McHugh, our distinguished representative, outlining the AFGE's concerns about this proposed legislation. Given the limited time available today and the broad mission of this Subcommittee, I will not attempt to address every concern, but rather only those that are most significant.

Deputy Administrator David Sanders recently sent a letter to Congressman McHugh, discussing the PBO and also sent a copy of that same letter to all SLSDC employees. In that letter it was alleged that I have never shared my concerns about PBO with him, that most SLSDC employees support PBO and that the AFGE National Office supports PBO. None of these things are true. In the meeting in May of 1997 at the Maintenance building with all the maintenance employees that Mr. Sanders recounts in his letter, I conveyed the Union's deep concerns with the PBO concept. As an elected official of the Seaway employees, I can also convey to you categorically that my employees are Not in favor of PBO. Furthermore, I would agree that AFGE Nationally does support the use of PBO, where it is appropriate. I would strongly disagree with Mr. Sanders assessment that the National Office of AFGE in this case endorses PBO. I would also ask you, Mr. Chairman, to receive Mr. Sanders testimony today with caution. Mr Sanders has been very vocal in his desires to be the first COO under the PBO. He will be speaking as someone with nothing to lose and everything to gain if the SLSDC is made a PBO.

AFGE's National office, Local 1968 and SLSDC worked diligently on earlier version of proposed PBO legislation in order to develop language we could all live with. However, in the current legislation, many of the items the parties agreed to change, delete, etc. were put back in with no prior input or concurrence by Local 1968 or the National AFGE. Examples of item's removed from past proposals and recurring in the current proposal are the ability to use The Federal Service Impasses Panel, the inability of the Union in negotiate wages and benefits as it dies currently and the mandatory usage of alternative dispute resolution procedures as opposed to the negotiate grievance procedure. As a matter of fact, the proposed legislation basically negates many of the employee rights currently afforded in Title 5 of the Statute to most other federal employees.

Local 1968 believes the "idea" that the chief operating officer could receive up to one half of his or her salary as a "bonus" is ridiculous. In fact, the legislation allows the chief operating officer to be paid up to the level of the President of the

United States, which also strikes us as ridiculous. Of course, no bargaining unit employees would be eligible for these generous bonuses. Hopefully, it would be possible to find a chief operating officer who could set goals, meet performance targets, and lead the Seaway successfully into the next century without bonuses of this magnitude. The size of these bonuses strike us as particularly great in light of the SLSDC's continuous comments to us about the need for increased federal funding.

Before I begin, I would draw each Subcommittee Members attention to the report recently issued by the General Accounting Office (GAO). We will hear more about that report today, including a direct report from the GAO. As an introductory matter, I would only say we agree with many of the concerns raised by the GAO. In particular, we are extremely concerned that no creditable case has been raised to justify a need for the SLSDC to become a PBO. In many ways, this proposed legislation appears to be a solution in search of a problem. I will address this issue shortly.

The following are some of our more significant concerns regarding the PBO. We have asked numerous officials to include OMB, OPM, DOT, Management of the SLSDC, and the President of the United States what is wrong with the agency that is currently operating. This was an attempt to determine what is wrong before we set out to fix it. Once we know what is wrong then we need to identify the parts of the PBO that will fix those problems. To our knowledge, no one has determined there is anything wrong with the operation at the SLSDC and subsequently how PBO will provide any improvement. In fact, the finding in the GAO report that concerned us most is that "there are no clear indications of how PBO status would improve SLSDC's performance." Streamlining government and improving performance are good general goals, but it is important to understand were we want to go and how we plan to get there. We do not believe that PBO is a useful tool in this case.

When the Union has asked the SLSDC Management why a PBO is necessary, the only answer received is that the mandatory financing portion of this legislation is necessary to establish a stable funding mechanism for our agency. SLSDC Officials have told up and show us OMB has plans to dramatically reduce funding for the Seaway over the next several years unless PBO is enacted and that such a decrease in funding will result in fewer employees at the Seaway. In effect, the SLSDC leaders have told us we should fight for the PBO in order to save our jobs. Frankly the Union feels that OMB is blackmailing the Seaway into PBO if that

information is accurate. Since 1988 the Seaway Corporation has never received 100% of the funds necessary to operate and maintain the St. Lawrence Seaway and to Maintain a safe and effective shipping lane to the Great Lakes and beyond. If we were to look at the percentage of decrease in funding in relation to the rest of the Department of Transportation, the SLSDC has taken the greatest percentage of decrease and is still performing all missions as required. This is in large part because the corporation has been borrowing from the reserve fund to do the required missions that the corporation is held accountable for. Without the reserve fund the corporation's ability to complete it mission would be severely jeopardized. There are many ways to address these funding problems without radical legislation like PBO. The most obvious would be a proposal from OMB and DOT to fund 100% of the SLSDC operations with congressional approval. There would then be no need to access the reserve funds or lay off employees. We should not be enacting PBO legislation simply as a means of increasing agency funding. The Union believes that if OMB were to reduce our budget as predicted the reduction should come from the lavish operation of the Washington Office. This office's operation and extensive travel budget won an appearance on NBC;s fleecing of America. Dave Sanders, Deputy Administrator of the Seaway, and his staff were noted as being the most traveled agency in government. Congressman McHugh, the Union, and the general public in Massena, New York have asked on several occasions that the Washington Office of the Seaway be moved back to Massena where the Seaway is.

The Union is also very concerned about portions of PBO that significantly reduce congressional oversight.,. Under current proposed PBO legislation, Congress would have a dramatically reduced say over the amount of funding the Seaway receives each year. The Seaway would become one of the few agencies in the country operating on a mandatory funding schedule rather than congressionally appropriated funds. In addition, Congress would no longer have input into the selection of the administrator or chief operating officer of the agency as the Senate confirmation process would be eliminated. The head of the Seaway would be appointed directly by the Secretary of Transportation.

Finally the enactment of PBO will quickly lead to the merger of the SLSDC and the Canadian Seaway Authority as a single Bi-National entity. Senior management of the SLSDC, in particular Deputy Administrator David Sanders has had several meetings and exchanged correspondence with his Canadian counterparts in relation to this anticipated merger. Mr. Sanders has consistently told the Union that PBO status is the necessary first step to the enactment of the Bi-National merger. The

Union has been provided little information about the substance of the Bi-National merger. We have seen no legislation related to a single Bi-National authority and subsequently have no idea how severely it would impact the corporation, its employees, or our costumers. At this point the Union is not prepared to support any legislation that encourages the formation of a single Seaway Authority. This gives us on more reason to be wary of PBO.

I would thank you once again for the opportunity to testify here before you today. It is indeed a great honor. No one from Local 1968 has ever been extended this opportunity before. We look forward to working with you as you consider, hopefully with a skeptical eye, plans to make the St. Lawrence Seaway a PBO. This conclude my overview with respect to PBO.
Mr Chairman I would welcome the opportunity to answer any question you may have for the record.

July 3, 1997

Craig M. Bolick
83 Nightengale Ave.
Massena New York, 13662
Born July 5, 1954
Detroit Michigan
Married for 23 years
Wife Kathy
Three Children: Scott age 22, Stacy age 19, Melissa age 14

Entered US Air Force July 29, 1971, Honorable Discharged Oct. 1975

I Started working for the Department of Defense in February 1976 Watervliet Arsenal, Watervliet New York, last Position held, Journeymen Machinist.

I transfer to the Saint Lawrence Seaway in February of 1985 to the present. Current Position Journeymen Machinist WB-11, My position requires me to Manufacture and repair Lock parts, and Machinery weather on site with portable machine tools or in the Machine shop. Plan and layout work for long term and short term projects.

I am required to perform as a Millwright when needed, I am required to weld when necessary, and also to assist in pipefitting and plumbing when needed. Assist the Heavy Equipment Branch in the repair of cranes, trucks, and all other Mobile equipment that is in need of repair. I have also been detailed for up to 90 days as a automotive mechanic when needed. I am required to inspect all in coming parts for compliance with Engineering and Manufactures specifications for fit and specified tolerances. I am required to repair all Machine tool and accessories within the machine shop.

Current Position in Local 1968 AFGE.
President. Length of time Three Years.
Local 1968 AFGE, Represents 114 Bargaining Unit employees, of which 85 are Union Members, total number of employees at the Saint Lawrence Seaway is 158.

American Federation of Government Employees

St. Lawrence Seaway Local 1968

Affiliated with the AFL CIO

Massena, New York 13662

Subject:
Conversion to Performance Based Organization

Date: March 20, 1996

From:
Craig M. Bolick
President of Local 1968 A.F.G.E. (AFLCIO)

To:
Honorable John MC Hugh Congressman.

Under the direction and advise of A.F.G.E National Headquarters, and A.F.G.E. Second District. The constituents of A.F.G.E. Local 1968 agreed to enter into partnership with the Saint Lawrence Seaway Development Corporation. A substantial amount of documentation followed to assist us in our efforts to ascertain a partnership charter, based on recommendations and our beliefs that Partnership would be a step in the right direction and especially being permitted to discuss topics within Title V, Section 7106B. We have achieved a responsible understanding with the Seaway. The Constituents of Local 1968 and Seaway Management are committed to obtaining independence from the Department of Transportation as a Partnership understanding. Being designated to participate within the Performance Based Organization guidelines at this time would diminish our chances of acquiring the status of a Independent Organization.

<u>LOCAL 1968 A.F.G.E. CURRENT POSITION ON PERFORMANCE-BASED ORGANIZATION FOR THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION IN MASSENA NEW YORK.</u>

1. Prior to Under Secretary of Transportation Mort Downey designating the Seaway for this PBO project, Restructuring initiatives were being discussed in early 1995 by DOT. Local 1968, Together with Seaway management initiate its own reinvention efforts to become an independent Government Corporation, Separate from DOT, Only under close scrutiny by an advisory board comprised of Presidential Cabinet Heads. These efforts were well underway in committee in the House of Representative under bill number HR1440.

2. In January of 1995, Local 1968 sent a letter to then Administrator Stanford E. Parris whole heartedly endorsing the Department's and the Corporation's restructuring which included plans to legislate SLSDC to an independent status. Furthermore, it was our understanding that this legislation was part of a "fast-track" plan to expedite DOT'S restructuring and SLSDC'S independence. To that end, AFGE, Local 1968 reiterated in January 1996 to Administrator

Gail McDonald our endorsement of an independent corporation to continue serving the Seaway's customers.

3. We preform a service (Locking ships through the Seaway system), of which we have little if any control over whether our users decide to transit our system or not. Leaving us with an unfair program measuring our service. Our service is seasonal in nature, closing down for repairs for three month's of the year due to ice conditions on the Great Lakes.

4. We are an international waterway, and converse extensively with our Canadian counterparts Leaving this rapport to individuals from DOT who are not familiar with our needs is unjust. This inhibits our communications and will effect our mission as a Corporation.

5. We are a very small agency consisting of 170 employee's. Rating the Seaway in a pilot program couldn't provide accurate results and flexibility is very limited with regard to personnel and procurement practices. Our annual budget is somewhere around 11 million dollars. If administrative obligations were remove from our custody, our numbers would diminish considerably.

6. Until a more detailed plan for a performance-based organization and operation of SLSDC is presented to this Union Local, we cannot endorse its implementation. At this point, there has not been made available enough information on which to judge the merits of such a change. We have no information as to what changes would be made or how these changes would affect the bargaining unit or the Corporation's workforce as a whole.

7. This is a particularly stressful time for all Government employees including those of us here at SLSDC and for this Union Local Leadership to be asked to convince its members to endorse yet another new initative without the benefit of enough information and a voice in the process is unfair. We will be entering contract and wage and benefit negotiations in a very short time and should not be pressured to consider another whole set of changes at this time. We believe that the Corporation operates as a model Government Corporation in its present form and that it would benefit even more by being independent of DOT and it added layer of bureaucracy. Therefore, at this time, our position remains in support of independence for this Corporation.

Therefore, we would greatly appreciate your support in our attempt to become a independent Government Corporation, and not a candidate for conversion to a Performance-based Organization.

Craig M. Bolick
President Local 1968 AFGE (AFL-CIO)

American Federation of Government Employees

St. Lawrence Seaway Local 1968

Affiliated with the AFL CIO

Massena, New York 13662

May 17, 1997

Honorable John McHugh
U.S. House of Representatives
26th District
109 Cannon Office House Bldg.
Washington, DC 20515

Dear Congressman McHugh:

You have asked Local 1968 AFGE to summit to you the provisions about which the Local has concerns about.

After reviewing the letter you sent Local 1968 AFGE (AFL-CIO) with the current Statutory language relating to the Saint Lawrence Seaway becoming a Performance Base Organization, Local 1968 AFGE (AFL-CIO) has taken the position that under the current language that is being proposed before the U.S. House of Representatives, Local 1968 AFGE does not support the language, as it is currently written.

Local 1968 AFGE does support the funding measures the Corporation is proposing under PBO. If Local 1968 AFGE is forced to accept all or none of the current Proposal, then we would have to reject the entire Proposal.

The question that Local 1968 is still asking of Management, the President of the United States, and OPM/OMB is what is it exactly that they are trying to "fix"? If we are trying to fix a budget problem, then Congress needs to look at the current law for funding for the Saint Lawrence Seaway under the Harbor Maintenance Trust Fund. This law states that the Saint Lawrence Seaway will be funded at 100% of their Operations and Maintenance costs.

If Congress were to implement this language as it is written in law, then the Corporation would not be asking for a Performance Base Organization. The Union feels that PBO is a way for the President of the United States to say to the people of this country, "look what I have done to make Government work better." When in reality, this would be just the opposite for the Saint Lawrence Seaway.

This Organization has operated under Corporation status since May 13, 1954. Although the Saint Lawrence has been funded under the Harbor Maintenance Trust Fund since 1987, they have not received the full 100% of the funding that is necessary for Operations and Maintenance of the Seaway. If we were to take a close look at the percentage of decrease, as compared to other agencies of the Department of Transportation, the Saint Lawrence Seaway has taken the largest percentage of decrease in funding in the Department, and is still performing the mission requirements, with less personnel and less funding. This is largely due to the fact that the Seaway has been borrowing from the reserve fund of the Saint Lawrence Seaway in order to perform the required mission functions that we are held accountable for.

This reserve fund was created by Management of the Saint Lawrence Seaway when we were under a toll system that paid for the Operation and Maintenance of the Saint Lawrence Seaway. When there was an excess amount of operating funds received, these funds were placed in the reserve account for later use when needed. The purpose of going into the Harbor Maintenance Trust Fund was to eliminate the tolls for the use of the Locks, and to tax the shipper at the ports for the use of the locks, ports, rivers and lakes. This money was to fund the Operation and Maintenance of all the foregoing to keep the system viable and cost effective. The Harbor Maintenance Trust fund currently has in excess of $500 million. The question that the Union is asking is why does the Saint Lawrence Seaway need to be placed into a PBO, if in fact there is more than enough money in this fund to pay for the Operations and Maintenance costs of the Seaway.

SECTION BY SECTION ANALYSIS

SECTION 102:

Under the proposed language of The Corporation, Management is proposing to have a Chief Operating Officer. The Saint Lawrence Seaway currently has a Chief Operating Officer under the title of Associate Administrator of the Massena Operation. The current position of Administrator is appointed by the President and confirmed for appointment by Congress. Under PBO the Secretary of the Department of Transportation would be able to appoint a COO without any review of confirmation by Congress or the President. The Union believes that if Congress has no review of the selection, then there is no place for the federal employees of the Saint Lawrence Seaway, and the people of this country to voice their concerns in a public forum on the appointment of a COO verses the current administrator.

The Union's position is that Congress needs to have direct control over the selection of the Administrator for the Saint Lawrence Seaway in order to oversee the Operation and Management policies.

Keeping in mind that as Federal employees we are hired to ultimately serve the people of this country, and not to "take" from the people, the idea of awarding the COO up to one-half of his or her salary as a performance award is in the view of Local 1968 taking the Government and the Saint Lawrence Seaway in the wrong direction.

If for the reason that Management of the Saint Lawrence Seaway has indicated to the Union the reasons for proposing PBO, was to receive funding that will be adequate to fulfill our mission, then by giving this COO the amount of bonus that is indicated in this proposal is ridiculous.

During the past year the Corporation has taken the position that the bonus for GS employees who are in the bargaining unit is to be eliminated and replaced with a Performance Management System. Management wants to put this into place to award the employees who Supervisor is willing to write up and justify that employee for any award or bonus that he or she may think that employee deserves.

Local 1968 AFGE has in the past had several problems with this. One, is where is the money coming from? Two, as always if there is one pot full of money for this purpose as it has been in the past, then as in the past, the Management of the Corporation will receive the major portion of this money. And what ever Management declares is left over will be left for the bargaining unit employees to receive. First the Supervisor who is willing to write and justify a employee are the only employees who will receive the bonus. Supervisors have shown the Union in the past that they are not willing to write their employees up for bonus awards, and it has been brought to the attention of the Union that the Supervisors of these employees have been told by upper Management to keep the rating of their employees down to the national average of the rest of the Federal work force. The supervisor who have not given their employees lower ratings have been told to do so by upper management, or the employees rating will not be signed until that supervisor has lowered the rating.

The employees of the Saint Lawrence Seaway are required to perform several job duties as part of their position description in order to accomplish the mission requirement of the Seaway. This is primarily due to the number of personnel reductions at the bargaining unit level over the last 15 years, and the increase in the number of top management officials at the Seaway.

The Union negotiated for Wage Board employees in 1990 to pull out of the Performance Bonus system. The reason for this is that the bonus program was causing hard feelings among all the employees. The Union found that employees were given higher performance ratings based on their relationship with their supervisor and not based on their performance on the job. The Union, during contract negotiations added $.25 cents per hour to all Wage Board employees hourly rate of pay.
Since 1990 the Union has had no problem or complaint from the bargaining unit employees.

TITLE II-- PERSONNEL PROVISIONS

SECTION 202 OF THE PROPOSED BILL

This section is quite disturbing to the Union.
14 (a)1 exempts the Corporation from any personnel ceiling to the number or grade of its employees.

The Union has seen over the history of the Corporation that when it comes to increasing the number of employees in the Corporation, this number always increases at the upper levels of Management of the Corporation. This has been shown to us through the organizational charts of the Corporation over the years.

As for being exempt in the Grade setting for employees at the Saint Lawrence Seaway the Union always had the right to negotiate this issue with Management. The Union views this issue as a way for upper Management to create even more high paying positions for management.

Section 14 (d):
Shorten the notice period preceding a performance based action under Chapter 43, or an adverse action under Chapter 75 of Title 5: The Union has rejected this in the past and this was removed, and now here it is again.

Convert certain term appointees to permanent appointments using internal merit promotion procedures: The Union views this as a way for upper Management to appoint to upper Management positions there "buddies" without any one else in Government having a opportunity to bid on the position. The position can be filled from within without ever going outside for competitive bidding.

Detailing employees among its offices for unlimited periods. The Union views this as getting the people trained that are liked by upper Management in order to avoid posting the position for all to apply for and the best qualified employee be selected. This is a tool for Management to circumvent the current system of fairness to all employees.

Establish probationary periods of 1-3 years for certain positions. WHAT POSITIONS? Without knowing the intent of this provision the Union can not support this.

Establish one or more alternative job evaluation systems as described in proposed new subsection 16 (c).
The Union body has already rejected this concept because of Managements position that any new system will be based on your Supervisor assessment and ability to write the employee up for an award or bonus, as we have stated before the Supervisors are being told to hold down the evaluations of their employees and most of the current Supervisors are unwilling to spend the time to write up an employee. Therefore, this leave us in the cold again.

Provide for variations from title 5 provisions governing recruitment and relocation bonuses and retention allowance: This the Union views as a free for all with upper Management between the Washington Office and the Massena Office of upper Management moving back and forth between each office for large sums of money that Congress would not have any control over for a minimum of five years.

Proposed new subsection 14 (e) dispute resolution procedures: The Union has always had the right to negotiate alternative ways to settle disputes with Management.

The Union has a new contract in place that deals with the provisions of reorganizing, moving employees within the organizations, and the Veterans preference laws currently under review by Congress that will strengthen the rights of Veterans in the removal and hiring practices. Is the Corporation advocating that these new laws be eliminated under PBO?

New Leave Policy Systems: The Union has not seen this new system that is being proposed under PBO, and until the Union has a chance to review and determine the extent of the changes, we have to oppose this provision.

The provisions of section 4703(b)(3) which requires a public hearing on the project plan: The Corporation is asking that they be exempt from this provision. The Union would like to see a public hearing on this proposal. The Union would like to take part in all public hearings if there were to be any.

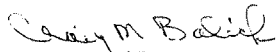
Section 4703 (b)(4) which requires 180-day advance notification to Congress and affected employees. The notice requirement is changed to 30 days with respect to the Corporation: The question the Union asked is why this change from 180 days to 30 days? This is 150 days less notification to both the Congress and the employees of the Corporation. The Union views this as a way for Management to circumvent Congress and the Union in imposing any new plan that they want.

Section 203 Performance Management: The Union has already rejected this portion of the bill. To bar an employee that has been denied a periodic step increase under 5 U.S.C. 5335 from there rights to appealing the denial to the Merit Systems Protection Board is again taking the rights of the employees away from them. This also takes away the rights of the Union under the current contract provisions.

Section 204 Classification and Pay Flexibilities:
Local 1968 AFGE is exempt from this provision of the law enacted after August of 1972. We currently have the right to negotiate classification and pay with the Corporation. We are not under the Federal Wage System, nor do we ever want to become part of this system.
Local 1968 AFGE has over the past 35 years fought hard not to become part of the Federal wage system and the Union believes that if we accept any part of the current language we would be placing the Union in jeopardy of becoming part of the federal wage system. We see this as a way for Management to destroy this Union and to take away from the Union all that the Union has fought hard for over the past 35 years.

Section 301 Title III--Procurement Acquisitions.
This portion of the bill we see no need for. This has been indicated to us from top Management Officials at the Seaway. Since we are a small organization that has such a small budget, this provision has no direct effect. The only part of this provision that the Union would have a problem with is when they talk about contracting out with the Canadian Government, with the Bi-National talks going on this would permit the Seaway to contract out with the Canadian Government jobs on the United States side of the Seaway. With the provision of the 180 notification changed to 30 day we will not have the time to react to this portion of the bill.

Section 401 Operations and Finance: The Union again asks why we need a PBO to finance the Seaway? Why can't we use this system of financing the Seaway instead of going through this process of changing the whole structure of the way we operate, when in fact the system that we are currently using is working without any problems other than the funding, the current laws for funding the Seaway, if used, would be adequate. But there seems to be reluctance on the part of Congress and the Department of Transportation to use the laws that were in acted in 1987 under the Harbor Maintenance Trust Fund for the Saint Lawrence Seaway.



Respectfully
Craig M. Bolick President Local 1968 AFGE (AFL-CIO)
Executive Board and Membership

American Federation of Government Employees

St. Lawrence Seaway Local 1968

Affiliated with the AFL CIO — Massena, New York 13662

To the Honorable Congressman John McHugh, Senator Alponse D'Amato, Senator Daniel P. Moynihan:

We the Members of Local 1968 AFGE (AFL-CIO) are opposed to the Performance Based Organization for the Saint Lawrence Seaway Development Corporation for reasons listed above.

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... of Government Employees

St. Lawrence Seaway Local 1968

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Carl Janyon	Fort Covington N.Y.
Neil G. Southworth	Massena N.Y.
Randy Kines	MASSENA NY.
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...	FT-COVINGTON N.Y
Randy Chilton	Malone N.Y.

... ederation of Government Employees

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Gregory [illegible]	106 Stoughton Ave Massena
Danny Brabon	82 Cty Rte #55 Lawrenceville, N.Y.
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American Federation of Government Employees

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Floyd W. Cole P.O. Box 143 Raymondville N.Y. 13678, 12977
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Pat McAff 527 BROUSE RD MASSENA N.Y. 136
Dave Bancroft 23 Bayley Rd Massena NY 136

American Federation of Government Employees

St. Lawrence Seaway Local 1968
Affiliated with the AFL CIO
Massena, New York 13662

June 27, 1997

From:
Craig M. Bolick
83 Nightengale ave.
Massena NY 13662

To:
The Honorable John McHugh
United States House of Representatives
Washington, DC 20510

Dear Congressmen John McHugh.

I was requested by Judi Brewer thru your office to provide the following information for the Government Oversight and Reform Committee. If your office see the need to change any of this information please feel free to do so.

1. Craig M. Bolick
2. Born July 5, 1954
3. Detroit Michigan
   Married in May 1974 to the present
   Wife Kathy age 41
   Three Children
   Scott age 22
   Stacy age 19
   Melissa age 14

4. Entered US Air Force July 29, 1971
5. Honorable Discharged Oct. 1975
   Started working for the Department of Defense February 1976
   Watervliet Arsenal, Watervliet NY Position Machinist
   Transfer to the Saint Lawrence Seaway in February of 1985 to the present.
   Current Position Machinist WB-11

6. Current Position in Local 1968 AFGE.
7. President. Length of time Three Years.
8. Represent 112 Bargaining Unit employees of a total of 158 employed at the Saint Lawrence Seaway.

9. Local 1968 AFGE Concerns of a Performance Base Organization for the Saint Lawrence Seaway Development Corporation.

1. The Standards by which the Seaway will be evaluated by.
2. What is the Administration trying to fix with PBO
3. Losing the Opportunity to become an Independent Organization outside of DOT.
4. New Leave Policies
5. Harbor Maintenance Trust Fund For Funding the Seaway verse Tolls,
6. Losing the Oversight of Congress for the appointment of an Administrator.
7. Bonuses for ½ of the Chief Operating Officer annual pay.
8. Exempt the Corporation from any personnel ceiling the numbers or grade of its employees.
9. Shorten the notice period preceding a performance based action
10. Convert certain term appointees to permanent appointments.
11. Detail employees for unlimited periods.
12. Lengthen probationary periods
13. Establish one or more job evaluation systems.
14. Variations to Title 5 in Recruitment and relocation bonuses and retention allowance.
15. Exemption for public hearing for a demonstration project.
16. Contracting with the Canadian Government for services.
17. Bi-National Agreement between the Canadian and US Seaway.
18. GAO report on the Seaway becoming a Performance Base Organization.
19. Being placed into the Federal Wage System
20. Losing the Union rights under Title 5 US codes

Craig M Bolick
President of Local 1968 AFGE (AFL-CIO)
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Massena NY 13662
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FAX COVER SHEET

U.S. DEPARTMENT OF TRANSPORTATION
400 7th STREET, SW
WASHINGTON, DC 20590

DATE: September 10, 1996

TO: Great Lakes/Seaway working group FAX :

FROM: NANCY MACRAE
Deputy Director
OFFICE OF INTERNATIONAL
TRANSPORTATION AND TRADE

PHONE: (202) 366-2892

FAX: (202) 366-7417

NUMBER OF PAGES INCLUDING COVER: 8

MESSAGE/COMMENT:

Attached is the final version of the progress report, cleared by both the Deputy Secretary and the Deputy Minister and incorporating all last-minute changes received from COE and Coast Guard. Thanks for all your help, and let me remind you that THIS IS JUST TH BEGINNING. Now we really have to get down to the nitty-gritty work.

Attachment

PROGRESS REPORT OF THE

U.S.-CANADA WORKING GROUP ON GREAT LAKES/SEAWAY SYSTEM

SEPTEMBER 17, 1996

On June 5, 1996, U.S. Secretary of Transportation Federico Peña and Canadian Minister of Transport David Anderson agreed to establish a new U.S./Canadian working group to examine the possibility of greater cooperation between the two countries in administering and managing services in the Great Lakes/St. Lawrence Seaway System. The governments of both countries provide a wide range of maritime services in the Great Lakes/St. Lawrence River region, and the working group was formed to explore ways of maintaining a high level of services despite resource constraints on both sides of the border.

SCOPE OF THE PROJECT

The group was charged with exploring ways to eliminate or reduce redundancy in order to increase system competitiveness and reduce user and government costs. The terms of reference for the work of the group are at Attachment A. The initial suggested time frame of 90 days quickly became too short for completion of the entire analysis. This 90-day report, then, is a progress report on findings to date and recommendations for further, more detailed tasks.

The working group was to exchange timely information on the respective U.S. and Canadian efforts to restructure their Seaway organizations and identify workable options to improve binational management of the Seaway. The group was also to make an analysis of other aspects of the overall system: Navigation aids, vessel traffic control systems, icebreaking, communications systems, and other locks outside the scope of the binational Seaway agreement. It was to develop a common set of goals related to the Great Lakes/St. Lawrence Seaway System as a whole and a common set of performance measures to measure progress toward meeting those goals.

ORGANIZATION OF THE WORK

A steering committee, headed on the U.S. side by the Assistant Secretary for Aviation and International Affairs and on the Canadian side by the Assistant Deputy Minister, Policy, directed the work of two subgroups. The first subgroup examined the St. Lawrence Seaway locks system (geographically identified as the System between Montreal and Lake Erie). The second subgroup examined maritime services on the rest of the Lakes: Navigation aids, vessel traffic control systems, icebreaking, communications systems, and other locks outside the scope of the binational Seaway agreement. The second subgroup also looked at channel dredging.

The working group comprised representatives from the U.S. Department of

Transportation, the Canadian Ministry of Transportation, and the Canadian Ministry of Fisheries and Oceans as selected by each country. It also included representatives from the U.S. Department of State, the U.S. Army Corps of Engineers, and the Canadian Ministry of Foreign Affairs.

CONSENSUS ON GOALS FOR COOPERATIVE APPROACH TO THE GREAT LAKES/SEAWAY SYSTEM

The working group has developed a set of goals for furthering a cooperative approach to the Great Lakes/Seaway System.

1. Provide a safe, reliable, and efficient waterway for commercial and recreational users.

2. Continually examine operations to ensure that every effort has been made to cut costs without sacrificing performance.

3. Promote the competitiveness of the Great Lakes/Seaway system for domestic and international traffic.

4. Build on existing cooperative arrangements to bring the two national organizations even closer together.

FINDINGS OF THE SUBGROUPS

Sub-Group 1: St. Lawrence Seaway System

The waterway between the Port of Montréal and Lake Erie falls under the mandate of the Canadian St. Lawrence Seaway Authority (SLSA), which operates eight locks in the Welland Canal and five of the seven locks between Montréal and Lake Ontario, and the U.S. St. Lawrence Seaway Development Corporation (SLSDC), which operates the other two locks. The primary operating service is the safe transit of commercial and non-commercial vessels through the locks and the navigation channels. Since the opening in 1959, there has been a history of close cooperation in operations, administration, and customer service initiatives. The Seaway operates as a binational waterway that depends on the sharing of assets and resources from both nations. The Corporation and the SLSA work jointly with respect to rules and regulations, overall operations, traffic control, navigation aids, safety, operating dates, and related marketing programs designed to develop fully the "fourth seacoast."

The Seaway System's main customers are vessel owners and operators, Midwest States and several Canadian Provinces, Great Lakes and St. Lawrence River port communities, shippers and receivers of domestic and international cargo, and the Lakes/Seaway maritime and related services industries.

The subgroup has focused to date on measures that could be put in place within existing institutional structures for the section of the Seaway from Montréal to Lake Ontario, through increased sharing of resources between the SLSDC and the SLSA. It has also initiated an examination of options for closer operational organization using several existing models; however, this effort is at a very early stage.

Findings. The Seaway entities have a history of cooperative activities in operations, administration and customer service initiatives since opening of the deep draft System in 1959. Examples of existing cooperative and resource sharing activities include: vessel inspection for Seaway fittings and pre-clearance for transit; exchange of vessel traffic control information; engineering projects; Seaway notices to mariners; tug and getelifter assistance; channel surveying; traffic statistics and publications; and monitoring of water levels and flows, and ice reconnaissance.

The binational Seaway subgroup identified significant duplicative activities as having potential for alternative resource allocation by the Seaway entities:

Short-Term

1) Aids to Navigation: Over 350 floating and fixed aids are positioned throughout the international section of the St. Lawrence River, between Montreal and Lake Ontario. All require periodic maintenance and servicing, and floating aids (approximately 200) must be precisely positioned in the Spring and later retrieved before the end of the navigation season. The potential exists for improved management of this program under one agency, thereby reducing redundancy and improving efficiency.

2) Vessel Inspections: Most ocean vessels entering the Seaway at Montreal are required to be screened for compliance with Canadian and U.S. Coast Guard environmental, ballast water, and port state regulations, and U.S. and Canadian Seaway transit regulations. The potential exists for consolidating the four agency inspection requirements under one agency or an independent entity which would conduct a single inspection in Montreal that complies with all regulatory mandates. See this same initiative under subgroup 2.

3) Vessel Traffic Control: Vessel Traffic Control (VTC) activities are carried out by both Seaway entities in alternating control sectors between Montreal and Lake Ontario. The potential exists for consolidation of control requirements under one agency, after Differential Global Positioning System (DGPS) based vessel tracking is implemented.

Other potential areas for closer cooperation are: channel sweeping, tug assistance, dredging, and administrative services.

Further analysis of these and other functions with sharing potential requires a detailed assessment of current and projected costs and resources in comparison to costs of those alternative management proposals, and assessment of benefits to Seaway customers as well as the two Seaway agencies. A further requirement for the work group is development of a time frame for implementation of programs determined to be viable for restructuring based on findings of the cost/benefit analysis.

Long-Term

1) Options for Binational Operations. The Seaway subgroup will also examine options for fully merged operations that would complement the current U.S. proposal to convert the SLSDC to a Performance Based Organization and the Canadian commercialization initiative for the SLSA. At present, the two Seaway entities are funded through two distinctly different approaches. Users of the two U.S. locks pay no tolls but are funded through the Harbor Maintenance Trust Fund, which also funds the SLSDC. Canada funds its 13 locks through toll revenues. Any binational management plan would have to take into account these differences. The subgroup has undertaken an analysis of two models: the International Joint Commission and the Panama Canal Commission, with a view to identifying desirable features applicable to the Seaway.

Subgroup 2: Great Lakes Maritime Services

Subgroup 2, with Coast Guard co-chairs from both countries, examined the services that both countries provide in the Great Lakes region. The U.S. and Canadian Coast Guards already have viable cooperative partnerships that provide seamless service to the mariner throughout the Great Lakes. Additionally, the U.S. Army Corps of Engineers provides a number of vital services directly in support of Great Lakes/St. Lawrence Seaway transit. The Corps provides reliable navigation through the Great Lakes connecting channels between Lakes Superior, Huron, Michigan, and Erie by the location and removal of obstructions to navigation as well as maintenance dredging, and by operation and maintenance of the Soo Locks. Also, the Corps provides information on channel conditions and lake levels to navigation, including lake level projections. The Canadian Coast Guard is the counterpart of the Corps. Existing Memoranda of Understanding (MOUs) as well as both formal and informal working agreements serve as the template for this cooperative effort.

Findings. The four key areas that provide the greatest opportunities for improved zonal resource management between both countries are:

1) **Command, Control & Communication** - Explore Joint Command Centers and better utilization of the communications infrastructure.

2) **Aids to Navigation** - Joint efforts to allocate scarce resources to service

aids, provide discrepancy response, and analyze user needs while delivering comparable levels of service.

3) **Icebreaking** - While there is little room for improvement in the binational cooperation that presently exists under the U.S./Canadian Icebreaking Agreement, there may be opportunities for the use of Canadian/U.S. resources from outside of the Great Lakes to meet peak demand or for improved resource employment; and,

4) **Marine Safety** - Explore opportunities for increases in the high level of coordination and cooperation already in place in the areas of port state control, vessel inspection, environmental regulation and spill response, aimed at fostering regulatory consistency and facilitating commerce.

The existing strengths and weaknesses, as well as opportunities for improvement and threats to success, were analyzed for each of the four key areas. The following is list of the specific opportunities identified, categorized as short, medium or long term:

SHORT TERM:

1) Explore creation of a pilot Joint Operations Center for command and control of all maritime operations/responsibilities within a particular geographical area.

2) Explore creation of a shared/joint communication infrastructure that completely eliminates redundancy and duplication of hardware and maintenance.

3) In response to the comparable initiative under subgroup 1, coordinate vessel boardings/inspections, where practicable, so that one boarding by all Marine Safety Agencies would successfully accomplish all safety inspections.

MEDIUM TERM:

1) Explore creation of a fully compatible shared inventory of Aids to Navigation equipment and hardware, thus facilitating a wide variety of cooperative/joint opportunities for servicing, storage and maintenance of navigational aids throughout the Great Lakes.

LONG TERM:

1) Develop a system and protocol to ensure shared Research and Development on emerging technologies (ECS, ADSS, etc.), including joint development of policy and rulemaking on the impact to maritime operations and safety

Great Lakes and Seaway user groups. Their input to the working group's work is therefore essential in helping to identify efficiencies and maximize the potential of the system. Accordingly, as part of its continued analysis of ways to improve binational coordination, the working group recommends that it be directed to establish a means of obtaining systematic input from this user community.

2. It is recommended that the Secretary and the Ministers endorse the goals set out at the beginning of this report as a framework for future cooperation and direct the working group to undertake the follow-on work listed below:

- Identification of immediate steps necessary to begin implementation of the recommendations of the two subgroups on closer cooperation. The steering committee emphatically agrees with the subgroups that these actions have significant potential for increased efficiency for users and better use of staff resources. The payoff for users in terms of reduced operating costs from speedier passage through the Seaway and ports could be substantial.

- Continued joint analysis of future Seaway system costs, revenues, and demand.

- Continued analysis of long-term binational management of the Seaway system. This complex task should be undertaken over the next six months.

3. The working group recommends that it continue as an ongoing consultative forum on Seaway/Great Lakes issues, recognizing that this informal mechanism can play a useful function in providing a high-level focus on these issues.

2) Jointly share marine safety information.

3) Develop a policy of complete recognition of pollution response equipment on both sides of the border for meeting the requirements of facility pollution response plans. Remove barriers in Customs laws and policy that unnecessarily restrict the cross border movement of commercial pollution response equipment and materials.

Other Issues. The subgroup also discussed dredging and lock operations. Opportunities exist for joint/shared coordination of dredged material management activities. The subgroup will continue to look further for opportunities for improved/additional cooperation in both dredging and lock operations. It was noted that dredging is a shared responsibility and that any change in dredging policy must be examined closely to ensure that it avoids adverse impact on Great Lakes waterways management and maritime safety.

In reviewing the seven key areas identified, the subgroup was conscious of the capital costs involved in each opportunity/alternative. An attempt was made to develop cost data to be used for comparisons and cost/benefit analysis. However, because of time constraints and the absence of a specific concept of operations for any of the recommended initiatives, the subgroup was unable as yet to develop any valid, detailed cost/benefit information.

It should be noted that many of these potential efficiencies will help maintain and sustain a level of service delivered to our customers/clients with our already reduced budgets rather than deliver any further savings.

Matters such as sovereignty, differing/conflicting legal regimes, the balancing of fiscal/cost requirements, national approaches to fees and cost recovery, and public/political perceptions will require input from other fora. Liability will also remain a concern in any shared activity.

On an operational level, the law enforcement mission of the USCG and the differing "style" with which the respective Coast Guards deliver their mandates, along with new training requirements, will also impact on the potential scope for further cooperation.

Despite the existence of an international boundary, the cooperative relationships already in place, such as with icebreaking and water quality initiatives, have been instrumental in providing relatively seamless service to the mariner throughout the Great Lakes. Further consultations between both countries to improve these relationships can only help provide better service to the mariner.

RECOMMENDATIONS FOR NEXT STEPS

1. The working group recognizes the valuable experience and expertise of the many

GREAT LAKES/SEAWAY CONTACT LIST

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Mr. HORN. And I now yield 10 minutes to the gentleman from Illinois, Mr. Davis.

Mr. DAVIS of Illinois. Thank you very much, Mr. Chairman. Let me also indicate that I appreciate the testimony of all the panelists.

General Beale, your statement indicates that you would like to be able to collect overpayment and earn discounts while paying for the service by using a portion of the money that is collected by the contractor. Could you shed some additional light on that?

General BEALE. Yes, sir. It's a practice that's common throughout industry where, in the case of trade that takes place, there are overpayments, there are discounts lost, and there are other opportunities for revenue that sometimes slip through the books. There are companies that are available to do the research work on missed opportunities on a contingency-fee basis. In other words, you can—you hire this company. If they recoup, they—they keep 10 percent, 20 percent, 30 percent, and whatever the negotiated amount is. And if they find nothing, then there's no payment.

The normal way of doing that within Government organizations is to go out and actually provide, underwrite the service contract, an opportunity for someone to go in and do that work where you actually pay them a specific fee regardless of whether they're able to recoup any discounts or promotion money for you at all. So this would give us the opportunity to recoup without any cost to the taxpayer.

Mr. DAVIS of Illinois. Are there reasons you can't do it now?

General BEALE. I'm advised that legislatively we don't have the ability to do that although there are some pilot programs that are being worked right now within the Federal sector.

Mr. DAVIS of Illinois. Thank you.

Mr. Kazenske, I guess current legislation actually would convert your office into a corporation; is that not true?

Mr. KAZENSKE. That's correct.

Mr. DAVIS of Illinois. And then why is the PBO status preferable?

Mr. KAZENSKE. Let me give you some background on that. The concept of the PTO as a Government corporation began in the 104th Congress when there was a bill proposed by Chairman Moorhead. It was not successful in that Congress. Since that point in time, the administration has moved forward with parts of their NPR initiative and realized in doing so that the current operation as we now exist at the PTO lends itself to a PBO concept.

There was legislation by Chairman Coble this year earlier on this corporation. There has been much discussion that the mere fact of being a corporation does not mean that the PBO concept cannot be applied specifically to the PTO. One of the discussion items that was of focus of that, the corporation at that point in time was looking at the PTO more from the way its fees are collected and managed, and not being part of the taxpayer roll as significantly as other Government agencies. However, the PTO also plays a significant policy role, as well as, ran this large operation. Those two roles came together in trying to formulate the PTO structure, into a PBO having policy and oversight of the business by a COO. And certainly that concept was merged in H.R. 400.

Mr. DAVIS of Illinois. Thank you very much.

Perhaps, Mr. Sanders, both you and Mr. Bolick, could respond to this particular question: How does the proposed PBO concept affect employees and the unions of the Seaway Development Corporation?

Mr. BOLICK. I can say that under the demonstration project, that if the union decided to accept the demonstration project, No. 1, because we have to be part of this, I think it was OPM or OMB put in a provision in there that for an FWS system where we currently now negotiate wages, benefits—gee, I don't think there's a thing we haven't negotiated, to be honest with you, over the past 35 years—but those provisions, that if we accept the demonstration project as it stands, we would go into the FWS system as the way it's written right now. Under the current laws we are afforded the right to arbitrate or to go into the impasse panel for dispute. Under the current legislation, we would not have that right. We would have to use alternate dispute resolution, which I have spent a great deal of time studying. And I have to say categorically at this point in time it wouldn't be advantageous for us to go into that dispute process.

Mr. DAVIS of Illinois. And so you would no longer have the ability to negotiate?

Mr. BOLICK. Under an FWS system, you don't negotiate your wages. Your wages are set for you.

Mr. DAVIS of Illinois. OK.

Mr. SANDERS. Mr. Davis, any changes to any of the personnel provisions that are in place now, and, very frankly, as I told you in my statement, we genuinely are not seeking any, which is one of the interesting aspects of this byplay, is that the union would have to agree through its collective bargaining process in any of the changes that we would be seeking. It's currently not the intention of the Seaway's management—obviously I can't speak for a future chief operating officer, but it's not our intention to seek any broad changes in personnel policy, nor has it been.

Mr. DAVIS of Illinois. And so even though you might have the right not to operate the same way, you wouldn't necessarily see a great change under your leadership if you were——

Mr. SANDERS. No sir. And a future manager, a future chief operating officer, would have to seek agreement from the union in order to proceed with any of those.

Mr. DAVIS of Illinois. Let me ask—but there are no specific safeguards—are there any specific safeguards that would protect the rights of employees?

Mr. BOLICK. Currently?

Mr. DAVIS of Illinois. Yes.

Mr. BOLICK. Currently right now we have our safeguards in place. But under PBO I'm not sure there would be any safeguards. They could legislate something in there, or a new Administrator can come down and say, well, we're going to contract your areas out. And I can go into the British studies where they have, like Mr.—one of the gentlemen here said that they have contracted, they have privatized, and the majority of the people have been contracted and privatized in the British system out of 30 that he was talking about. I think six were left alone, but with some changes.

Mr. DAVIS of Illinois. Did that result in people losing their jobs or——

Mr. BOLICK. Well, I'm not quite sure on that report, because I'm only stating from what the gentleman said prior to me, prior to us four here, from the NAPA. I can say that the part that I saw said that there were more men that lost their positions than women, based on the fact that the men do more physical work. That part of it was contracted out.

Mr. DAVIS of Illinois. Mr. Sanders, do you see anything that would stop the PBO from outsourcing, say, from a management perspective purely for the purpose of saving money?

Mr. SANDERS. No, Mr. Davis. My understanding is that in anything technically as it relates to the types of work that are done, in terms of all of that there really aren't any changes that wouldn't have to be negotiated through the partnership council that we have between management and labor now. If there were any changes agreed to, there would have to be an agreement with our union. And so unless there's a fear of what some future union leaders might agree to or some future managers might foist on union leaders or vice versa, I don't see that as being a concern right now.

Our concern, and my principal concern, in pursuing this would be to find a way to tie the Seaway Corporation's budget, our function, to the amount of national benefit that we provide. And one of the ways that we do that is through this mandatory funding mechanism. The domestic discretionary spending, as I'm sure I don't have to tell you, has been under a certain amount of pressure over the last few years. So tying our budget to the amount of national benefit in some quantifiable way we think has benefits not just for management, but really principally for our unionized work force.

Mr. BOLICK. I would like to say something here. As far as contracts go, we negotiated some recently and tried to put those provisions in the contract and management to declare this nonnegotiable.

Mr. DAVIS of Illinois. I guess my next question actually would be what has the relationship been in the past, and the current relationship between management and the work force, and what I am trying to get at is are there reasons to feel that this is going to be negative on the part of the work force and the part of the union?

Mr. BOLICK. I have to say that we are not sure what the binational agreement is at this point, and one of the gentlemen that spoke earlier talked about the contractual issues in this PBO and the loopholes. I think it was Mrs. Maloney made a point that there are several loopholes in these provisions under the idea of being able to contract out.

We know that the corporation has been over the past year or so been dealing with the Canadian Government and some other unions other than this union in the binational agreement between the Canadian Government and United States Government, to merge the two Seaways into one and have one COO alternate between the United States Government and the Canadian Government. This is a concept that we have had discussed to us at some point in time. We are not sure where this is going to head and we are not sure whether the Canadians, as they currently right now

can come across the border and work in the United States, and we cannot go over there, and they can consistently in Massena, NY, take good paying jobs away from the St. Lawrence County people, who are highly unemployed at this point in time, but we have skilled people. But the Canadians can work in this country and we cannot go over there and work there. If we go into a binational agreement that says, yes, we are going to do cross-border workings, that is ludicrous at this point in time until the Canadian Government says the United States workers can go over the border and work in their territories.

Mr. DAVIS of Illinois. Let me just ask you, have you had experience with downsizing, outsourcing, and privatizing in your——

Mr. BOLICK. My career, my 26 years with the U.S. Government, yes, I have. At the Watervliet Arsenal in Watervliet, NY. They have privatized, downsized, they have done everything there. We were at a work force of over 3,000 when I left there, and currently right now they are down to 900 people. So that's——

Mr. DAVIS of Illinois. Tell me the effect, if you know, on the overall economy in the area where you were located.

Mr. BOLICK. It had a dramatic effect as far as good paying, skilled jobs because General Electric in that area at that time was laying off substantially. There was nobody hiring and nowhere for anybody to go. We had the same thing happen in Massena, NY, when General Motors downsized. They went from 450 employees to 100 employees, and it had a substantial impact on Massena, NY, for about 5 or 6 years. The housing went down, people were laid off, had no money. They had to go on welfare to eat.

Mr. DAVIS of Illinois. Mr. Sanders, I know, and this is perhaps my last question. Mr. Chairman, you can't make all the predictions in the world, but would you see much of either one of these activities taking place as the PBO, that is either downsizing, outsourcing, or privatizing?

Mr. SANDERS. No, Mr. Davis, I wouldn't. In fact, I really see a lot of this in terms of stemming that, if you will. I think this initiative does a lot to stem that in that I think that Mr. Bolick knows that Canada had a proposal to commercialize which is a euphemism, in some circles, for privatizing Canada's Seaway operation. I think Mr. Bolick knows that the Seaway Corporation management, myself in particular, were very vocal opponents of that, because I feel very strongly that the St. Lawrence Seaway is a public asset to be operated in the public interest and not in the private interest. So I see our proposal, really, as a way—I don't believe that everything is a responsibility of Government. But I do believe that providing transportation infrastructure is a legitimate responsibility of Government and the St. Lawrence Seaway is an important part of that. And I think that Government employees have been doing that very well.

I will remind you that one of the things that came out of the GAO report was that the St. Lawrence Seaway isn't terribly broke and there is nothing to fix, and one of the reasons for that is the talent and dedication, really, above all else, of our employees. And while Mr. Bolick and I may not agree, today, on the best course to take the Seaway into the future, I would say that over time with Mr. Bolick and other employees like him, equally talented and

equally dedicated, that, I really think, we can make sure the Seaway stays a public asset to be operated in the public interest with public employees, the right number of them, and very frankly, I think that right number is just about what we have now.

Mr. DAVIS of Illinois. I thank you, gentleman.

Mr. BOLICK. May I say one more thing? I think a quick fix for this whole problem would be to make this corporation an independent corporation like proposed a year and a half ago under H.R. 1440 and to give us the right to get our tolls back to be independent of the Harbor Maintenance Trust Fund. Under the toll system over the last couple of years, we would have made a substantial profit and in the future, next 2 years it looks like we would make a substantial profit under a toll system. To make us independent, give us the right to charge a toll for a users' fee would solve all our problems.

Mr. DAVIS of Illinois. Thank you, very much, gentlemen, and thank you, Mr. Chairman.

Mr. HORN. Thank you. Let me ask a couple of questions here. In terms of the union's jurisdiction in Canada, does the American Federation of Government Employees not seek to organize outside the United States? Isn't it true that some of the AFL–CIO unions include Canadian operations, or am I wrong?

Mr. BOLICK. I am not sure about AFGE, but AFL–CIO, yes. I think the truckers are now cross bordering, if I am not mistaken. I had a discussion with a gentleman a couple weeks ago and he said they are just starting to move the trucks across.

Mr. HORN. Is there any reason why the American Federation of Government Employees cannot organize in Canada?

Mr. BOLICK. They have their own union. They can strike; they just shut the Seaway down. They have done it in the past. We don't have that option.

Mr. HORN. So they can get through the two locks, but not the——

Mr. BOLICK. That's true, sir. They can shut the whole Seaway down if they want to go out on strike.

Mr. HORN. Have they ever done that?

Mr. BOLICK. Yes, sir, they have. They have shut the system down at $10,000 a day per ship. It was an expense for the Canadian Government. They have done that.

Mr. HORN. How long did that last?

Mr. BOLICK. I am not sure, but I would say at least 2 weeks.

Mr. HORN. Interesting. So you are not going to compete with the Canadian union.

Mr. BOLICK. No, sir. They have a lifetime agreement with their government. They have got a job for life.

Mr. HORN. I was interested in why you weren't competing there. In this country, sometimes, you know, three or four unions compete for the same work force. It is not unknown. If you think it is, come to southern California where it happens regularly. Anyhow, let me ask this of General Beale. I was interested in your testimony that you really try to meet where the troops are and tell me just for the record and my education, commissaries are open to what types of customers?

General BEALE. Principally, sir, it's the active duty troops and retirees.

Mr. HORN. That would be the ones that made it to 20 years?

General BEALE. Yes, sir, 20 or more.

Mr. HORN. Now, what do they get, a special card?

General BEALE. No, sir. They have the military retired just like I do. They have an ID card that's a different color from your active duty card. It's gray for retirees, I guess appropriately so, and green for active duty. And then members of the Reserve component, Guard and Reserve, are authorized 12 shopping trips per year. Most of them come in monthly.

Mr. HORN. Twelve shopping trips per year for reservists.

General BEALE. Yes, sir. And then there are a number of other categories. Outside DOD, for example, uniformed officers of the Public Health Service are entitled to commissary services by law. Members of the Coast Guard, which, of course, in peacetime is under the Department of Transportation, are authorized. Congressional Medal of Honor winners who are not otherwise, not retired from the service, and there are a fairly large number of other small categories which I could submit for the record.

[The information referred to follows:]

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DOD 1330.17-R

DEPARTMENT OF DEFENSE

ARMED SERVICES COMMISSARY REGULATIONS (ASCR)

APRIL 1987

ASSISTANT SECRETARY OF DEFENSE
(FORCE MANAGEMENT AND PERSONNEL)

CHAPTER 1

GENERAL PROVISIONS

Part A - Introduction

1-100 Purpose

Armed Services Commissary Regulations (ASCR) establish uniform policies relating to operating Army, Navy, Air Force, and Marine Corps commissaries. Supplementary rules, regulations, and directives of the Military Departments, not in conflict with these regulations or their amendments, shall remain in effect and be enforced. These regulations are not intended to cover detailed procedures or instructions of the respective Military Departments.

1-101 Numbering

The numbering system of this Regulation is designed to permit insertion of additional sections, paragraphs, and pages within the appropriate chapter and part when revisions are issued.

1-102 Citation of Regulations

"The Armed Services Commissary Regulations," and any paragraph may be cited as "ASCR" followed by the paragraph number; thus, this paragraph would be cited as ASCR 1-102.

1-103 Deviations from ASCRs

Deviations from the requirements of ASCRs shall be made only in cases of emergency, and such deviations shall be effective only until the emergency ends or until a proposed amendment can be submitted to the the Assistant Secretary of Defense Force Management and Personnel (ASD(FM&P)) for consideration. A report of any deviation shall be furnished to the ASD(FM&P) and to the Military Department concerned.

Part B - Definition of Terms

1-201.1 Military Departments

The Department of the Army, the Department of the Navy, and the Department of the Air Force.

1-201.2 Military Services

The U.S. Army, the U.S. Navy, the U.S. Air Force, the U.S. Marine Corps, and the U.S. Coast Guard.

1-201.3 Uniformed Services

Unless otherwise specified, the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned officers of the Public Health Service, and commissioned officers, ship's officers, and members of the crews of vessels of the National Oceanic and Atmospheric Administration (NOAA).

1-201.4 Uniformed Personnel

Members of the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned officers, ship's officers, members of the crews of vessels of the NOAA, commissioned officers of the Public Health Service, and members of the Reserve components as defined in sections 1-201.5 and 1-201.13, below, on extended active duty or on active duty for training.

1-201.5 Reserve Components

The Army National Guard and Air National Guard of the United States, the Army Reserve, the Naval Reserve, the Air Force Reserve, the Marine Corps Reserve, and the Coast Guard Reserve.

1-201.6 Dependent

Any of the following:

a. A lawful spouse. This includes the separated spouse of the sponsor.

b. Unremarried former spouse of a member or former member, married to the member or former member for a period of at least 20 years, during which period the member or former member performed at least 20 years of service that is creditable in determining the member's or former member's eligibility for retired or retainer pay, or equivalent pay; and the dependents of such former spouse if before the divorce, the person (dependent) was living in a home provided by or for an authorized sponsor and was dependent on the sponsor for over 50 percent of his or her support Public Law (P.L. 97-252 references (a) and (b)).

c. Children who are under 21 years old, unmarried, and who are, in fact, dependent for over half of their support from the sponsor.

d. Children who are 21 years old or over, unmarried, who are, in fact, dependent for over half of their support from the sponsor, and who are either incapable of self-support because of a mental or physical incapacity, or have not passed their 23rd birthday and are enrolled in a full-time course of study at an approved institute of higher learning.

e. Parents, including father, mother, father-in-law, mother-in-law, step-parents and parents by adoption who are in fact dependent for over half of their support from the sponsor.

f. The DoD Military Pay and Allowances Entitlements Manual (reference (b)) shall be used to determine dependency status in questionable cases.

1-201.7 Surviving Spouse

A widow or widower who has not remarried, or who, if remarried, has through divorce, annulment, or the death of the spouse become unmarried. This category also includes an unremarried former spouse who was married to a member or former member for at least 20 years, during which period the member or former member performed at least 20 years of service that is creditable in determining the member or former member's eligibility for retired or retainer pay, or equivalent pay in accordance with reference a.

1-201.8 Orphan

The surviving child, including one who is adopted, of a deceased uniformed service member, retired uniformed service member, recipient of the Medal of Honor, or totally (100%) disabled former member. The child must be under the age of 21; or if 21 or over incapable of self-support because of a mental or physical incapacity; or under 23, and enrolled in a full-time course of study

at an approved institute of higher learning. The surviving child must have been a dependent under definition 1-201.6, above, at the time of the parents death.

1-201.9 Surviving Dependent Parents

The surviving dependent parents, as defined in 1-201.6.e., above, of a deceased uniformed service member, retired uniformed service member, or recipient of the Medal of Honor, or totally (100%) disabled former member. The surviving parents concerned must have been dependents as outlined in 1-201.6, above, residing in the household maintained by or for an authorized sponsor, and have been granted commissary privileges before the sponsor's death.

1-201.10 Retired Personnel

a. All personnel carried on the official retired lists of the uniformed Services as defined in paragraph 1-201.3, above, who are retired with pay or granted retirement pay for physical disability.

b. All members of the Reserve components as defined in paragraph 1-201.3 above, retired with pay, or granted retired pay for physical disability.

c. Retired officers and crews of vessels, light keepers, and depot keepers of the former Lighthouse Service. (See Section 754a reference (c).)

d. Retired commissioned officers, ship's officers and members of the crews of vessels of the Coast and Geodetic Survey. (See Section 868a, reference (c).))

e. Retired commissioned officers of the Environmental Science Services Administration (currently known as National Oceanic and Atmospheric Administration) (NOAA).

1-201.11 Agent

a. A specific named person may be authorized on a temporary basis (not exceeding 1 year unless extended for continuing hardship) by the commanding officer, at the command level designated by the Military Department concerned, to shop for an authorized patron under one of the following conditions:

1. In extreme hardship cases.

2. When no adult dependent member is capable of shopping due to sickness or because of stationing away from his or her household.

b. Any person chosen by a blinded or other severely disabled eligible patron to accompany and assist the authorized patron in shopping. At the command level, designated by the respective Military Departments, commanding officers may issue letters of authorization containing the following or similar statement:

> "__(name of patron)__, the bearer of Uniformed Services Identification and Privilege Card No. _____, is authorized to be accompanied by a person of his or her choice while shopping in a military commissary (and exchange, if applicable)."

The statement should authorize the patron to use any commissary (or exchange). These may be authorized on a permanent basis if the disability is certified as permanent by appropriate military medical authority.

c. In the case of an official organization or activity, an agent is a representative designated in writing by the person responsible for the organization or activity authorized the commissary entitlement.

1-201.12 Extended Active Duty

Full-time duty in the active military service of the United States, entered into with the original expectation of serving for an indefinite or stated period of time, other than active duty for training.

1-201.13 Active Duty ~~for Training~~

The period in which a Reserve component member is in an active duty status and entitled to basic pay and allowances under Section 204 (reference (d)), for full-time training or other full-time duty.

1-201.14 Commissary

Any military retail sales outlet operated under the authority of this Regulation. Separate outlets for purposes of this Regulation are based upon geographic location, i.e., operated under one roof. Each separate operating location shall be considered a commissary regardless of sales volume or management/accountability structure. This includes outlets on the same installation or a previously designated annex, branch, or satellite store. Individual facilities under the same roof that are structured to operate at the convenience of the customer represent one commissary. Commissaries shall be sited for the convenience of active duty military patrons.

1-201.15 Overseas

For purposes of this Regulation "Overseas" applies to other than the 50 United States. Puerto Rico and Guam will be considered as "Overseas". The acronym "CONUS" refers to the 48 contiguous states.

See Chg Not 2 15/02/89

CHAPTER 2

AUTHORIZED PATRONS

Part A - Scope of Section

2-100 General

This section lists the individuals, organizations, and activities entitled to commissary privileges, except in foreign countries when prohibited by treaty or other international agreements, and sets forth instructions regarding the identification of authorized patrons.

Part B - Patrons

2-101 List of Patrons

Commissary privileges are authorized for the classes of individuals, organizations, and activities specified in paragraph 2-101.1 through 2-101.19 below. The primary consideration in authorizing commissary privileges to individuals is the compensation status of the member, or in the case of dependents, the sponsor's compensation status. The intent of patronage is to provide an income effect benefit through savings on food and household items necessary to subsist and maintain the household of the military member and family for the inclusive period of compensated duty. The primary consideration in authorizing commissary privileges to organizations or other activities is the compensation status of the beneficiary of the organizational or activity support.

2-101.1 Uniformed Personnel

This includes all uniformed personnel, as defined in section 1-201.4, above.

2-101.2 Retired Personnel

This includes all retired personnel, as defined in section 1-201.10, above.

2-101.3 Fleet Reserve Personnel

This includes enlisted personnel transferred to the Fleet Reserve of the Navy and the Fleet Marine Corps Reserve, after 16 or more years of active service. (These personnel are equivalent to Army and Air Force retired enlisted personnel.)

2-101.4 Surviving Spouse and Dependents

This pertains to surviving spouse, as defined in section 1-201.7 and the dependents of the following personnel, as defined in sections 1-201.6, 1-201.8, and 1-201.9, below:

a. Uniformed personnel, as defined in section 1-201.4, who died while on active duty.

b. Retired personnel as defined in section 1-201.10, above.

c. Members of the Fleet Reserve and Fleet Marine Corps Reserve.

n Handling Services, DODSTD Issue 9H-03.

d. Members of the Reserve components, as defined in paragraph 1-201.5, above, who died while on or traveling to or from the place at which the member is to perform or has performed active duty, including active duty for training and inactive duty training (regardless of the period of such duty) such as drills. (section 308 reference (e))

e. Personnel of all Reserve components retired with pay under Chapters 67, 367, 571 and 867 (reference (f)).

f. Members of the Reserve components who would have been entitled to retired pay at age 60, and who elected to participate in the Survivor Benefit Plan before attaining that age. Privileges become effective on the deceased member's 60th birthday.

g. Personnel of the emergency officers' retired lists of the Army, Navy, Air Force, and Marine Corps who have been retired under P.L. 85-857 (reference (g)).

h. Officers and crews of vessels, light keepers, and depot keepers of the former Lighthouse Service.

i. Veterans separated under honorable conditions who are eligible for compensation due to 100 percent (total) service-connected disability, as determined by the Veterans' Administration or one of the Military Services (reference (g)).

j. Recipients of the Medal of Honor.

2-101.5 Military Personnel of Foreign Nations

This pertains to officers and enlisted personnel of the Military Services of foreign nations on active duty, as follows:

a. When on duty with U.S. Military Services under competent orders issued by the U.S. Army, Navy, Air Force, or Marine Corps.

b. When assigned military attache duties in the United States and designated on reciprocal agreements with the U.S. State Department.

c. In overseas areas when determined by the major overseas commander or commandant that the granting of such privileges is in the best interest of the United States, and that such persons directly participate in activities or functions of the United States military mission.

d. Excluded are officers and enlisted personnel of foreign nations, retired, on leave in the United States, or attending United States schools, who are not under orders issued by the U.S. Army, Navy, Air Force, or Marine Corps.

2-101.6 Official Organizations and Activities of the Military Services

This applies to official organizations and other resale activities of the U.S. Military Services (except concessionaires) that are operated for uniformed personnel on active duty. Sales to organizations may be on a charge sales basis with billings payable in cash equivalent at least monthly. Sales to appropriated funded organizations are encouraged when it is economically beneficial to the U.S. Government.

2-101.7 Non-DoD Government Departments or Agencies in Overseas Areas

In the interest of Federal Government economy, commissary sales to non-DoD Federal Government departments or agencies in overseas locations will be authorized according to DoD Directive 4000.19 (reference (g)). This support will be authorized when the support can be furnished without unduly impairing the service to authorized DoD patrons. Sales to the extent warranted will be on a reimburseable basis as discussed in section 4-601. Recurring support requirements shall be formalized in negotiated interdepartment or interagency agreements under the authority of the local commanding officer. Service support agreements shall be coordinated with the appropriate commissary command headquarters to ensure resources are available/programmed prior to final approval. The following categories of support may be authorized:

a. Organizational Support. Bulk sales to a designated official for use by the agency or department.

b. Individual Support. Individual U.S. employees who were hired in the Continental United States (CONUS) under transportation agreements of a non-DoD Federal department or agency and their dependents (as defined in section 1-201.6 assigned overseas may be authorized to buy in military commissaries. Appropriate identification credentials shall be issued in accordance with DoD Instruction 1000.13 (reference (i)).

2-101.8. Hospitalized Veterans

This includes veterans discharged under honorable conditions from the U.S. uniformed services (as defined in Section 1-201.3) when hospitalized where commissary facilities are available. (Does not include veterans discharged under honorable conditions receiving outpatient treatment.) (See Sections 4621e, 7603, and 9621e, reference (f)).

2-101.9 Totally Disabled Veterans

This applies to veterans discharged under honorable conditions from the uniformed services of the United States who are eligible for compensation due to 100 percent (total) service-connected disability, as determined by the Veterans Administration or one of the Military Services (reference (h)).

2-101.10 Civilian Employees of the U.S. Government Stationed Outside of the United States

Commissary privileges shall be authorized to all DoD civilian employees (and dependents of their household) who were hired in the CONUS under a transportation agreement for employment in overseas locations, where commissaries are available. Overseas military commanders or Secretaries of Military Departments may extend commissary privileges to civilian employees of other U.S. Government departments or agencies through official support agreements. (See section 2-101.7.)

2-101.11 Civilian Employees of the Military Services Within the United States

Privileges may be extended to civilian employees of the Military Services when specifically authorized by the Secretary of the Department concerned, and when it is impractical for the civilian employee to procure such commissary supplies from civilian agencies without impairing the efficient operations of the installation. Privileges shall not be extended to civilian employees of

on Handling Services, DODSTD Issue 94-03.

the Military Services who do not reside within the military installation. Privileges shall not include the purchase of tobacco products in those states, including the District of Columbia, that impose a tax on such products.

2-101.12 American National Red Cross Personnel

a. Within the United States. Privileges may be extended to all uniformed and nonuniformed, full-time, paid, professional, and headquarters staff personnel of the Red Cross who are assigned to duty with the Military Services by the Red Cross, and who reside within a military installation in the United States. Section 2-101.11 regarding civilian employees of the Military Services applies.

b. Outside the United States. Privileges may be extended to all uniformed and nonuniformed, full-time, paid, professional headquarters staff personnel and to uniformed, full-time paid, secretarial and clerical workers of the Red Cross, who are U.S. citizens and assigned to duty overseas with the Military Services by the Red Cross. Extension of such privileges will be determined by the major overseas commanders or commandants when it is within their capability and without detriment to their ability to fulfill the military mission.

2-101.13 Retired Civilian Employees of the U.S. Coast Guard

This applies to retired civilian employees of the Coast Guard who, on June 30, 1939, were serving as officers or crew on Lighthouse Service vessels, light keepers, or depot keepers of the former Lighthouse Service, and who, after June 30, 1939, and at the time of retirement, were civilian employees of the Coast Guard serving as lighthouse keepers or on board lightships or other Coast Guard vessels.

2-101.14 United Service Organization (USO)

a. When it is within the capability of the major overseas commander or commandant, and without detriment to the ability to fulfill the military mission, commissary privileges may be extended to USO clubs and agencies to purchase subsistence supplies for use in the club snack bars, which support active duty military members and their families.

b. In overseas areas, privileges may be extended to USO area executives, USO executive directors, and assistant executive directors who are U.S. citizens and assigned duties overseas when it is within the capability of the overseas commanders, and when it is without detriment to their ability to fulfill the military mission.

2-101.15 United States Nongovernmental, Nonmilitary Agencies, and Individuals in Overseas Commands

Commissary store support may be authorized in overseas commands by the Secretary of the Military Department concerned on a reimbursable basis, when such agencies and individuals are serving the U.S. Armed Forces exclusively, and when it has been determined that the granting of the privilege would be in the best interest of the United States, and when failure to grant such privileges would impair the efficient operation of the U.S. military establishment.

2-101.16 Medal of Honor Recipients

This includes all recipients of the Medal of Honor.

2-101.17 Dependents

This pertains to all dependents as defined in section 1-201.6. To qualify for commissary patron privileges as a dependent, one must be a member of a household maintained by or for an authorized sponsor. In the case of a divorce, the sponsor's former spouse, and children residing with the sponsor's former spouse are not considered to be members of an authorized sponsor's household for purposes of commissary privileges, except children who reside with a former spouse meeting the requirements of paragraph 1-201.6b as provided for by P.L.97-252 (reference (a)) or in cases where the former spouse has remarried another authorized military sponsor.

2-101.18 Orphans

As defined in section 1-201.8.

2-101.19 Surviving Dependent Parents

As defined in section 1-201.9.

Part C - Identification of Patrons

2-201 Positive Identification Required

Any individual who seeks to make a purchase from a commissary shall be positively identified as an authorized patron * either before entry into the commissary facility or in CONUS, at * * the point of purchase (at the cash register) at the option of the * * respective installation or area commander. The prescribed identification media shall be carefully checked to ensure that each individual is entitled to the privileges he or she seeks.

2-202 Types of Identification Required

* The following methods of identification will be used: *

* a. For military members in uniform, as defined in section * * 1-201.4, at the option of the commissary system commander and * * with the concurrence of the respective installation or area * * commander, the official military uniform is acceptable * * means of identifying the wearer as an authorized patron. This * * only applies to U.S. uniforms as defined in section 1-201.4 and * * does not include uniforms as defined in section 1-201.4 and does * * not include uniforms of other nations, ROTC cadets, Boy Scouts, * * Civil Air Patrol, etc. All commissaries shall perform personal *

* random spot checks of uniformed personnel requiring that 100 *
* percent of customers show an official DD Form 2, Armed Services *
* Identification Card, during the spot-check period. *

* b. All other persons not in military uniform shall be *
* identified by an official DD Form 2 or an official DD Form 1173, *
* Uniformed Services Identification and Privilege Card, in accor- *
* dance with DoD Instruction 1000.13 (reference (i)). All identi- *
* fication shall bear the signature of the person to whom issued. *
* Reserve personnel not in military uniform and their dependents *
* shall be identified as specified by section 2-204, below. *

2-203 Reserve Component - Identification Procedures

Members of the Reserve components, as defined in section 1-201.5, above, are eligible to use military commissaries by reason of the perfomance of active duty (as defined by section 201.13, above). The benefit may be exercised by the member or the member's authorized dependents (as defined by section 1-201.6, above). The following criteria and/or identification procedures shall be used in administering the benefit.

a. Selected Reserve. A member of Selected Reserve in good standing, as defined by section 1-201.16, above, shall be issued a "DoD Form 2529, DoD Reserve Component Commissary Privilege Card," (instruction and form are at appendices C and D respectively) by the unit administering the Reserve training and/or orders authority. This form shall be controlled by administering units and publication offices. No member shall be issued, nor possess, more than one "DD Form 2529" for the same benefit period. A benefit period will not exceed 365 days. The card authorizes the bearer 12 days of discretionary visits during the applicable 365-day period. Prior to gaining entry to a commissary, a Reserve member shall be required to present their Commissary Privilege Card, "DD Form 2529," along with valid Reserve identification card (DD Form 2), while an authorized dependent shall be required to present a Commissary Privilege Card along with a valid form of identification containing a picture of the
* dependent. "If the dependent possesses one of the following *
* Reserve dependent ID cards, the dependent's name is not required *
* to appear on the Commissary Privilege Card as the dependent has *
* been verified in the Defense Enrollment Eligibility Reporting *
* System (DEERS) as the sponsor's eligible dependent. The Reserve *
* dependent ID cards are: Army Reserve and Army National Guard - *
* DA 5431, Air Force Reserve and Air National Guard - AF 447, Navy *
* Reserve - NAVPERS 5512/7, Marine Corps Reserve - NAVMC 11138, *

#Second amendment (Ch 3, 8/3/90)

* DD Form 1173-1 (Guard and Reserve Family Member ID Card) which is replacing the above Reserve dependent ID cards on a phased-in basis. "The commissary entrance control clerk shall date stamp one of the 12 blocks with the current date on the "DD Form 2529," at the time of entry.

b. Active Duty. Any member of a Reserve component as defined by section 1-201.5, above, who is ordered to active duty as defined in section 1-201.13, above, is authorized to use military commissaries during the inclusive period of the actual active duty. Before entry into the commissary, the Reserve member shall be required to present a copy of the sponsor's active duty orders along with a valid form of identification containing a picture of the dependent. The orders shall contain the name, rank, social security number or service number of the sponsor; beginning and ending dates of the sponsor's active duty tour; and the name of the individual dependents. If the dependent possesses one of the above Reserve dependent ID cards, the dependent's name is not required to appear on the sponsor's active duty orders as the dependent has been validated in the Defense Enrollment Eligibility Reporting System (DEERS) as the sponsor's eligible dependent.

2-204 Civilian Employees of the U.S. Government Stationed Outside of the United States Identification Procedures

Civilian emoloyees and their dependents authorized privileges at overseas installations under section 2-101.10 shall be identified by an official DD Form 1173, "Uniformed Services Identification and Privileges Card" as provided in paragraph E.2.d (11) of reference (i) (note reference (i) is being revised to authorize commissary privilege in Puerto Rico as an overseas location (see ASCR 201.15)). Civilian employees on official temporary duty (TDY) orders in overseas locations must present a copy of competent official orders indicating specific inclusive dates of official duty at the overseas installation and a certification by local command authority authorizing commissary privileges. Additionally, the TDY employee will present a separate identification credential containing a photograph (such as state driver's license) to validate identify as listed on the orders.

Mr. HORN. How about veterans that have gone to veterans hospitals or something? Do they count in that? Can they go to a commissary?

General BEALE. Sir, I know that—I can't say for certain that all veterans are excluded. I know there is a provision before one of the bodies of Congress right now to include veterans with a 30-percent or more disability. In fact, I read that on Legislate the other day. But by and large, I don't believe veterans are included unless they are retirees or one of the other categories.

Mr. HORN. So the basic thing is the retirees. How do you make your judgments now? We talk about downsizing here. We have had a lot of it in base closures, and there are thousands of retirees that are no longer served by some commissary. Now, I don't know if they are primarily the grocery market, all-purpose Wal-Mart commissary, but I am thinking of the pharmacies we were able to keep open at the Long Beach Naval Shipyard for 2 years. Suddenly they close it and say if you want a pharmaceutical prescription filled, you have to mail it in to heaven knows where. And I realize that is not unknown in the private sector. HMO's are doing it, so forth. But when you lose your local pharmacy, you lose that professional behind the counter that especially for retirees is performing a very useful service, like what are the other 15 pills some doctor has prescribed for you. And as you know, a lot of doctors dealing with people over 65, which I am, would say just bring in all the prescriptions and throw them in the trash can and we'll start over. Because a lot of these different prescriptions, if people continue to take them, are very life threatening in terms of one counteracting the other or one leading to real difficulty.

So I am curious on how we make a judgment in this country on what commissaries stay open when the active troops go and you still have a retiree clientele. Have you kept them open in situations where there is a retiree clientele and the troops have gone?

General BEALE. Not specifically a retiree clientele, but in several cases, to include the commissary at Long Beach Shipyard, we have maintained commissary capability at seven locations where substantial numbers of active duty remained after the dust settled from base closure from what was supposed to be a complete closure to something that was more akin to a realignment.

The initial guidance that came out of the Defense Department several years ago was that since the criteria historically had been based on the number of active duty at a specific location in order to qualify for a commissary, that once the active duty moved to another location or the active unit was shut down, that, in fact, the commissaries would close.

Now, the Department has backed off of that policy guidance and what we were trying to do right now through the Defense Commissary Board is take a more regional approach to the way decisions are based on where commissaries will be ultimately scattered across the landscape to take into account some of the concerns that you have mentioned, particularly with regard to the retired community that have obvious expectations of continued service on through retirement.

Mr. HORN. They are pleased with your service and don't like to see it disappear.

General BEALE. Yes, sir.

Mr. HORN. Do you include pharmacies in your jurisdiction?

General BEALE. No, sir, we have no connection with pharmacies. The Army/Air Force Exchange Service and the Navy Exchange have been getting into the pharmacy service in conjunction with the surgeon generals and the medical departments of their respective services, but the commissaries have not been into the pharmaceutical business.

Mr. HORN. But they are under some of the departments, such as the Navy or the Army or Air Force, you are saying.

General BEALE. It's normally been a cooperative effort between the medical departments of the services and their respective exchange service as opposed to the commissary system.

Mr. HORN. Is there any reason why a commissary shouldn't all be under the defense commissary system?

General BEALE. Well, all commissaries are. All commissaries under the Defense Commissary Agency, but with respect to your question about pharmacies, we have no connection with that. Now, the exchanges are another matter. The Army/Air Force Exchange Service, that services obviously the Army and the Air Force, the Navy Exchange and the Marine Corps Exchange are nonappropriated fund activities, meaning they are cooperatives paid for by the service member, as opposed to an appropriated fund activity such as the commissary system where 75 percent of our operating costs are borne by the taxpayer.

Mr. HORN. Now, wouldn't it be more economical if pharmacies were out of the services and under the jurisdiction of the Defense Commissary Agency, because you would get more bulk buying and lower rates for your customers.

General BEALE. Let me answer that in two ways, if I might. I can certainly say from the perspective of the commissary, we could certainly engage in that practice and get into the pharmaceutical business. However, it would, unless we were going to charge for pay-as-you-go service, we would require some additional operating funds from the taxpayer in order to be able to provide that service.

From the standpoint of the Department, I can address it in a limited manner because prescribing to going to DeCA, I commanded the Defense Personnel Support Center in Philadelphia, PA, which among several functions is responsible for buying all medical, surgical, and pharmaceutical items for the Department of Defense.

Now, the Defense Personnel Support Center, which is a subordinate command of the Defense Logistic Agency, is able to negotiate very good contracts for pharmaceutical purchases based on the leverage it brings buying for the entire Defense Department. Now, those buys, either available through the depot systems, but more likely today through a prime vendor from the commercial sector who is located in the geographic vicinity of those hospitals to provide support, provide some very good service, and I am not quite sure that DeCA could do any better job than my old outfit in Philadelphia did in terms of buying pharmaceuticals and the leverage that they are able to bring to the table representing the entire Defense Department.

Mr. HORN. Now, does Defense Logistics also purchase for you, or do you do your own purchasing?

General BEALE. Over time, and it's an interesting point that you raised, and I suppose because I came from Philadelphia down to DeCA and I was able to see some of the challenges that faced us in Philadelphia versus some of the opportunities that presented themselves in DeCA as we brought the four service systems together. Over the last 4 years I have taken in-house most of the purchasing that the Defense Personnel Support Center used to do on behalf of the commissaries, because quite frankly, we can do it cheaper for the taxpayer. And we are not paying the surcharge rates that are normally assessed by DOD service providers.

Now, there are some commodities that are still purchased for us by the Defense Personnel Support Center. In the continental United States, for example, produce, fruits and vegetables, are still purchased by the defense subsistence offices of the Defense Personnel Support Center for both commissaries and troop issue, read that dining facilities, of the various services throughout the United States. They still serve as our agent in Europe, for example, to provide and purchase offshore items for us that are purchased overseas versus those that are shipped over for sale from the United States.

So we still have some limited relationship with DPSC and DLA, but we have taken the purchase of what we call market-ready items, bread, milk, fresh meat, chickens, principally perishables, taken that over from DLA and taken over the contracting for semiperishables and in this case eliminated the middleman because we can do it a little less expensively than was previously the case.

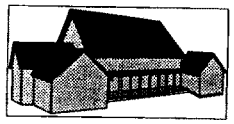
Mr. HORN. That was a very helpful explanation. Without objection, I would like the staff to work with your staff to put together a list of where the commissaries still are.

General BEALE. Yes. We can submit that, yes, sir.

[The information referred to follows:]

07/09/97

COMMISSARY STRATIFICATION



	# CONUS	#OCONUS	TOTALS
Eastern	110	5	115
Midwest	35	0	35
Western/Pacific	64	30	94
European		63	63
Totals	209	98	307

As of 07/09/97

EASTERN REGION (VA BEACH, VA)	SERVICE	LOCATION
CONUS		
1. Harrison Village	ARMY	IN 46316
2. Camp Lejeune MCB	MARINE	NC 28542-5002
3. Charles Melvin Price Sup Cntr	ARMY	IL 62040-1801
4. Cherry Point MCAS	MARINE	NC 28533-0030
5. Crane NWSC	NAVY	IN 47522-5001
6. Defense Supply Center Richmond	DLA	VA 23297-5096
7. Fort Bragg	ARMY	NC 28307-5000
8. Fort Campbell	ARMY	KY 42223-5639
9. Fort Eustis	ARMY	VA 23604-5542
10. Fort Knox	ARMY	KY 40121-5680
11. Fort Lee	ARMY	VA 23801-1523
12. Fort Leonard Wood	ARMY	MO 65473-5890
13. Fort McCoy	ARMY	WI 54656-5131
14. Fort Monroe	ARMY	VA 23651-6600
15. Great Lakes	NAVY	IL 60088-5129
16. Langely AFB	AIR FORCE	VA 23665-2078
17. Little Creek	NAVY	VA 23521-2699
18. Little Rock AFRB	AIR FORCE	AR 72099-5070
19. Mallonee Village	ARMY	NC 28307-5000
20. New River	MARINE	NC 28545-1006
21. Norfolk NB	NAVY	VA 23511-3899
22. Oceana NAS	NAVY	VA 23460-9998
23. Pope AFB	AIR FORCE	NC 28308-5000
24 Portsmouth NSY	NAVY	VA 23709-1001
25. Rock Island Arsenal	ARMY	IL 61299-7280
26. Scott AFB	AIR FORCE	IL 62225-5362
27. Selfridge ANG Base	AIR FORCE	MI 48045-5011
28. Seymour Johnson AFB	AIR FORCE	NC 27531-6290
29. Whiteman AFB	AIR FORCE	MO 65305-5020
30. Wright- Patterson AFB	AIR FORCE	OH 45433-5442

EASTERN REGION CONT'D

CONUS

31.	Aberdeen Proving Ground	ARMY	MD 21005-0387
32.	ARDEC	ARMY	NJ 07806-5000
33.	Andrews AFB	AIR FORCE	MD 20331-6290
34.	Annapolis NS	NAVY	MD 21402-5065
35.	Bangor ANGB	AIR FORCE	ME 04401-3048
36.	Bolling AFB	AIR FORCE	DC 20332-6290
37.	Brunswick NAS	NAVY	ME 04086-1197
38.	Carlisle Barracks	ARMY	PA 17013-5011
39.	Cutler	NAVY	ME 04626-9603
40.	Dahlgren NSWC	NAVY	VA 22448-5000
41.	Defense Distribution Region East	DLA	PA 17070-5006
42.	Fort Detrick	ARMY	MD 21702-5000
43.	Dover AFB	AIR FORCE	DE 19902-6290
44.	Fort Belvoir	ARMY	VA 22060-5696
45.	Fort Devens	ARMY	MA 01433-5760
46.	Fort Drum	ARMY	NY 13602-5006
47.	Fort Hamilton	ARMY	NY 11252-7100
48.	Fort Meade	ARMY	MD 20755-5220
49.	Fort Monmouth	ARMY	NJ 07703-5609
50.	Fort Myer	ARMY	VA 22211-6010
51.	Fort Ritchie	ARMY	MD 21719-6020
52.	Hanscom AFB	AIR FORCE	MA 01731-6290
53.	Kelly Support Facility	ARMY	PA 15071-5020
54.	Lakehurst NAEC	NAVY	NJ 08733-5001
55.	Mitchell Field	NAVY	NY 11530-6795
56.	McGuire AFB	AIR FORCE	NJ 08641-5380
57.	New London	NAVY	CT 06349-5041
58.	Newport NETC	NAVY	RI 02841-5060
59.	Patuxent River NAS	NAVY	MD 20670-5427
60.	Portsmouth NSY	NAVY	NH 03801-2032
61.	Quantico MCB	MARINE	VA 22134-5082
62.	Scotia	NAVY	NY 12302-9460
63.	Tobyhanna Army Depot	ARMY	PA 18466-5082
64.	Vint Hill Farms	ARMY	VA 22186-5635
65.	Walter Reed Army Medical Center	ARMY	MD 20910-1231
66.	West Point	ARMY	NY 10996-1597
67.	Winter Harbor NSGA	NAVY	ME 04693-0900

OCONUS

68.	Keflavik NS	NAVY	Iceland FPO AE 09728-0349

69.	Albany	MARINE	GA	31704-5002
70.	Arnold AFB	AIR FORCE	TN	37389-2600
71.	Athens NSCS	NAVY	GA	30606-5000
72.	Barksdale AFB	AIR FORCE	LA	71110-6290
73.	Cp Merrill	ARMY	GA	30533-9499
74.	Cecil Field NAS	NAVY	FL	32215-0116
75.	Charleston NWS	NAVY	SC	29445-8601
76.	Charleston AFB	AIR FORCE	SC	29404-6290
77.	Columbus AFB	AIR FORCE	MS	39701-9903
78.	Eglin AFB	AIR FORCE	FL	32542-1412
79.	Fort Benning	ARMY	GA	31905-6203
80.	Fort Gillem	ARMY	GA	30050-5000
81.	Fort Gordon	ARMY	GA	30905-5665
82.	Fort Jackson	ARMY	SC	29207-6060
83.	Fort McClellan	ARMY	AL	36205-5112
84.	Fort McPherson	ARMY	GA	30330-5000
85.	Fort Polk	ARMY	LA	71459-0925
86.	Fort Rucker	ARMY	AL	36362-5373
87.	Fort Stewart	ARMY	GA	31314-6070
88.	Gulfport NCBC	NAVY	MS	39501-5011
89.	Gunter AFB	AIR FORCE	AL	36112-3327
90.	Hunter Airfield	ARMY	GA	31409-5191
91.	Hurlburt Field AFB	AIR FORCE	FL	32544-6290
92.	Jacksonville NAS	NAVY	FL	32212-0131
93.	Keesler AFB	AIR FORCE	MS	39534-6290
94.	Key West NAS	NAVY	FL	33040-0007
95.	Kings Bay NSB	NAVY	GA	31547-2506
96.	McDill AFB	AIR FORCE	FL	33608-6290
97.	Maxwell AFB	AIR FORCE	AL	36112-6519
98.	Mayport NS	NAVY	FL	32233-6336
99.	Memphis NAS	NAVY	TN	38054-6067
100.	Meridian NAS	NAVY	MS	39309-5800
101.	Moody AFB	AIR FORCE	GA	31699-1711
102.	New Orleans NAS	NAVY	LA	70142-5007
103.	Orlando NTC	NAVY	FL	32862-0005
104.	Parris Island MCRD	MARINES	SC	29905-0039
105.	Patrick AFB	AIR FORCE	FL	32925-3604
106.	Pensacola NAS	NAVY	FL	32508-5375
107.	Redstone Arsenal	ARMY	AL	35898-7210
108.	Robins AFB	AIR FORCE	GA	31098-2428
109.	Shaw AFB	AIR FORCE	SC	29152-5033

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110. Tyndall AFB	AIR FORCE	FL 32403-5530
111. Whiting Field	NAVY	FL 32570-6161
OCONUS		
112. Corozal	ARMY	APO AA PAN 34002-5000
113. Howard AFB	AIR FORCE	APO AA PAN 34002-5000
114. Roosevelt Rds	NAVY	PR 00735
115. Fort Buchanan	ARMY	PR 00934-5075

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MIDWEST REGION (KELLY AFB, TX)

116.	Altus FB	AIR FORCE	OK	73523-6290
117.	Brooks AFB	AIR FORCE	TX	78235-5290
118.	Cannon AFB	AIR FORCE	NM	88103-5222
119.	Corpus Cristi NAS	NAVY	TX	78419-5104
120.	Dyess AFB	AIR FORCE	TX	79607-1250
121.	Ellsworth AFB	AIR FORCE	SD	57706-4838
122.	F.E. Warren AFB	AIR FORCE	WY	82005-2452
123.	Fitzsimons AMC	ARMY	CO	80045-7010
124.	Fort Bliss	ARMY	TX	79906-0019
125.	Fort Carson	ARMY	CO	80913-3005
126.	Fort Hood	ARMY	TX	76544-5056
127.	Fort Hood II	ARMY	TX	76544-5056
128.	Fort Leavenworth	ARMY	KS	66027-1139
129.	Fort Riley	ARMY	KS	66442-0520
130.	Fort Sill	ARMY	OK	73503-7400
131.	Fort Sam Houston	ARMY	TX	78234-5000
132.	Goodfellow AFB	AIR FORCE	TX	76908-5000
133.	Grand Forks AFB	AIR FORCE	ND	58205-6315
134.	Holloman AFB	AIR FORCE	NM	88330-8286
135	Kelly AFB	AIR FORCE	TX	78241-5000
136.	Kingsville NAS	NAVY	TX	78363-5014
137.	Kirtland AFB	AIR FORCE	NM	87117-5539
138.	Lackland AFB	AIR FORCE	TX	78236-1039
139.	Laughlin AFB	AIR FORCE	TX	78843-5250
140.	McConnell AFB	AIR FORCE	KS	67221-3662
141.	Minot AFB	AIR FORCE	ND	58705-5026
142.	Offutt AFB	AIR FORCE	NE	68113-2130
143.	Peterson AFB	AIR FORCE	CO	80914-1610
144.	Randolph ARB	AIR FORCE	TX	78150-4501
145.	Reese AFB	AIR FORCE	TX	79489-6290
146.	Sheppard AFB	AIR FORCE	TX	76311-3048
147.	Tinker AFB	AIR FORCE	OK	73145-9015
148.	USAF Academy	AIR FORCE	CO	80840-2750
149.	Vance AFB	AIR FORCE	OK	73705-5702
150.	White Sands Missile Range	ARMY	NM	88002-5518

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WESTERN/PACIFIC REGION
CONUS

151.	Alameda NAS	NAVY	CA	94501-5006
152.	Barstow MCLB	MARINES	CA	92311-5002
153.	Beale AFB	AIR FORCE	CA	95903-1723
154.	China Lake NWC	NAVY	CA	93555-6001
155.	Cp Pendleton	MARINES	CA	92055-5212
156.	Davis-Monthan AFB	AIR FORCE	AZ	85707-3410
157.	Dugway Proving Ground	ARMY	UT	84022-6930
158.	Edwards AFB	AIR FORCE	CA	93524-1590
159.	El Centro NAF	NAVY	CA	92243-5006
160.	El Toro MCAS	MARINES	CA	92709-6017
161.	Fallon NAS	NAVY	NV	89406-5000
162.	Fort Huachuca	ARMY	AZ	85613-6000
163.	Fort Irwin	ARMY	CA	92310-5000
164.	Fort Ord (Monterey)	ARMY	CA	93944-7200
165.	Hamilton Housing	NAVY	CA	94949-5080
166.	Hill AFB	AIR FORCE	UT	84056-5704
167.	Hunter Liggett	ARMY	CA	93928-5000
168.	Imperial Beach NAS	NAVY	CA	91933-5128
169.	Lemoore NAS	NAVY	CA	93246-5002
170.	Long Beach NSY	NAVY	CA	90822-5091
171.	Los Angeles AFB	AIR FORCE	CA	90245
172.	Luke AFB	AIR FORCE	AZ	85307-1539
173.	March AFB	AIR FORCE	CA	92518-1868
174.	McClellan AFB	AIR FORCE	CA	95652-1130
175.	Miramar NAS	NAVY	CA	92145-5000
176.	Moffett Field NASA	NASA AMES	CA	94035-5009
177.	Nellis AFB	AIR FORCE	NV	89191-7041
178.	North Island NAS	NAVY	CA	92135-5092
179.	Oakland	ARMY	CA	94626-5000
180.	Point Magu NAS	NAVY	CA	93042-5023
181.	Port Hueneme NS	NAVY	CA	93043-5000
182.	Presidio of San Francisco	ARMY	CA	94129-0909
183.	San Diego NTC	NAVY	CA	92106
184.	San Diego NS	NAVY	CA	92136-5007
185.	San Onofre	MARINES	CA	92055-5212
186.	Sierra	ARMY	CA	96113-5906
187.	Stockton NCS	NAVY	CA	95203-5000
188.	Travis AFB	AIR FORCE	CA	94535-1905
189.	Treasure Island	NAVY	CA	94130-5000
190.	Twentynine Palms MCA	MARINES	CA	92278-8111
191.	Vandenberg AFB	AIR FORCE	CA	93437-6290
192.	Yuma MCAS	MARINES	AZ	85369-5002
193.	Yuma Proving Ground	ARMY	AZ	85365-9121

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CONUS

194.	Bangor	NAVY	WA 98315-2604
195.	Barbers Point NAS	NAVY	HI 96862-5050
196.	Bremerton NAS	NAVY	WA 98314-5205
197.	Eielson AFB	AIR FORCE	AK 99702-2399
198.	Elmendorf AFB	AIR FORCE	AK 99506-2906
199.	Fairchild AFB	AIR FORCE	WA 99011-9045
200.	Fort Greely	ARMY	AK 99737-2000
201.	Kodiak	COAST GUARD	AK 99619-5028
202.	Fort Lewis	ARMY	WA 98433-5000
203.	Fort Richardson	ARMY	AK 99505-5349
204.	Fort Shafter	ARMY	HI 96858-5000
205.	Fort Wainwright	ARMY	AK 99703-7610
206.	Hickam AFB	AIR FORCE	HI 96853-5255
207.	Kaneohe Bay MCAS	MARINES	HI 96863-5002
208.	Malstrom AFB	AIR FORCE	MT 59402-7510
209.	McChord AFB	AIR FORCE	WA 98438-1316
210.	Mountain Home AFB	AIR FORCE	ID 83649-5249
211.	Pearl Harbor NS	NAVY	HI 96860-6000
212.	Schofield Bks	ARMY	HI 96786-3699
213.	Smokey Point NS (EVERETTE)	NAVY	WA 98271
214.	Whidbey Island NAS	NAVY	WA 98278-9100

OCONUS

215.	Andersen AB	AIR FORCE	Guam APO AP 96543-4011
216.	Atsugi NAS	NAVY	FPO AP Japan 96306-2324
217.	Cp Carroll	ARMY	S. Korea APO AP 96260-0286
218.	Cp Casey	ARMY	S. Korea APO AP 96205-0088
219.	Cp Courtney	MARINES	APO AP Okinawa 96368-5000
220.	Cp Edwards	ARMY	APO AP S. Korea 96205-0088
221.	Cp Foster AFB	MARINES	APO AP Okinawa 96368-6290
222.	Cp Humphreys	ARMY	APO AP S. Korea 96278-6290
223.	Cp Kinser MCB	MARINES	APO AP Okinawa 96368-5156
224.	Cp Kure	ARMY	APO AP Japan 96343-0075
225.	Cp Page	ARMY	APO AP S. Korea 96205-0088
226.	Cp Stanley	ARMY	APO AP S. Korea 96205-0088
227.	Cp Zama	ARMY	APO AP Japan 96343-0075
228.	Chinhae NAS	NAVY	APO AP S.Korea 96269-1100
229.	Guam NS	NAVY	FPO AP GUAM 96540-2300
230.	Hannam Village	ARMY	APO AP S. Korea 96205-0088
231.	Hario Housing	NAVY	FPO AP JAPAN 96221
232.	Iwakuni MCAS	MARINES	FPO AP Japan 96310-0061
233.	Kadana AFB	AIR FORCE	APO AP Okinawa 96368-5000
234.	Kunsan AFB	AIR FORCE	APO AP S. Korea 96264-5000

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235.	Misawa AFB	AIR FORCE	APO AP Japan 96319-6290
236.	Osan AFB	AIR FORCE	APO AP S. KOREA 96278-6290
237.	Pusan	ARMY	APO AP S. Korea 96259-0270
238.	Sagami	ARMY	APO AP Japan 96343-0075
239.	Sagamihara	ARMY	APO AP Japan 96343-0075
240.	Sasebo NB	NAVY	APO AP Japan 96322-2300
241.	Taegu	ARMY	APO AP S. Korea 96218-0562
242.	Yokosuka NESC	NAVY	FPO AP Japan 96349-2300
243.	Yokota AB	AIR FORCE	APO AP Japan 96328-6290
244.	Yongsan	ARMY	APO AP S. Korea 96205-0088

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EUROPEAN REGION (KAPAUN GE)

245.	Alconbury	AIR FORCE	APO AE UK 09470
246.	Ansbach	ARMY	APO AE GE 09250
247.	Aschaffnburg	ARMY	APO AE GE 09165
248.	Augsburg	ARMY	APO AE GE 09178-0505
249.	Aviano AB	AIR FORCE	APO AE IT 09601
250.	Babenhausen	ARMY	APO AE GE 09175
251.	Bad Aibling	ARMY	APO AE GE 09098
252.	Bad Kissingen	ARMY	APO AE GE 09033
253.	Bad Krueznach	ARMY	APO AE GE 09252
254.	Bad Nauheim	ARMY	APO AE GE 09074
255.	Bamberg	ARMY	APO AE GE 09139
256.	Baumholder	ARMY	APO AE GE 09034
257.	Bitburg	AIR FORCE	APO AE GE 09126-5000
258.	Buedingen	ARMY	APO AE GE 09165
259.	Cairo	ARMY	FPO AE Egypt 09839-4901
260.	Chievres	ARMY	APO AE Belgium 09708
261.	Costanzo	NAVY	APO AE IT 09627-2700
262.	Croughton	AIR FORCE	APO AE UK 09494-5480
263.	Darmstadt	ARMY	APO AE GE 09175
264.	Dexheim	ARMY	APO AE GE 09252
265.	Dhahran	ARMY	APO AE Saudi Arabia 09858-6814
266.	Eskan Village	ARMY	APO AE SAUDI ARABIA 09803-1310
267.	Fairford	AIR FORCE	APO AE UK 09456
268.	Garmisch	ARMY	APO AE GE 09053
269.	Gelnhausen	ARMY	APO AE GE 09165
270.	Giebelstadt	ARMY	APO AE GE 09244
271.	Giessen	ARMY	APO AE GE 09169-4400
272.	Grafenwoehr	ARMY	APO AE GE 09114
273.	Hanau	ARMY	APO AE GE 09165
274.	Heidelberg	ARMY	APO AE GE 09102
275.	Hohenfels	ARMY	APO AE GE 09173-5411
276.	Idar Oberstein (c/o Baumholder Comsy)	ARMY	APO AE GE 09262
277.	Illesheim	ARMY	APO AE GE 09140
278.	Incirlik	AIR FORCE	APO AE TURKEY 09824-5195
279.	Izmir	AIR FORCE	APO AE TURKEY 09821
280.	Kelley Bks	ARMY	APO AE GE 09131-4377
281.	Kitzingen	ARMY	APO AE GE 09244
282.	Lajes Field	AIR FORCE	APO AE PORTUGAL 09720
283.	Lakenheath	AIR FORCE	APO UK 09464-5450
284.	Livorno	ARMY	APO AE ITALY 09613
285.	Mannheim	ARMY	APO AE GE 09086
286.	McCully	ARMY	APO AE GE 09096
287.	Menwith Hill	AIR FORCE	APO AE UK 09468
288.	Mildenhall (mail c/o Lakenheath Comsy)	AIR FORCE	APO AE UK 09459
289.	Naples	NAVY	FPO AE ITALY 09619-3500

As of 07/09/97

290.	Neubruecke (C/O Baumholder Comsy)	ARMY	APO AE GE 09260
291.	Panzer Bks	ARMY	APO AE GE 09131-4377
292.	Patch Bks	ARMY	APO AE GE 09131-4377
293.	Pirmasens	ARMY	APO AE GE 09189
294.	Ramstein	AIR FORCE	APO AE GE 09094-6290
295.	Rhein Main	AIR FORCE	APO AE GE 09057-7490
296.	Rota	NAVY	FPO AE SPAIN 09645-3100
297.	Schinnen	ARMY	APO AE NETHERLANDS 09703
298.	Schweinfurt	ARMY	APO AE GE 09033
299.	Sembach	AIR FORCE	APO AE GE 09136
300.	Sigonella	NAVY	FPO AE IT 09627-2700
301.	Spangdahlem	AIR FORCE	APO AE GE 09126-5000
302.	Vicenza	ARMY	APO AE ITALY 09630
303.	Vilseck	ARMY	APO AE GE 09112
304.	Vogelweh	AIR FORCE	APO AE GE 09094
305.	Wiesbaden	ARMY	APO AE GE 09096
306.	Worms	ARMY	APO AE GE 09056
307.	Wuerzburg	ARMY	APO AE GE 09244

Mr. HORN. And also Mr. Bolick had a statement, had a number of attachments, I want them put in the record. Without objection, they will go with your statement.

One more question I have for our friends from the Patent and Trademark Office. Was privatization ever considered by the Patent and Trademark Office?

Mr. KAZENSKE. I believe at one point, there was a NAPA study that we worked with that was considered, however wasn't followed up on, I believe.

Mr. HORN. What was the reasons for not considering it?

Mr. KAZENSKE. One of the main reasons was the granting of the patent and the trademark is the sovereign function of the Federal Government and should remain as part of the Federal structure.

Mr. HORN. What is the basis for that statement?

Mr. KAZENSKE. It is the provisions under title 35 of the United States Code that deals with the granting of the patent and title 15 with the registration of a trademark.

Mr. HORN. And you don't think that could be privatized?

Mr. KAZENSKE. There are aspects that maybe could be privatized. However, I think in the current situation I would strongly recommend that it not be at this point in time. Seeing more that we take steps as we move through this process and not take major leaps in the legislation or any point of legislation.

Mr. HORN. What do the British do? Do they privatize their patent operation?

Mr. KAZENSKE. It is not privatized. It is a type of government corporation. It's a much smaller office with an operation that receives about 22,000 patent applications a year.

Mr. HORN. That's about one-third of your daily mail.

Mr. KAZENSKE. That's right.

Mr. HORN. Well, I am looking at the Constitution of the United States of America, which is a good document to look at occasionally. Article 1, section 8, we get down to the following language: "To promote the progress of science and useful arts by securing for limited time to authors and inventors the exclusive right to their respective writings and discoveries."

Now, section 8 merely says that Congress shall have the power to, and then you have got a whole series of actuals. And then, of course, you have the great necessary and proper clause at the end, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof."

Actually nothing there says you can't privatize the Patent Office, as long as Congress does it.

Mr. KAZENSKE. I guess you could.

Mr. HORN. That's a congressional power to regulate in that area. And I have felt for a long time that what is left of the Department of Commerce, your operation could run like a clock in perpetuity; the travel office we got rid of; and you have got a couple of bureaus down there to help the special trade representative gather data. NOAA is 60 percent of Commerce's budget and they could go off and run themselves, too. So I wonder why do they need all these political appointees to tell them what to do, when like the National

Science Foundation, or the National Aeronautics and Space Administration, they work quite well, thank you. They don't need to be in a Cabinet department.

And I just wonder why all these people are still hovering around Herbert Hoover's Commerce building. In his day, Commerce was something. But with the New Deal, all of those basic functions went to regulatory agencies, Federal Communications Commission, Federal Trade Commission, all the rest of it that emerged out of the 1930's, 1940's, 1950's, the NLRB, and so forth.

All of that used to be something Commerce had something to say about. They don't have anything to say anymore. So I just wonder why we need this tremendous overhead that for a group of agencies that could run themselves without political appointees, be they Republican or Democrat. So we will be pursuing that, I hope, in this Congress, in the next couple of years, and try to make it a little leaner Government. And all I am saying is just opening the mail in your place is a challenge.

I thought the two Senators from California had the worst mail load I know, with 34 million people taking pen in hand every day, or seems that way. But I wish you all well. You have given us an excellent perspective on your particular operations and we are most grateful to you.

I now want to thank the following people that had a role in preparation of this hearing. J. Russell George, who is looking over the whole crowd and the staff and me, as staff director of this distinguished subcommittee; Matt Ryan on my immediate left, the professional staff member in charge of putting this particular hearing together; John Hynes, who is out working with the media, I guess, professional staff member; Andrea Miller, our staff assistant/clerk; Mark Stephenson with the minority professional staff; Gene Gosa, the clerk for the minority, and we are privileged to have four interns working for us. Interns translate into free labor for summer, and try to enjoy yourself after the free labor, Darren Carlson, Jeff Cobb, John Kim, and Grant Newmann. Our two court reporters are Vicky Stallsworth and Tracy Petty. We thank you all very much, and with that, the meeting and hearing is adjourned.

[Whereupon, at 12:57 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

INFORMATION INDUSTRY ASSOCIATION

Written Statement

of

THE INFORMATION INDUSTRY ASSOCIATION

before

THE HOUSE SUBCOMMITTEE ON

GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY

Hearing on

Performance Based Organizations

July 8, 1997

25 Massachusetts Avenue, NW Suite 700 Washington, DC 20036 202-986-0280 FAX 202-638-4403 http://www.infoindustry.c

The Information Industry Association (IIA) appreciates the opportunity to offer comments for the Subcommittee's consideration as part of its oversight hearing on proposals regarding Performance-Based Organizations (PBO's) as defined by the Administration's National Performance Review (NPR). IIA and its members are supportive of the overarching concept encompassed in the Administration's PBO proposal, which is to improve the performance of government agencies and cut their costs. Additionally, we believe there is some merit to the idea of allowing agencies managerial flexibility to help achieve these results. However, with respect to one very important function of the government -- disseminating government information to the public -- IIA believes that there should be no flexibility in an agency's legal obligation. Close inspection of the PBO materials available from the NPR World Wide Web Site, raises questions about the Administration's intent with respect to dissemination obligations. We are concerned therefore, that without clear congressional direction, agencies might try to avoid or abuse their information dissemination responsibilities if designated as PBO's. Our testimony will focus on these specific concerns.

We commend the Subcommittee for holding this oversight hearing and believe that our comments are especially relevant in light of your recent oversight hearing regarding the Government Printing Office and Executive Branch information dissemination, as well as your important work last year on amendments to the Freedom of Information Act.

The Information Industry's Interest in Government Information Access

IIA is the trade association of leading companies involved in the creation, distribution and use of information products, services and technologies. Our 550 corporate members range from large multinationals to entrepreneurial start-ups. The Association includes traditional and electronic publishers that provide a wide variety of information products and services covering nearly every subject matter imaginable, as well as interactive service providers, computer manufacturers, software developers, and telecommunications companies. Many of IIA's members obtain information from government agencies and incorporate this data into products and services that are then sold to the general public. The private sector information industry therefore plays a key role in promoting and enhancing public access to public information.

IIA member companies help serve the needs of a broad segment of society that obtains information from sources other than government itself, whether for reasons of convenience, privacy, or efficiency. Thus, when discussing increased access to public records, it is important to remember that users of private sector information products and services are also part of the public. To ensure that this significant segment of government information users continues to have access to the information products and services on which they rely, IIA believes it necessary for government to adopt policies which will encourage a diversity of sources for data generated by public institutions. As a result, IIA has long supported a set of sound information policy guidelines that encourage government to provide unfettered access to its information. Many of these principles are now codified in Title 44 as a result of the *Paperwork Reduction Act of 1995 (PRA)*.

As stated in IIA testimony before the Subcommittee earlier this year, PRA brought to closure nearly ten years of effort to fashion a set of sound information policies to govern federal executive agency dissemination of government information. Representatives of the information industry, the library community, and consumer groups, together with executive and legislative branch officials, all participated in the process of crafting the dissemination principles contained in PRA and supported its adoption. Because it was instrumental in the adoptions of PRA, the Subcommittee is aware that in many respects, PRA is a landmark statute, establishing rules for federal officials to follow as they proceed toward an era where the provision of government information will be greatly affected by the advent of new technologies and new demands by the public.

However, as IIA also expressed to the Subcommittee during the May 8 hearing, we are very concerned that despite all the effort and time involved in crafting this statute, its spirit and mandates are being ignored. IIA can report that the Office of Information and Regulatory Affairs ("OIRA") has failed to fulfill its duty to provide clear direction to agencies about their obligations and responsibilities under the law. This has led to numerous major and minor violations of both the intent and the clear language now contained in Title 44 of the U.S. Code. If the trend continues, government activities will threaten a number of private sector information providers and their customers will decrease, rather than increase, the amount of information available to the American public.

Therefore, as the Subcommittee considers proposals which give agencies more autonomy and flexibility with respect to statutory obligations, such as the Administration's PBO proposal, it is critical to ensure that there is no erosion in agency information obligations under the PRA dissemination rules.

Specific Concerns

In studying the details of the PBO proposal, as outlined on the NPR Web site, IIA discovered two troubling pieces of information which raise concerns about the Administration's intent with regard to agency information dissemination obligations.

First, within the Performance-Based Organization Web page there are several sections. One of those sections is entitled "Flexibilities." Under the Flexibilities section, there is an ambiguous reference, with no further details, entitled "Paperwork Reduction Flexibilities." We have attached for the Subcommittee's review a printed copy of the reference. We urge the Subcommittee to have the Administration explain further what it envisions in using this terminology. If it is the intent of the Administration to allow PBO's to exempt themselves from current dissemination responsibilities, IIA would urge Congress to state clearly that agencies are not exempt from such responsibilities.

IIA's concern is heightened in light of the fact that OMB -- which as mentioned above, has been lacking in its enforcement of the PRA dissemination principles -- is one of

the three organizations (along with the NPR and the Office of Personnel Management) anointed by the Administration to help agencies mastermind how they can become PBO's.

The second reference in unambiguous and gives IIA significant concern. In a document entitled "The Blair House Papers", which were forwarded by President Clinton and Vice President Gore in January of this year, there is a list of the Administration's potential PBO candidates. One of the candidates listed is the Department of Commerce's National Technical Information Service (NTIS). As the Subcommittee is aware, NTIS is engaged in information dissemination activities that are in direct violation of PRA. While we have thoroughly documented our concerns regarding NTIS in our submission for the Subcommittee's May 8 hearing on executive branch dissemination activities, it is worthwhile to reiterate our overarching concern regarding NTIS' philosophy and operations with regard to their information dissemination responsibilities. It is relevant to focus on NTIS because its philosophy goes to the core of the type of behavior Congress should help ensure does not infuse PBO's.

National Technical Information Service (NTIS)

In general, NTIS, which is required to be self-sustaining, has adopted the philosophy that the business of government is to be *in* business. The fact that it must be self-sustaining has driven this philosophy at NTIS and its attendant actions. NTIS has undertaken actions that seem to go far beyond its mandate to operate on a self-sustaining basis. Not only do some NTIS policies stretch the boundaries of its legislative authority, in some instances NTIS is acting in direct opposition to information dissemination policies contained in PRA -- such as duplicating private sector products already available in the market. As such, these actions threaten to impair public access to government information.

NTIS was created and exists today strictly to collect and disseminate scientific, technical and engineering information ("STEI") which is generated by various federal government agencies. In effect, NTIS acts as a central repository for such information, which is originally collected by the agencies using taxpayer dollars in order to fulfill the essential dissemination responsibilities which are a part of those agencies' missions.

The governing statue that provided NTIS with this special role for STEI is the American Technology Preeminence Act ("ATPA" P.L. 102-245). By mandating that all federal agencies transfer to NTIS all STEI that results from federally funded research and development ATPA sought to increase American participation in technology development.

The mandate for transfer of STEI was intended to allow NTIS to become an efficient service to provide information to the American people to aid the drive for increased American competitiveness. However, NTIS' profit-making approach to its operations, aggravated by its monopoly position, threatens to reduce access and thwart the very goal it was designed to accomplish. Rather than fulfilling the crucial role of granting wider access to scientific, technical and engineering information, NTIS has

undertaken steps that serve in some instances to forestall broad dissemination of this material and in others unnecessarily duplicate the dissemination efforts both of the private sector and other governmental bodies.

In a business-like effort to expand its inventory to make it more attractive to potential users, NTIS has adopted a very broad, 1954 Comptroller General's Opinion definition of "technical information." This broad definition creates a situation whereby the originating agencies are transferring whole classes of information to NTIS for dissemination and in some cases then refusing to provide it directly to users.

PRACTICES

Below, we have listed some of the practices of NTIS which are in conflict with PRA requirements. We have done so to reinforce the negative consequences that could occur in granting general flexibility to PBO's with respect to PRA requirements.

Exclusive Arrangements: The purpose for restricting agencies from entering into exclusive information dissemination activities is to ensure that no agency, private company or other non-governmental entity can establish monopoly control over public information. Public information should be available to all.

Nonetheless, in an effort to promote its joint venture opportunities, NTIS has suggested in at least two publications that an exclusive arrangement for information dissemination might be made. In its two-year business plan produced in 1992, NTIS stated: "[T]he joint venture program enables NTIS to enter into *exclusive* non-competitive partnerships with private sector organizations to invest resources and share benefits." In its 1993 joint venture guidelines, NTIS wrote: "[C]ompanies making investments to enhance NTIS information products and services may also need *exclusivity* to warrant their level of investment and to ensure that they can capture some benefit from their investments."

Restrictions on Redissemination: If an agency *can* disclose government information, then an agency *should* disclose it. To ensure the free flow of information afforded by the First Amendment, governmental authorities should not restrict or regulate the use, resale or redissemination of public information. Unless the government can justify restricted access to its information under tightly controlled procedures to protect national security, no legitimate governmental purpose can be served by limiting the use of government information.

Copyright statutes are a means for originators of information to assure a fair return for their creative endeavors and to protect against misuse of their information through restrictions granted to the owner of the information. However, in the United States, Section 105 of the 1976 Copyright Act expressly prohibits, with very limited exceptions, federal government assertion of copyright in its works. This prohibition exists both to prevent a surreptitious means by which government might seek to control information

about itself and to protect the First Amendment guarantees of freedom of speech and press.

Yet, despite the long-standing acceptance of Section 105 of the Copyright Act and the restatement of this principle in PRA, NTIS continues to enforce copyright-like controls over the information it has available. In 1995, NTIS offered to provide the bibliographic database which it creates and maintains to Depository Libraries at no cost. Acting like a profit-making business rather than a governmental agency, NTIS issued regulations which placed copyright-like, downstream use restrictions on the information. The regulation stated: "[I]mproper disclosure of this valuable information could seriously erode NTIS' ability to operate on a self-sustaining basis .. [I]mproper dissemination of the list of products could significantly reduce the rental value of NTIS's bibliographic database as an income producing asset "

Another more permanent and long-term example of NTIS' prohibitive dissemination practices is shown through the evolution of its contracting agreements over the past 25 years. Throughout the 1970's and most of the '80's, NTIS' database user contracts consisted of approximately seven pages of text and several schedules. Today, in contrast, NTIS employs a private sector, copyright-like license agreement which consists of 18 pages of text and was adopted -- according to one of IIA's member companies -- from perhaps the single most restrictive database copyright license agreement utilized anywhere in the world.

Royalties: Governmental imposition of royalty fees for resale or redissemination of publicly available information represents another copyright-like control over data and as such violates the PRA. Again, the Copyright Act's limitations on the government's ability to copyright public information confirms the premise that any person who has acquired the information may use it, resell or redisseminate it without paying any additional fees or royalties to the government.

The bibliographic databases mentioned in the example above are the NTIS products most often used by the information industry in its information products. Again, these databases are created from information that agencies are mandated to give to NTIS under the ATPA -- information that is created at taxpayer expense. Yet, anyone in the public wishing to use the agency information must enter into a licensing agreement with NTIS that requires a payment of a flat fee and payment of an additional royalty fee based on the amount and frequency of use of the information.

Over the years, the royalty rate and other downstream use restrictions in NTIS' licensing agreements have steadily increased -- so much so that in some instances information companies are contemplating abandoning redissemination of the information. Thus the goal of increasing American participation in technological developments has the potential to be seriously undermined, as NTIS policies force private sector participants to reduce either the number or scope of their products and services. This is a prime example

of how bad information dissemination practices defeat the primary objective of government to inform its citizens through broad dissemination of information.

User Fees in Excess of Cost of Dissemination: A practice that some agencies employ that looks suspiciously like the controls granted exclusively to non-government owners of copyrighted materials is the imposition of a fee that is based on perceived market value rather than the cost of dissemination. Copyright owners operate in a competitive marketplace, and their investment in creative and innovative materials can continue only if they receive fair compensation for their goods and services. However, government must and should act differently in a free and open society. To encourage the widest possible dissemination of public information, agencies should make their information available at the cost of dissemination -- that is the cost of making a copy available in any existing format requested by the user. The Freedom of Information Act (FOIA), for example, limits agencies to recovering only the "direct costs" of searching, duplicating, and reviewing records found to be responsive to a request.

Based on the notion that its mission is to disseminate information, and that it is to be self-sustaining, NTIS argues that *all* of its costs should be included in the cost of dissemination and thereby charges high fees for obtaining information. Moreover it appears to add more costs on high-volume, popular information. In some instances the user has no lower-cost option for obtaining the information because the originating agency believes it is fulfilling its dissemination obligations through NTIS.

While the previous comments have been restricted to problems relating to information dissemination activities, it is also important to note here concerns relating to the fact that NTIS is a fee-funded agency.

Normally when an agency collects fees for services it provides, the revenues go into the U.S. Treasury. If an agency wants to establish a dissemination activity, it must justify it to Congress, which in turn will appropriate the funding only after it deems the agency request necessary and justified. This process provides an opportunity for Congress and the public to examine the proposal as it relates to the agency's mission as well as its relation to other dissemination activities in the public and private sectors. However, Congress yields some of its important oversight role and reduces the agency's public accountability when it authorizes fee-funded dissemination operations.

When an agency is funded directly from collected fees -- as in the case of NTIS -- it has an incentive to generate fees even if it means disregarding long established and widely supported information dissemination policies. One example of NTIS' disregard of dissemination policies has the potential to roll back a very important method of obtaining information -- FOIA requests. NTIS is marketing itself to agencies as a new means for fulfilling FOIA requests. Because it is fee-funded, NTIS is not obligated to return fees in excess of cost of dissemination to the Treasury. Thus, NTIS can charge much higher fees for fulfilling the request and keep all of the revenue generated.

Because FOIA requests are viewed as a burdensome process by some agencies, many are all too glad to turn over such responsibilities to NTIS, in effect making NTIS the *de facto* FOIA disseminator. This practice is contradictory both to FOIA and to PRA, and it has the potential to create a bureaucratic nightmare as a potential requester of information is sent by the agency to NTIS for the information only to find the cost at NTIS is prohibitively high. This "FOIA-for-profit" process is antithetical to the purpose and promise of FOIA and will ultimately lead to less public access to government information.

Other PBO Models

There are examples of at least two executive branch agencies that are fee-funded that have incorporated sound policies into their information dissemination practices. Specifically, two agencies that have characteristics similar to those outlined for a PBO are the Patent and Trademark Office (PTO) and the Securities and Exchange Commission (SEC). These two agencies, which collect and disseminate information that is of significant importance to our economy, have worked very closely with Congress, users -- including the private sector -- and public interest groups when initiating new information products or services in the market to ensure that those products and services not violate the letter or the spirit of PRA.

Although IIA and its member companies have not always agreed with every specific action taken by these two agencies, they have generally acted very responsibly. It is because Congress took very careful steps to craft the statutory authority for these agencies in a manner that stressed the importance of their information dissemination obligations that they have acted responsibly. Furthermore, Congress has maintained vigilant oversight of SEC and PTO by continuing to have a hand in the amount of appropriations provided the agencies..

For example, Congress is currently considering, and the House has already approved, legislation which would turn PTO into a government corporation. Recognizing the important role that patent information plays in the economy and society, the legislation lists as one of the new corporation's responsibilities information dissemination. The House Judiciary Committee also included in its report (House Report 105-39) language which recognizes the important role that information companies have played in disseminating patent information to the public and directs PTO, in accordance with its responsibilities under PRA, to ensure that it does not take steps that would "undercut the value" of the private sector products and services now sold.

The SEC has been moving rapidly to electronic collection and delivery of securities information. However, unlike NTIS which sees its information as a commodity, the SEC has initiated a careful process to solicit the views of Congress and users before developing any new information dissemination products or services.

Some have explained that the difference between a PBO and a government corporation is simply semantics. However, according to the NPR Web site, it is not a matter of semantics. The NPR Web site explains that government corporations must be self-sustaining whereas PBO's do not. They Web site goes on to explain that it is a much more difficult process to move a government corporation forward because they typically need legislative approval. The site seems almost to suggest that agencies should attempt to attain PBO status instead of government corporation status because there will be less congressional intervention in converting to a PBO. This is an important distinction the Administration has drawn and IIA believes it suggests that there should be legislative oversight of *all* agencies whether they are seeking PBO or government corporation status.

Conclusion

IIA appreciates this opportunity to provide the Subcommittee with our views on Performance-Based Organizations. While we cannot argue with the concept of giving government agencies more flexibility so that they can operate more efficiently and effectively, we do believe that Congress should move cautiously especially where government information is concerned. Moreover, Congress should continue to provide stringent oversight of the conversion process to ensure that agencies are not given latitude to abandon important societal obligations such as disseminating government information to the public. We commend the Subcommittee for holding this hearing and urge you to continue your oversight.

Performance Based Organizations

This page is under construction...
we have big plans for this page, so come back often

Page updated on 6/17/97

Welcome to our Performance-Based Organizations (PBOs) web page. You will find the initial collection of documents related to PBOs. This collection will expand as our experience grows.

The concept of PBOs was launched in Vice President Gore's speech at the National Press Club on March 4, 1996. In that speech, he spoke of ways agencies could deal with the reality of "Governing in a Balanced Budget World." The first of six basic concepts was PBOs.

On January 11, 1997, at the Blair House retreat, the President and the Cabinet discussed second-term priorities, including PBOs. (See Blair House Papers, January 1997.)

Performance Based Organizations

- What Is a PBO?
- What Are the characteristics of a Potential Candidate?
- How to Be Selected as a Potential Candidate? (Coming Soon)
- Current PBO Candidates

Model PBO Legislation

- Short Summary Explanation
- Model PBO Legislation
- Section by Section Analysis of the Legislation

Speeches

- 03/04/96: Vice President Gore's Speech On "Governing in a Balance Budget World" (includes information on PBOs)

Announcements

Publications

- "Reinventing's Next Steps: Governing in a Balanced Budget World," March 4, 1996
- "The Blair House Papers," January 1997
- NEW! Budget of the United States Government, Fiscal Year 1998, "Section IV: Improving

Performance in a Balanced Budget World
Download the PDF version

Converting to a PBO

(coming soon)

- NEW Conversion Guide
- Conversion Teams

Draft Agency Legislation

- NEW 5/5/97: St. Lawrence Seaway Development Corporation

Administrative Waivers

(coming soon)

- What are Administrative Waivers?
- Samples
  - Defense: Defense Commissary Agency

Framework Agreements

(coming soon)

- What are Framework Agreements?
- Samples:
  - Transportation: St. Lawrence Seaway Development Corporation

Performance Agreements

(coming soon)

- What are Performance Agreements?
- Samples:
  - Transportation: St. Lawrence Seaway Development Corporation

Flexibilities

- Personnel Flexibilities
  - NEW Model Bill
  - Existing
  - "Demonstration Projects: Beyond Current Flexibilities," May 1996
- Procurement Flexibilities
  - NEW Model Bill
  - Existing
  - "A Guide to Best Practices for Past Performance" May 1996 -- booklet

- "A Guide to Best Practices for Performance-Based Service Contracting," January 1996 -- booklet
- Paper Work Reduction Flexibilities
  - Existing
  - Special PBO Process
- General Service Administration Flexibilities
  - Real Property
  - Personal Property
  - Information Technology
  - Travel

Other Countries

- NEW Summary of "Next Steps," The United Kingdom's Central Government Management Reform, prepared by Scott Quehl, OMB, January 1996.

For more information on Performance-Based Organizations, contact Mary Mozingo, National Performance Review, (202) 632-0219 or e-mail: mary.mozingo@npr.gsa.gov

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