# OPM PRIVATIZATION INITIATIVES—TRAINING

## HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL SERVICE

OF THE

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

JULY 26, 1995

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# OPM PRIVATIZATION INITIATIVES—TRAINING

**WEDNESDAY, JULY 26, 1995**

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

The subcommittee met, pursuant to notice, at 2:06 p.m., in room 2247, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Bass, and Morella.

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

Mr. MICA. Good afternoon. I would like to call to order this meeting of the House Civil Service Subcommittee. This morning, the subcommittee's hearing is on OPM privatization and training. And I welcome our witnesses and guests.

This hearing will provide an opportunity for the subcommittee to assess the Office of Personnel Management's privatization initiatives in the area of training. OPM's initiative was in response to a National Performance Review recommendation and together with the proposal to create an Employee Stock Ownership Plan, ESOP, out of the Office of Federal Investigations and was intended to, and hopefully, will, save approximately $30 million over the next 5 years.

There's no doubt that the commercial nature of training by OPM of Federal employees does cost us $40 million a year. But it's important that we look at this as a reimbursable activity similar to commercially contracted training provided by a variety of other agencies, commercial organizations, think tanks, and educational institutions, from trade schools through some of the Nation's leading graduate schools. It's important that we look at it from that perspective.

On May 16, the Office of Personnel Management and the USDA Graduate School signed a memorandum of understanding transferring OPM's work force training services to the graduate school effective July 1st of this year. As of the end of June, most of the remaining training staff had their Federal employment terminated and began working for the graduate school.

The graduate school also acquired the training obligations formerly held by OPM, as well as lists of students, advertising information, certain leased space, training equipment, software and other assets. In developing cost analyses of five options for the privatization of the training programs, OPM does not appear to have considered this sale to a commercial firm.

Yet this transition has demonstrated the commercial value of these training activities. If OPM had desired to achieve full privatization of the training function, at least one opportunity was presented. One of the witnesses who will testify today delivered an unsolicited proposal to OPM, offering $5 million to acquire mailing lists, addresses of students, and a designation as OPM's successor in the delivery of training for accredited Federal employees.

It's very unusual in a tight budgetary time, such as we're in, for any Federal agency to give away a resource when private companies are, in fact, willing to pay for it. This hearing will enable the subcommittee to gain a better understanding of OPM's rationale for this and other decisions.

Although OPM described this initiative as "privatization," the function is only getting part of the way toward making this a private sector activity. The graduate school as a nonappropriated fund instrumentality—and I checked on that; it's a nonappropriated fund instrumentality of the Department of Agriculture—it's still a part of government.

The graduate school, for example, can work through interagency agreements, a form of noncompetitive procurement that gives it a decided advantage over commercial vendors of training services. Competition is the really critical factor in privatization. Competition is the driving force for both reducing prices and improving quality.

When we remove competition from privatization initiatives, we lose substantial benefits of the real purpose of privatization. I'm also concerned about OPM's long-term plans for monitoring the quality of training provided to Federal employees. We saw one example of training gone awry in the HIV/AIDS training program that we reviewed last month.

With major changes in missions being proposed for Federal agencies, some retraining of Federal employees may, in fact, be necessary. And with tight budgets, a better focus of training dollars on job-related requirements is truly essential.

It's not clear that the Office of Personnel Management has this oversight role in its plans. And that's something we need to look at. While I fully support greater reliance on the private sector for delivery of training services, I also recognize the importance of improving the quality of programs so that they enhance the skills of individuals and the effectiveness of organizations.

OPM must concentrate additional effort on this oversight responsibility in order to make its privatization effort contribute to more effective government.

Our witnesses today include our colleagues, Representative Scott Klug—without my glasses, Scott, you're just a blur—Scott Klug, a real champion of privatization and government reform, and he also chairs the Speaker's task force on privatization; Representative Jimmy Duncan of Tennessee, who has sponsored several initiatives to promote greater reliance on the private sector by various Federal agencies.

Our second panel today includes Mr. Thomas Dungan of Management Concepts, Inc., a Vienna, VA, firm that offers a variety of training services; Mr. E.C. Wakham, a retired Director of OPM's Western Regional Training Center, who is now co-owner of Executive Seminar Center, a Denver, CO-based company; and Mr. Dennis Reischl, accompanied by Mr. Ralph Smith, both corporate officers of FPMI Communications, a Huntsville, AL-based firm that has offered to purchase OPM assets.

We're going to divide our third panel into a third and fourth panel, so our third panel will include Mr. Philip Hudson, Director of the U.S. Department of Agriculture Graduate School.

Our fourth and final panel—I'm going to reverse the order of this—is OPM Director Jim King, accompanied by Deputy Counsel Mary Michelson and Carol Okin, who is Director of the Office of Merit Systems Oversight and Effectiveness.

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

ONE HUNDRED FOURTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143



**The Honorable John L. Mica**
**Chairman, Subcommittee on Civil Service**
**Opening Statement**
**Subcommittee Hearing on OPM Privatization - Training**
**July 26, 1995**

Good afternoon. This hearing will provide an opportunity for the Subcommittee to assess the Office of Personnel Management's privatization initiatives in the area of training. OPM's initiative was in response to a National Performance Review recommendation and, together with the proposal to create an employee stock ownership plan out of the Office of Federal Investigations, was intended to save approximately $30 million over five years.

There is no doubt about the commercial nature of training of federal employees. OPM's $40 million per year training program was established as a reimbursable activity, similar to commercially contracted training provided by a variety of other agencies, commercial organizations, think tanks, and educational institutions--from trade schools through some of the nation's leading graduate schools.

On May 16, the Office of Personnel Management and the U.S. Department of Agriculture Graduate School signed a memorandum of understanding transferring OPM's Workforce Training Services to the Graduate School, effective July 1 of this year. As of the end of June, most of the remaining training staff had their federal employment terminated, and began working for the Graduate School. The Graduate School also acquired the training obligations formerly held by OPM, as well as lists of students, advertising information, certain leased space, training equipment, software, and other assets.

In developing cost analyses of five options for the privatization of the training programs, OPM does not appear to have considered sale to a commercial firm. Yet this transition has demonstrated the commercial value of these training activities.

If OPM had desired to achieve full privatization of the training function, at least one opportunity was presented. One of the witnesses who will testify today delivered an unsolicited proposal to OPM offering $5 million to acquire mailing lists, addresses of students, and a designation as OPM's successor in the delivery of accredited training for federal employees. It's very unusual in tight budgetary times for any federal agency to give away a resource when private companies are willing to pay for it. This hearing will enable the Subcommittee to gain a better understanding of OPM's rationale for this decision.

Although OPM described this initiative as "privatization," the function is only getting part of the way to the private sector. The Graduate School, as a nonappropriated fund instrumentality of the Department of Agriculture, is still part of the government. The Graduate

School, for example, can work through interagency agreements, a form of noncompetitive procurement that gives it a decided advantage over commercial vendors of training services.

Competition is the critical factor in privatization. Competition is the driving force for both reducing prices and improving quality. When we remove competition from privatization initiatives, we lose substantial benefits of privatization.

I am also concerned about OPM's long-term plans for monitoring the quality of training provided to federal employees. We saw one example of training gone awry in the HIV/AIDS training programs that we reviewed last month. With major changes in missions being proposed for federal agencies, some retraining of federal employees may be necessary. And, with tight budgets, a better focus of training dollars on job related requirements is essential.

It is not clear that the Office of Personnel Management has this oversight role in its plans. While I fully support greater reliance on the private sector for the delivery of training services, I also recognize the importance of improving the quality of programs so that they enhance the skills of individuals and the effectiveness of organizations. OPM must concentrate additional effort on this oversight in order to make its privatization effort contribute to more effective government.

Our witnesses today include our colleagues Representative Scott Klug of Wisconsin, who chairs the Speaker's Task Force on Privatization, and Representative John Duncan of Tennessee, who has sponsored several initiatives to promote greater reliance on the private sector by federal agencies.

Our second panel includes Mr. Thomas Dungan of Management Concepts Incorporated, a Vienna, Virginia firm that offers a variety of training services, Mr. E.C. Wakham, a retired director of OPM's Western Regional Training Center who is now co-owner of the Executive Seminar Center, a Denver, Colorado, based company, and Mr. Dennis Reischl, accompanied by Mr. Ralph Smith, corporate officers of FPMI Communications, the Hunstville, Alabama-based firm that offered to purchase the OPM assets.

Our third panel includes OPM Director James King, accompanied by Deputy General Counsel Mary Mitchelson and Carol Okin, who is Director of the Office of Merit Systems Oversight and Effectiveness. Our final panel will be Mr. Philip Hudson, Director of the U.S. Department of Agriculture Graduate School.

We appreciate your participation in our hearing, and look forward to your testimony.

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Mr. MICA. If we could have our colleague, Mr. Klug, come forward, I understand Mr. Duncan is going to submit his remarks for the record. Welcome to our subcommittee, Mr. Klug. It's the custom of the subcommittee to welcome your remarks in total for the record. You have 5 minutes.

Mr. KLUG. Thank you, Mr. Chairman. And I'll make sure I stay within that time, as well.

[The prepared statement of Hon. John J. Duncan follows:]

Statement of
Representative John J. Duncan, Jr.

Subcommittee on Civil Service
House Committee on Government Reform and Oversight

July 26, 1995

Mr. Chairman, Members of the Subcommittee, it is my pleasure to appear before you today to discuss the issue of contracting out. As the sponsor of H.R. 28, the Freedom from Government Competition Act, I am delighted that the subcommittee is conducting these hearings to explore strategies that could and should be implemented to eliminate government competition with private firms. This is necessary to have a government that works better and costs less.

I am pleased to see this Subcommittee, under the leadership of Chairman Mica, devote a series of hearings to the issue of contracting out. This hearing on the Office of Personnel Management (OPM) privatization initiatives on an issue of great importance to both taxpayers and private sector businesses is certainly commendable.

So many commercial firms already provide training functions to the federal government that there is no good reason for the bureaucracy to continue this type of activity. Further, where the federal government does provide training services commercially, the agencies should be required to ensure that private sector firms compete fairly with open competition and cost justifications.

While later panels will more fully discuss this point today, I would like to make note of the cost justifications that were done to transfer OPM's Workforce Training Services (WTS). Cost did not appear to factor into this decision to move the WTS to the U.S. Department of Agriculture (USDA) Graduate School, which ranked as a middle cost option.

Since training services are not inherently governmental in nature, I am surprised it took OPM so long to get out of this area. I am also surprised that the shift of OPM's training services is being considered by some to be privatization. While the transfer indeed removed government employees from the federal payroll, it did not ensure that the services provided would be of the quality and competitive prices that taxpayers deserve. I view this transfer as more of a shifting of function rather than pure privatization.

Any activity for which government agencies rely so heavily upon the private sector should be contracted out. Private sector businesses are readily available to take on these contracts as opposed to sitting back and watching more "sweetheart deals" occur within the federal government. The Workforce Training Services transfer to the USDA Graduate School is a perfect example of why I became involved in the contracting out of government goods and services and why I introduced H.R. 28.

Based on my research, I understand that legislation such as mine was introduced in Congress the last time Republicans were in the majority in this House. Faced with the prospect of enactment of such a bill, the old Bureau of the Budget in the Eisenhower Administration issued a policy statement concerning reliance on the private sector. The Executive Branch argued that legislation was not necessary and that it inappropriately would inject the Legislative Branch into the legitimate management functions of the agencies. So, in lieu of that legislation, an Executive policy was issued. Over the past 40 years, federal agencies have grown, the expanse of agency performance of commercial activities has proliferated, and the extent to which government activities duplicate and compete with the private sector has become pervasive.

In fact, the genesis of contracting out legislation dates back even further. The history of government competition is best described by Dr. Allan V. Burman, President Bush's Administrator of the Office of Federal Procurement Policy. In testimony before one of this Subcommittee's predecessors, the Subcommittee on Human Resources of the Committee on Post Office and Civil Service, on January 25, 1990, he said:

> "As far back as 1932, a Special Committee of the House of Representatives expressed concern over the extent to which the government engaged in activities which might be more appropriately performed by the private sector. The first and second Hoover Commissions expressed similar concern in the 1940's and recommended legislation to prohibit government competition with private enterprise. However, there was no formal policy until

1955, when Congress introduced legislation to require the Executive Branch to increase its reliance on the private sector. Finally action was dropped only upon assurance from the Executive Branch that it would implement the policy administratively. Bureau of the Budget Bulletin 55-4 ... was issued in 1955 prohibiting agencies from carrying on any commercial activities which could be provided by the private sector. Exceptions were permitted only when it could be clearly demonstrated in specific cases that the use of the private sector would not be in the public interest."

On January 15, 1955, the policy directive issued by President Eisenhower stated:

> "the federal government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels"

Dr. Burman told the Subcommittee,

> "since 1955, every Administration has endorsed the general policy of reliance on the private sector to provide commercial and industrial services."

Unfortunately, this policy has not been implemented. It is estimated that as many as one million federal employees are engaged in commercial activities. While this policy has been endorsed by every Administration, Republican and Democrat, since 1955, enforcement has been poor. Contracting out seems to be a little bit like Mark Twain's comment about the weather, "everybody talks about it, but nobody ever seems to do anything about it."

This federal policy is now found in Office of Management and Budget Circular A-76. This circular is a miserable failure. It is a classic case of the fox being in charge of the hen house. It is completely up to the bureaucrats to decide if they want to convey their in-house activities to contract. It is up to the bureaucrats to decide if they want to do an A-76 study. It is up to the bureaucrats to decide whether to perform an activity in-house or by contract. Being empire builders by nature, there should be little doubt about how bureaucrats will decide each of these issues.

Numerous organizations have conducted studies on contracting out. In 1984, the Grace Commission recommended contracting out and estimated that $4.6 billion a year could be saved by using private contractors to perform the commercial activities currently accomplished in house by federal employees, while at that time OMB estimated the savings at up to $3 billion annually.

Earlier this year, the Heritage Foundation issued a report, "cutting the Deficit and Improving Services By Contracting Out" which stated:

> "Contracting out government services to the private sector offers the new Congress the winning opportunity to make substantial cuts in federal spending - as much as $9 billion per year - without reducing essential constituent services."

The recently released report of the Commission on the Roles and Missions of the Armed Forces, know as the "White Commission", indicated that in the Department of Defense

> "at least 250,000 civilian employees are performing commercial-type activities that do not need to be performed by government personnel ... we are confident our recommendations for greater use of private market competition will lower DOD support costs and improve performance. A 20 percent savings from outsourcing the Department's commercial-type workload would free over $3 billion per year for higher priority defense needs ... We recommend that the government in general, and the Department of Defense in particular, return to the basic principle that the government should not compete with its citizens."

The issue of government competition with the private sector has become so pervasive that the 1986 White House Conference on Small Business adopted as one of its leading planks:

> "Government at all levels has failed to protect small business from damaging levels of unfair competition. At the federal, state and local levels, therefore, laws, regulations and policies should ... prohibit direct, government created competition in which government organizations perform commercial services ... New laws at all levels, particularly at the federal level, should require

strict government reliance on the private sector for performance of commercial-type functions. When cost comparisons are necessary to accomplish conversion to private sector performance, laws must include provision for fair and equal cost comparisons. Funds controlled by a government entity must not be used to establish or conduct a commercial activity on U.S. property."

This year's White House Conference on Small Business, which met here in Washington last month, again made this issue one of its top priorities. Its plank stated that Congress should enact legislation that would prohibit government agencies and tax exempt and anti-trust exempt organizations from engaging in commercial activities in direct competition with small businesses.

In a recent report, "Listening to America", the Republican National Committee's National Policy Forum, said:

"In reducing the size and scope of government, it is time for Washington to learn from the lessons of the state and local governments. In Indianapolis, Jersey City, Dallas, Charlotte and Philadelphia, city governments under Democrat as well as Republican administration are turning to privatization to do more with less. In some cases, governments are getting out of the business of doing things they never should have done in the first place. In other cases, private companies compete with public employees to provide service at the highest quality and the lowest cost.

"The federal government can learn much from the new breed of mayors and governors who are responding to the call from their friends and neighbors to put government back in the hands of the people who found it, to rethink the role of government; to get out of businesses it doesn't belong in ...

On June 15, the House overwhelmingly adopted my amendment to the Defense Authorization bill which establishes both a statutory policy and implementation mechanism for contracting out in the Department of Defense. The text of my amendment is attached to my statement.

The FY 1996 Budget Resolution passed by the House and Senate includes a provision in which savings from contracting out is included in the assumptions of revenues and outlays. The budget plan language includes:

> "Congress should examine federal functions to determine those that could be more conveniently, efficiently, and effectively performed by the private sector, and ... facilitate the privatization of these functions."

The Conference report says:

> "Since 1955, it has the policy of the federal government that it will not provide a product or service for its own use if such product or service can be procured from the private sector. Each federal agency should obtain all goods and services necessary or beneficial to the accomplishment of its authorized functions by procurement from private sources unless the goods or services are required by law to be produced or performed, respectively, by the agency or the head of an agency determines and certifies to the Congress that government production, manufacture, or provision of a good or service is necessary for the national defense; a good or service is so inherently governmental in nature that it is in the public interest to require production or performance, respectively, by a Government employee; or there is no private source capable of providing the good or service. The conferees recommend that committees of jurisdiction examine impediments to accomplishing this objective."

This language comes almost verbatim from my bill, H.R. 28. The "Freedom from Government Competition Act," which currently has thirty-six cosponsors. It would require each agency of the federal government to obtain goods or services from the private sector through ordinary and appropriate federal acquisition processes unless: the product or service is required by law to be performed by the agency, or the head of an agency certifies to Congress that in accordance with regulations promulgated by OMB that (1) in-house performance is necessary for national defense, (2) the activity is so inherently government in nature that it is in the public interest to require performance in-house, or (3) there is no capable private source.

The bill also requires the Director of OMB to conduct an inventory of commercial activities and report such to Congress within one year. That report should also include a schedule for converting those commercial activities to contract within five years.

When we look for ways to cut the size of government, we should look first at those activities which can be done by the private sector. There is no reason why the federal government should own and operate aircraft for non-military use when planes and helicopter services can be obtained from the private sector. There is no reason for federal employees to design roads and buildings when there are architecture-engineer firms that can do this work by contract. There is no reason for agencies to operate motor pools when maintenance of cars can be done by private contractors. There is no reason for the taxpayers to pay the salaries of federal employees to operate cafeterias, guard posts, perform janitorial services, painting, printing, electrical work, and scores of other activities that can be obtained from the private sector, including and especially small businesses, woman owned business and minority enterprises.

Let me take a moment to highlight one of my favorite examples, and it is one I noted that Chairman Mica mentioned in his opening statement at your first hearing on this issue in March -- map making.

OMB estimates the federal government spends $1 billion annually on surveying and mapping in some thirty-nine federal departments, agencies and bureaus. Figures from the Office of Personnel Management show more than 7,000 employees involved in surveying and mapping positions. The federal government maintains the same mapping responsibilities as it did 40 years ago. In fiscal year 1993, only $84.7 million, 8.5 percent of the $1 billion federal expenditure, was contracted to the private sector for surveying and mapping services, according to information from the Federal Procurement Data System.

The private sector is comprised of more than 6,000 surveying and 250 mapping firms. The capabilities of these firms meet and exceed those of the government agencies.

Not only do federal agencies not contract a significant amount of their own work, but many agencies do work for other federal agencies, as well as state, local or foreign government, in unfair competition with the private sector.

The federal rules and procedures that have historically been in place to protect the private sector are routinely ignored by federal agencies. For example, OMB Circular A-76 mentioned earlier not only requires agencies to perform cost comparison on their activities and contract out those functions that can be more efficiently provided by the private sector, but also prohibits one agency from doing work for another agency if the providing agency has not conducted a cost comparison. No federal agency has completed an A-76 on a surveying or mapping function. Yet agencies routinely do mapping work for other agencies. OMB Circular A-97, which implements the Intergovernmental Cooperation Act, prohibits a federal agency from providing services to a state or local government agency unless the recipient certifies to OMB that the service cannot be acquired by contract from the private sector. No such certification of a surveying and mapping activity has ever been filed with OMB, yet several federal agencies regularly do such work.

Over the past 20 years, numerous government studies have concluded that more contracting should be used in federal surveying and mapping activities. Increased contracting of mapping has had support from Administration of both parties. It was targeted for increased contracting in President Reagan's last budget and the Clinton Administration's National Performance Review. A recent Heritage Foundation report also cited mapping as an area of particular contracting out opportunity.

Mr. Chairman, when you look at states like Michigan, Washington and Massachusetts where Governors of both parties are discovering the benefits of contracting out, or cities like Chicago and Philadelphia, where Democratic mayors are leading the contracting out parade, or countries like Poland, Russia, Rumania, where state-run enterprises are being turned over to private enterprise, when you look at what is happening all around the world, a cynic might say the only two places where contracting out has not caught on are Havana, Cuba, and Washington D.C.

I'm not a cynic, Mr. Chairman, I'm an optimist. I believe that when private enterprise is permitted to compete in the marketplace for the right to win a contract to perform a commercial-type good or service for the federal government, we will end up with the best value for money. That is what the taxpayers demand and deserve.

## STATEMENT OF HON. SCOTT KLUG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. KLUG. When I was asked by the Speaker last year to begin to explore the idea of privatization, it seemed to us there were many opportunities for the Federal Government. In fact, if you look back at the early days of the Eisenhower administration, President Eisenhower urged the Federal Government to get out of whatever it was doing that competed with the private sector.

Now, that has been a nice idea in theory, but from a practical perspective over the last 45 years, instead, we have seen in many cases the Federal Government continuing to run and operate and, unfortunately, often times expanding operations which do compete with the private sector.

I think one of the great dangers we need to worry about in this entire discussion about downsizing government is whether we truly downsize government by eliminating programs, or what we're simply doing is shifting names around on letterhead. And I think that's the case of the program this committee's going to look at very carefully this afternoon and which you've already worked at.

I'm obviously pleased that you're holding these hearings today on the OPM agreement with the USDA Graduate School. And I should say up front that I had long discussions with Dennis Reischl, who's going to testify in front of this panel, earlier on. While he's not from my congressional district itself, he's from Milwaukee, which is only about 70 miles away from Madison. And he was the one who first flagged this entire agreement and raised the entire question which is in front of this committee today.

Now, I think the entire problem really began with OPM's attitude on this project, which essentially said, "Here's a government service which has no commercial value and is not worth money whatsoever." If you look, for example, at a June 1995 Government Executive article in which OPM Training Director Judith Jaffe—I think the committee characterized correctly as contemptuous of the idea that OPM's training curricula would have any significant market value.

As you're going to hear today, at the time that the USDA Agriculture School or Graduate School actually got this contract from OPM, there was an offer on the table for $5 million. And so it goes across a wide range of government services. And in this case, it seems to me the relationship is particularly incestuous.

Because it seems to me in this case, OPM was not only interested in trying to privatize this program, but it was interested if it could privatize it by essentially in some ways keeping it in the hands of an organization very closely aligned to the Federal Government and second keeping it in the hands of an organization where it could guarantee the placement of many of its employees.

When it seems to me OPM's fundamental responsibility was to, A, shed this business, and second, if they're going to shed it, to make money of it—the entire idea of privatization is to get out of competition with the private sector and not in many ways to see itself as an employment agency, which is, I think, unfortunately, the way OPM handled this entire approach.

Now, as you know, the USDA Graduate School classes are held in Federal buildings, such as the Labor Department Perkins Building, the General Services Administration Regional Office Building, and the Federal Judiciary Building. In addition, the USDA Graduate School has the ability to enter into interagency agreements with other Federal agencies without—let me say that again—without complying with Federal regulations which private businesses must follow.

By choosing to transfer its training function to the USDA Graduate School, OPM is choosing to unfairly compete with the private sector and closing off, in my opinion, an area that would absolutely thrive if competition was allowed in the free market. The Federal Government was never meant to be in the business of competing with the private sector, as I said earlier, and OPM's training services are not inherent government functions and duplicate what's already provided for in the private sector.

And I should point out to this committee that nearly 90 percent of current Federal training is provided by private contractors. But unfortunately, in this case, OPM is way behind the curve and I think in many cases, frankly, tried to fight and to buck that trend.

This arrangement, in my opinion, between OPM and the USDA Graduate School is not privatization. By refusing to consider all possible cost-saving options, including an open, competitive bid, OPM is denying taxpayers the opportunity to both save money and to simultaneously really downsize the government.

OPM has also denied free market access to Federal training sectors, and the bottom line is that privatization is meant to open opportunities to the private sectors, not, in my opinion, as this agreement was done, to deny them. And I'll submit the rest of my statement for the record, Mr. Chairman.

[The prepared statement of Hon. Scott Klug follows:]

# CONGRESSMAN SCOTT KLUG'S

# TESTIMONY BEFORE

# THE HOUSE GOVERNMENT AFFAIRS

# AND OVERSIGHT

# SUBCOMMITTEE ON CIVIL SERVCE

# ON THE OFFICE OF PERSONNEL

# MANAGEMENT'S

# WORKFORCE TRAINING SERVICES

JULY 26, 1995

Whenever the issue of downsizing the federal government comes up, I have always said that if Congress doesn't specifically address exactly what will be done to the agency's functions or employees, we run the danger of changing letterhead instead of downsizing government. The issue of privatizing the Office of Personnel Management's (OPM) Workforce Training Services (WTS) is the perfect example of the federal government opting to change letterheads as opposed to truly privatizing the federal agency's functions. Instead of exploring all privatization options including an open bid, OPM chose to transfer its training functions to the USDA Graduate School.

I'm pleased, Mr. Chairman, that this Committee is holding these important hearings to review OPM's agreement with the USDA Graduate School. As the Speaker-appointed head of the House Privatization Task Force, I have some reservations about how OPM's training functions were handled and how the federal government has found itself in the position of competing with the private sector.

**The Flaws of OPM's Privatization of WTS**

Nearly 90 percent of current federal training is provided by contractors. OPM, however, did not follow the federal government's lead. They chose to merge with the USDA Graduate School, even though it was not the most cost-effective option. OPM did not even consider selling the training services to the private sector.

This is the first flaw to OPM's approach to privatization. By refusing to explore the options of an open competitive bid, OPM has refused to looking into ALL possible cost-saving measures. They maintain the argument that their services are worth practically nothing in the private sector. At the same time, however, OPM had a proposal from FPMI Communications which amounted to $5 million.

I am also concerned about the fact that OPM is calling the transfer to the USDA Graduate School, "privatization." While the USDA Graduate School is technically not a government organization, it enjoys the advantage of having the benefits of a government agency. The USDA Graduate School classes are held in federal buildings such as the Labor Department Perkins Building, the General Services Administration Regional Office Building and the Federal Judiciary Building. In addition, the USDA Graduate School has the ability to enter into interagency agreements with other federal agencies without complying with federal regulations private businesses must follow. By choosing to transfer its training functions to the USDA Graduate School, OPM is choosing to unfairly compete with the private sector and closing off an area that should be allowed to thrive in a free market.

Finally, OPM has put the federal government in the position of competing with the private sector. The federal government was never meant to be in the business of competing with the private sector. OPM's training services are not inherent government functions and duplicate what is already provided for in the private sector.

**Conclusion**

The arrangement between OPM and the USDA Graduate School is not privatization. By refusing to consider all possible cost-saving options including an open competitive bid, OPM is denying taxpayers the opportunity to save money and downsize government. OPM has also denied free market access to federal training services. Privatization is meant to open opportunities to the private sector - not deny them.

Mr. MICA. Just a couple of quick questions, if I may. There has been a sort of "Gentle Ben" mentality in the Federal Government that nobody gets fired, that we try to place everybody. And one of the alternatives has been the ESOP's or employee participation programs in taking over the "privatization" of some function.

I think from a practical standpoint, we should do our best to try to accommodate employees. Would you be opposed to a situation where we could give an opportunity for employees to compete to gain this activity if we had a more level playing field?

Mr. KLUG. Absolutely. And if you look at privatization across the United States, I think you find in many States and in some cities—Indianapolis in particular—that's exactly the kind of management style that has been used to say, "We're not going to preclude government employees from getting these contracts, and we're going to allow them to compete; and if they compete and win, they get the deal."

That's an idea that, for example, has been used in a number of communities with sanitation services. If you can compete and government employees can put together a package that beats the private sector, you should get the job and absolutely, rightfully so.

It's frankly part of the debate that went on in this very institution over our famous barber shop and beauty shop: Should the people who run the barber shop and beauty shop who are on the Federal payrolls today be precluded from competing for those contracts and for running those operations in Congress? Absolutely not. Should the deal be wired for them? Absolutely not, as well.

I would suggest, Mr. Chairman, part of the decision we have to make, it seems to me, as the board of directors for the U.S. Government, is what ultimately our goal has to be. And I think our goal has to be to deliver the most cost-effective services to our constituents. And in some cases, unfortunately, that may mean making decisions in terms of staffing and personnel.

One example from one other country. New Zealand several years ago decided to corporatize its post office. It has cut its work force in half by roughly 40 percent. It used to lose, the New Zealand post office, about $300 million a year. It now makes $400 million a year. And in a statement that every single American can identify with, in the last 18 months, the New Zealand post office has lowered the price of its stamps three times.

So clearly, we have an obligation to Federal employees who have served us well. But ultimately, I would argue, there's a fundamentally important obligation to our taxpayers to deliver the services as cheaply and as efficiently as possible.

Mr. MICA. You mentioned that we're the board of directors. And we're trying to run the place like that. But we're also a legislative body, and you have to set the rules and legislation by which these transitions are made. Do you have a model or something that you could suggest that you've seen specifically as far as a legislative directive that would incorporate some of your concerns?

Mr. KLUG. No, I haven't. And, frankly, one of the great frustrations is not only the Federal Government in many ways behind the State governments in this case. We're behind much of what the rest of the world has done in privatization initiatives. And I think that's always a very delicate situation, especially when you see some of the kinds of budget cuts we have seen this time in Congress.

And it's going to be a very difficult situation for some specific programs of the country, just as it has been on the Base Closing Commission. It seems to me if we're going to sever Federal employees, you need to be very aware of the fact that they have responsibilities and obligations and families.

What you do to those Federal employees has a ripple effect on the surrounding communities. And we need to figure out some kind of transition program and some kind of training program. But I would argue that our fundamental responsibility is not to be an employee agency. Our fundamental responsibility is to deliver services for the American taxpayers.

Mr. MICA. I thank you, and I yield to the vice chairman.

Mr. BASS. Thank you very much, Mr. Chairman. And thank you very much, Congressman Klug, for your good testimony here today. You mentioned in the end of your comments that the idea behind this whole process was to provide the most cost-effective services possible to constituents.

And we have a situation, apparently, where OPM has transferred its work force training services, which has a budgetary value of roughly $40 million, over to the USDA Graduate School and that there was an offer apparently to purchase certain assets of OPM for $5 million.

I'm wondering—if this isn't too technical; you may not know the answer to this—where is the leap, in your mind, from the transfer from OPM to USDA Graduate School and the $40 million worth of potential, the value there, the $5 million asset purchase that's on the table that was ignored, if you will, or may have been ignored by OPM and how you provide the most cost-effective services to constituents.

Perhaps rephrasing it, in your opinion, do you think that OPM did not use the most cost-effective—and what would have transpired had they taken this offer up for $5 million? Would we have gotten a better deal, or would the taxpayers have gotten a better deal under a different scenario?

Mr. KLUG. Well, in my opinion, the taxpayers would have gotten a much better deal, because we would have made money on the program. And second, we would have provided jobs in the private sector where those companies pay taxes, in contrast to the government continuing to hold on to responsibilities.

Now, I think OPM's going to try to claim that it really had no legal authority as such to sell these assets. But I don't remember OPM ever coming up here to Congress asking us to have the ability and the authority to sell those assets. And that's a mind-set that this Congress has an obligation and a responsibility to change.

I also think you're likely to hear, if my reading of the facts is correct, that when OPM looked at a whole series of options in front of them, it chose essentially a middle course. And again, the reading of the record as best as I can understand it is that OPM chose the middle course to do two things.

One of the primary responsibilities was not to maximize the return to the taxpayers. The two things they wanted to do were to provide jobs to its employees and to take what in many ways was a very comfortable and easy transition role. And if this deal doesn't make sense, I think it doesn't make sense because OPM really wasn't interested in privatizing this program.

Mr. BASS. Thanks a lot.

Thank you, Mr. Chairman.

Mr. MICA. I thank you, Mr. Klug, for coming before our panel today and for your leadership on this and a number of issues. I've seen you stand alone on the floor in the last Congress and advocate a number of positions for which it was very tough to get the supporting votes.

But you continue to be a leader in trying to make government more effective, more responsible, and a benefit to the people who are paying the tab. We appreciate that and commend you again for your interest, participation, and contributions to our subcommittee.

Mr. KLUG. Thank you, Mr. Chairman. And obviously, good luck to you and your colleagues on reevaluating this entire contract.

Mr. MICA. It's tough. Any changes are tough, as you well know. Thank you.

I would like to call our next panel, if we could have them come forward, Mr. Thomas Dungan, Management Concepts, Inc.; Mr. Ralph Smith and Dennis Reischl of FPMI Communications; and E.C. Wakham of the Executive Seminar Center. Welcome gentlemen.

And as you know, we have an investigation and oversight responsibility, so it's the custom of this subcommittee and our committee to swear in our witnesses. If you would stand, please, and be sworn in.

[Witnesses sworn.]

Mr. MICA. Thank you. And we'll let the record reflect the witnesses answered in the affirmative. Again welcome. We thank you for your participation and look forward to your comments.

As I mentioned to Congressman Klug, you have the ability to have a lengthy statement and documents entered in the record. And I'll be glad to do that. The panel will, without objection. We would like you to try to limit your comments and remarks to 5 minutes. We will use a timer here. So if you would like to summarize, you can do that.

We'll start with Mr. Dungan. Mr. Dungan, do you have a brother by the name of Travis?

Mr. DUNGAN. No. I don't, as a matter of fact. But I am familiar with him.

Mr. MICA. Well, nice to see you. And if you would begin, please. Thank you.

## STATEMENTS OF THOMAS DUNGAN, MANAGEMENT CONCEPTS INC.; DENNIS K. REISCHL, FPMI COMMUNICATIONS, INC., ACCOMPANIED BY RALPH SMITH; AND E.C. WAKHAM, EXECUTIVE SEMINAR CENTER

Mr. DUNGAN. Mr. Chairman and subcommittee members, I thank you for the opportunity to testify. My purpose here today is not to oppose the transfer of OPM's training function to the graduate school, but rather to take issue with one of the terms of that transfer and oppose the graduate school's unfair competitive practices.

The term of the proposed agreement that I oppose is that which provides for the automatic transfer to USDA Graduate School of over $72 million of noncompetitive work funded by Federal taxpayers.

My second point of opposition is to the graduate school's ongoing eligibility to receive interagency agreements which provide it the opportunity to grab millions of dollars of work each year noncompetitively, despite the fact that these are commercial services readily available from the private sector.

Members of the subcommittee, let's get the record straight from the outset. The graduate school of the Department of Agriculture, despite its name and 74-year history in this area, is not part of the Federal Government. It is a "nonappropriated fund instrumentality," a NAFI, which means it gets no direct funding from Congress.

Instead, it is supported entirely by fees that it charges to students and Federal agencies. And because it is not a Federal agency, the graduate school should not receive sole source interagency training contracts or agreements.

As you can see, both of my issues today center on the principle of full and open competition. Federal Acquisition Regulation 6.101 clearly states, "Contracting officers shall promote and provide for full and open competition in soliciting offers and awarding government contracts."

The FAR further states, "No agency shall contract for supplies and services from another agency for the purposes of avoiding requirements of full and open competition." This regulation has resulted in the U.S. Government purchasing the best products, research, and services that the market can produce.

Now, how does this focus on competition relate to the graduate school's unfair practices? Quite simply, the graduate school knows that interagency agreements are the key to millions of dollars of noncompetitive work. Why, you may ask? Because Federal training officers and contracting officers will invariably choose the path of least resistance. And the path of least resistance is an interagency agreement.

It helps the buyer circumvent the FAR requirement for full and open competition, despite the fact that the FAR prohibits the use of interagency agreements to avoid competition. In a 1978 ruling, the Comptroller General clearly stated, "For all practical purposes, the obtaining of goods and services from a NAFI is tantamount to obtaining them from a nongovernment commercial source."

Despite this clear ruling to the contrary, the graduate school nonetheless received and accepted interagency agreements. In fact, the graduate school was the focus of a Federal grand jury in 1985 in connection with the abuse of such agreements. In this case, the Army had bypassed the competitive procurement process and purchased items such as a microwave oven, a bar stool, an exercise machine, all under the guise of an interagency agreement with the graduate school for educational services.

In a ruling that sprang from the grand jury probe, the Comptroller General used even stronger words than he had in this 1978 ruling and directed them squarely at the USDA Graduate School. And I quote: Graduate school of the Department of Agriculture, as a NAFI, is not a proper recipient of interagency orders from government agencies for training services. Interagency agreements are not proper vehicles for transactions between NAFI's and government agencies, end quote.

Undaunted, the graduate school still pushed for its prize and in 1990 prevailed upon Congress to grant it statutory authority to receive interagency agreements. Its authority came in the form of two small paragraphs hidden in the middle of a 700-page farm bill known but to a few as section 1669 of Public Law 101–624.

This sweet deal buried in a 700-page statute enables the graduate school to receive noncompetitively millions of dollars of work. Additionally and not surprisingly, it allows the graduate school to award contracts without regard to Federal procurement law.

And what has the graduate school done with this right? First, it has wasted no time in building its portfolio of noncompetitive interagency agreements. Companies like mine can provide high quality, professional training to Federal agencies at competitive prices, but we cannot compete for a contract that never sees the light of day.

Second, by expanding on the definition of "training services," the graduate school has grabbed lucrative interagency agreements to provide career planning and development services with NASA, the Nuclear Regulatory Commission, and the Patent and Trade Office.

Likewise, it has provided services to a number of Federal agencies. Both of these functions could be handled better and for less money by the private sector and are only marginally related to training.

What business area will the graduate school head into next? Let's cite the consequences to the private sector of the merger if accomplished under the present terms. First, unfair competition will continue.

Mr. MICA. If you could begin to summarize.

Mr. DUNGAN. Effectively, the graduate school competes unfairly. It is able to syphon off millions of dollars of work without any degree of competition and has a detrimental effect to the private sector. Thank you.

[The prepared statement of Mr. Dungan follows:]

Mr. Chairman and Subcommittee members, I thank you for this opportunity to testify today on a matter that is of vital interest to my firm, to private training companies in general, and ultimately to the U.S. taxpayer. My name is Thomas F. Dungan, Jr., and I am the founder and president of Management Concepts Inc., a 22-year-old business providing training services to both the public and private sectors. I have over 33 years of federal contracting experience, starting while I was in the military.

My purpose here today is not to oppose the transfer of OPM's training functions to the USDA Graduate School, but rather to take issue with one of the terms of that transfer, and to oppose the Graduate School's unfair competitive practices.

The term of the proposed agreement that I oppose is that which provides for the automatic transfer to the USDA Graduate School of over $72 million[1] of non-competitive work funded by federal taxpayers.

[1]Deferred revenue as reported in Audited Financial Statement of OPM; FY '93. See Attachment 1.

My second point of opposition is to the USDA Graduate School's ongoing eligibility to receive interagency agreements, which provide it the opportunity to grab millions of dollars of work each year noncompetitively, despite the fact that these are commercial services readily available from the private sector.

Members of the subcommittee, let's set the record straight at the outset. The Graduate School of the Department of Agriculture, despite its name and 74-year history in this area, is *not* part of the federal government. It is a "non-appropriated fund instrumentality" (NAFI), which means it gets no direct funding from Congress. Instead, it is supported entirely by fees that it charges to students and federal agencies for its services.

And because it is not a federal agency, the USDA Graduate School should not be eligible to receive sole-source "interagency" training contracts or agreements.

**Full and Open Competition: It's Not Just a Good Idea -- It's the Law**

As you can see, both of my issues today center on the principle of full and open competition.

The Federal Acquisition Regulation, and its underlying legislation, clearly recognize the value of full and open competition. FAR 6.101 mandates:

> "Contracting officers shall promote and provide for full and open competition in soliciting offers and awarding government contracts."

The FAR further states:

> "No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of (full and open competition)."

This regulatory preference for competition has resulted in the federal government purchasing the best products, research and services that the marketplace can produce.

**Interagency Agreements: Better Than a Foot in the Door**

How does this focus on competition relate to the Graduate School's unfair advantage? Quite simply, the USDA Graduate School knows that interagency agreements are the key to millions of dollars of noncompetitive work. Why? Because federal training officers and contracting officers will invariably choose the path of least resistance. And the path of least resistance is an interagency agreement. It helps the buyer to circumvent the FAR requirement for full and open competition, notwithstanding the fact that this practice is prohibited by the FAR itself.

A 1978 ruling of the Comptroller General stated:

> "for all practical purposes (. . .) the obtaining of goods and services from a NAFI is tantamount to obtaining them from non-government commercial sources."
>
> "Additionally, of course, a NAFI may compete in, and be awarded a contract under, a competitive procurement unless otherwise precluded by its charter from doing so."[2]

Despite this clear ruling to the contrary, the Graduate School nonetheless received and accepted interagency agreements. In fact, the Graduate School was the focus of a federal grand jury probe in 1985 in connection with the abuse of such agreements (*see Attachment 2)*. In this case the Army had bypassed the competitive procurement process and purchased items such as a microwave oven, a bar stool and an exercise machine -- all under the guise of interagency agreements with the Graduate School for "educational services."

[2] 58 Comp. Gen. 94.

In 1984, in a ruling that sprang from the grand jury probe, the Comptroller General used even stronger words than six years earlier, and directed them squarely at the USDA Graduate School (*see Attachment 3*):

> "Graduate School of the Department of Agriculture, as a NAFI, is not a proper recipient of "interagency" orders from Government agencies for training services (...) Interagency agreements are not proper vehicles for transactions between NAFIs and Government agencies."[3]

Undaunted, the Graduate School still pushed for its prize, and in 1990 prevailed upon Congress to grant it statutory authority to receive interagency agreements. This authority came in the form of two small paragraphs, hidden in the middle of the Farm Bill. This little-known provision, known as Section 1669 of Public Law 101-624, said the following:

[3] 64 Comp. Gen. 110, Decision B-214810.

**SECTION 1669 GRADUATE SCHOOL OF THE DEPARTMENT OF AGRICULTURE**

(a) TRAINING SERVICES --
Notwithstanding any other provision of law, the head of a Federal agency or other major organizational unit within any agency, including agencies and offices within the Department of Agriculture, may place an order (or enter into an agreement) with the Graduate School of the Department of Agriculture under the provisions of section 1535 of title 31, United States Code*, for training and other services incidental to the provision of such training.

(b) GOODS OR SERVICES --
The Graduate School may obtain any goods or services necessary to the fulfillment of an order under subsection (a) or its obligations under such agreement without regard to the requirements of--

(1) the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) or

(2) any other law that prescribes procedures for the procurement of property or services by an executive agency.

**Refers to the Economy Act, which authorizes interagency agreements.*

This "sweet deal" buried in a 700-page statute enables the USDA Graduate School to receive non-competitively millions of dollars of work. Additionally, and not surprisingly, it allows the Graduate School to award contracts without regard to federal procurement law. And what has the Graduate School done with this right?

First, it has wasted no time in building its portfolio of non-competitive training contracts. Companies like mine can provide high quality professional training to federal agencies at competitive prices. But we cannot compete for a contract that never sees the light of day.

Also, by expanding on the definition of "training services," the Graduate School has grabbed lucrative interagency agreements to provide "career planning and development" services with NASA, the Nuclear Regulatory Commission and the Patent & Trademark Office (*see Attachment 4*). Likewise, it is providing "conference management services" to a number of federal agencies. Both of these functions could be handled better and for less money by the private sector, and they are only marginally related to training. What area of business is the Graduate School headed into next?

**Consequences of the Proposed Transfer**

In summary, let's explore the consequences to the private sector if the merger is accomplished under its present terms:

- unfair competition;
- layoffs and lost business; and
- a loss of confidence that the government will follow its own regulations.

And the consequences to the government and taxpayer?

- a loss of the cost and quality benefits that come with competition;
- a loss of new ideas and approaches from the marketplace;
- a shrinking tax base; and
- a step back from the principles of the National Performance Review.

**The Solution**

Members of the subcommittee, private industry should, in the interest of fairness, be given an opportunity to compete on a full and open basis for OPM's $72 million training backlog. The USDA Graduate School is no more entitled to this gift than is Harvard University.

Second, because the USDA Graduate School is not a government entity, it should be required to compete on a level playing field with its competitors. Section 1669 of P.L. 101-624 should be repealed.

What would happen if we level the competitive playing field, and change the terms of the merger to require the USDA Graduate School to compete for OPM's $72 million backlog ?

- a wider array of training services available to the federal sector at better prices;
- a training community that is quicker to respond to the needs of the marketplace;
- a broader tax base due to a more robust market for private training providers; and
- a government that is leaner and more efficient because it meets its training needs with resources that already exist in the commercial marketplace.

I thank you for your time and attention, and I'll be happy to answer any questions you may have.

(*attachments follow*)

*Testimony of Thomas F. Dungan, Jr., Management Concepts Inc.*
*Hearing on OPM Privatization of Training Services -- July 26, 1995*

## List of Attachments


| Item | | Page |
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| 1. | Excerpts from Audited Financial Statement of OPM | 10 |
| 2. | Washington Post Column re: USDA Graduate School, 8/21/85 | 14 |
| 3. | Comptroller General Decision B-214810, 11/29/84 | 15 |
| 4. | Excerpts from Interagency Agreements Held by USDA Graduate School | 19 |

U.S. Office of Personnel Management
Revolving Fund
**COMBINING STATEMENT OF FINANCIAL POSITION [Unaudited]**
[Dollars in Thousands]

As of September 30, 1993

| | *Investigations* | *Human Resources Development* | *DOD Testing* | *Other* | *Total* |
|---|---|---|---|---|---|
| **ASSETS:** | | | | | |
| Financial Resources: | | | | | |
| Fund Balances with Treasury | ($21,522) | $26,130 | ($2,551) | $418 | $2,475 |
| Accounts Receivable, Net, Non-Federal | 7 | 52 | (1) | 0 | 58 |
| Inventories | 11,991 | 386 | 0 | 0 | 12,377 |
| Intragovernmental Items: | | | | | |
| Accounts Receivable, Net, Federal | 13,997 | 41,895 | 3,672 | 676 | 60,240 |
| Advances, Federal | 179 | 338 | 0 | 0 | 517 |
| Total Financial Resources | 4,652 | 68,801 | 1,120 | 1,094 | 75,667 |
| Non-Financial Resources: | | | | | |
| Advances, Non-Federal | 260 | 20 | 1 | 28 | 309 |
| Curriculum Development | 0 | 1,043 | 0 | 0 | 1,043 |
| Property and Equipment, Net | 4,585 | 4,390 | 74 | 325 | 9,374 |
| Total Non-Financial Resources | 4,845 | 5,453 | 75 | 353 | 10,726 |
| **Total Assets** | $9,497 | $74,254 | $1,195 | $1,447 | $86,393 |
| **LIABILITIES:** | | | | | |
| Funded Liabilities: | | | | | |
| Accounts Payable, Non-Federal | $8,782 | $5,951 | $747 | $585 | $16,065 |
| Accrued Payroll and Benefits | 1,979 | 782 | 213 | 15 | 2,989 |
| Intragovernmental Liabilities: | | | | | |
| Accounts Payable, Federal | 3,086 | 2,091 | 262 | 205 | 5,644 |
| Deferred Revenue, Federal | 11,071 | 72,466 | 94 | 718 | 84,349 |
| **Total Funded Liabilities** | 24,918 | 81,290 | 1,316 | 1,523 | 109,047 |
| Unfunded Liabilities: | | | | | |
| Accrued Annual Leave | 3,100 | 1,679 | 0 | 23 | 4,802 |
| Total Unfunded Liabilities | 3,100 | 1,679 | 0 | 23 | 4,802 |
| Total Liabilities | 28,018 | 82,969 | 1,316 | 1,546 | 113,849 |
| **NET POSITION:** | | | | | |
| Fund Balance | (18,521) | (8,715) | (121) | (99) | (27,456) |
| **Total Net Position** | (18,521) | (8,715) | (121) | (99) | (27,456) |
| **Total Liabilities and Net Position** | $9,497 | $74,254 | $1,195 | $1,447 | $86,393 |

The accompanying notes are an integral part of these statements.

U.S. Office of Personnel Management
Revolving Fund
**COMBINING STATEMENT OF OPERATIONS AND CHANGES IN NET POSITION (Unaudited)**
(Dollars in Thousands)

For the period ended September 30, 1993

| | *Investigations* | *Human Resources Development* | *DOD Testing* | *Other* | *Total* |
|---|---|---|---|---|---|
| **REVENUE AND FINANCING SOURCES:** | | | | | |
| Intragovernmental Revenue: | | | | | |
| Investigations | $83,387 | | | | $83,387 |
| Human Resource Development | | $108,199 | | | 108,199 |
| DOD Testing | | | $7,094 | | 7,094 |
| Other | | | | 1056 | 1056 |
| **Total Revenue and Financing Sources** | $83,387 | $108,199 | $7,094 | $1,056 | $199,736 |
| **EXPENSES:** | | | | | |
| Personnel Salaries | $47,403 | $19,894 | $4,910 | $328 | $72,535 |
| Personnel Benefits | 11,088 | 3,821 | 1,038 | 76 | 16,023 |
| Contractual Services | 23,655 | 67,576 | 45 | 152 | 91,428 |
| Rent, Communications, and Utilities | 9,940 | 11,753 | 66 | 273 | 22,032 |
| Travel and Transportation | 5,793 | 1,875 | 648 | 135 | 8,451 |
| Supplies and Materials | 2,300 | 4,031 | 89 | 86 | 6,506 |
| Printing and Reproduction | 593 | 2,340 | 8 | 105 | 3,046 |
| Depreciation Expense | 2,142 | 1,158 | 62 | 111 | 3,473 |
| Annual Leave Expense | 157 | 77 | 0 | (4) | 230 |
| Bad Debt Expense | 3 | 150 | 0 | 5 | 158 |
| Curriculum Development Cost Amortization | 0 | 676 | 0 | 0 | 676 |
| **Total Expenses** | 103,074 | 113,351 | 6,866 | 1,267 | 224,558 |
| **Excess (Shortage) of Revenues and Financing Sources over Total Expenses** | ($19,687) | ($5,152) | $228 | ($211) | ($24,822) |
| **Net Position, Beginning Balance (Restated)** | $1,166 | ($3,563) | ($349) | $112 | ($2,634) |
| Excess(Shortage) of Revenues and Financing Sources over Total Expenses | (19,687) | (5,152) | 228 | (211) | (24,822) |
| **Net Position, Ending Balance** | ($18,521) | ($8,715) | ($121) | ($99) | ($27,456) |

The accompanying notes are an integral part of these statements.

**REVOLVING FUND**
**NOTES TO PRINCIPAL FINANCIAL STATEMENTS**
**SEPTEMBER 30, 1993 AND 1992**

## NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### A. BASIS OF PRESENTATION

The accompanying financial statements present the financial activity for the Office of Personnel Management's Revolving Fund. They have been prepared to report the financial position and results of operations of OPM programs, as required by the Chief Financial Officers Act of 1990, and are generally in compliance with Office of Management and Budget (OMB) Bulletin 94-01, *Guidance on Form and Content of Agency Financial Statements*. These statements are therefore different from the financial reports, prepared by the Revolving Fund programs pursuant to OMB directives, that are used to monitor and control the program use of budgetary resources.

### B. REPORTING ENTITY

The Revolving Fund was established in 1952 to finance personnel background investigations for other Federal agencies. In 1969, P.L. 91-189 (5 U.S.C. 1304e) was enacted to allow the financing of training and other reimbursable activities through the fund. Each individual activity is required to break even over a reasonable period of time. During FY 93 and FY 92, these activities included personnel background investigations, human resources development, administration of military entrance exams for the Department of Defense, and other miscellaneous activities.

### C. BUDGETS AND BUDGETARY ACCOUNTING

The Revolving Fund is available without fiscal year limitation to support a continuing cycle of business-type operations by using receipts derived from those operations. The fund is credited with reimbursements received for services provided by revolving fund programs. Activities that may be financed in any fiscal year by the fund are restricted to those functions that are noted in budget estimates submitted to Congress for that fiscal year.

### D. BASIS OF ACCOUNTING

Transactions are recorded on both an accrual and budgetary basis. Under the accrual method, reimbursements are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. Budgetary accounting facilitates compliance with legal constraints and controls over the use of Federal funds. All material interfund balances and transactions have been eliminated.

### E. FUNDS WITH THE U.S. TREASURY

OPM does not maintain cash in commercial bank accounts. Cash disbursements and receipts are processed by the U.S. Treasury. The Funds with the U.S. Treasury are available to pay current liabilities and finance authorized purchase commitments relative to goods and services that have not been received.

F. ADVANCES

on-Federal advances are principally advances to employees for official travel. Federal advances are primarily to the General Services Administration (GSA) for services to be provided at a future date.

G. PROPERTY AND EQUIPMENT

The buildings in which Revolving Fund programs operate are provided by GSA, which charges OPM a rate that approximates the commercial rental rates for similar properties. Property and equipment costing $5,000 or more with an estimated service life over two years or greater are capitalized and depreciated. Bulk purchases of lesser-value items that aggregate more than $50,000 are also capitalized. Equipment with an acquisition cost of less than $5,000 is expensed when purchased.

OPM-developed ADP software that constitutes major systems improvements, i.e., significantly improves operations (such as new modules or subsystems) or significantly extends the software's life (for example, major redesigns), costing $5,000 or more with an estimated service life over two years, is capitalized and amortized. The capitalized cost includes salaries and benefits of agency staff for development, modification, testing, and installation as well as other direct and indirect costs incurred during development.

Expenditures for property and equipment are recognized as expenses when the asset is consumed in operations. Equipment is depreciated using the straight-line method over the estimated useful life of the property, which ranges from 3 to 10 years.

H. ANNUAL, SICK, AND OTHER LEAVE

Annual leave is accrued as it is earned, and the accrual is reduced as leave is taken. Each year, the alance in the accrued annual leave account is adjusted to reflect current pay rates. Sick leave and other types of nonvested leave are expensed as taken.

I. DEFERRED REVENUE

Deferred revenue represents funds received from customers in advance of services being performed and reimbursements earned, primarily for background investigations and for training management assistance and organizational development services. For background investigations services, customers are billed when OPM receives the request to perform a background investigation. The recognition of revenue from advance billings is deferred until cases are completed. For training management assistance and organizational development services, customers are billed based upon a signed interagency agreement. The recognition of revenue from advance billings occurs as services are provided under the agreement.

J. CONTINGENT LIABILITIES

OPM is a party in various administrative proceedings, legal actions, and claims brought by or against it. In the opinion of OPM management and legal counsel, the ultimate resolution of these proceedings, actions, and claims will not materially affect the financial position or results of operations of the Revolving Fund.

K. INVESTED CAPITAL

Invested Capital represents U.S. Government resources initially invested in the Revolving Fund to commence operations plus the net book value of assets transferred from other Federal agencies without reimbursement.

WASHINGTON POST WEDNESDAY, AUGUST 21, 1985 E19

JACK ANDERSON and DALE VAN ATTA

# Grand Jury Probing USDA Grad School

In Washington, it's hard to come up with an original scam. But the inventive administrators of the Graduate School of the U.S. Department of Agriculture managed to do it.

For the past three years, this obscure institution has been providing services and personnel for various agencies and charging commissions to do it. If you worked for a government agency that needed extra personnel, computers or furniture and you wanted to avoid the cumbersome procurement channels, the thoughtful folks at the Graduate School were usually willing to help.

It was an ingenious bit of flimflammery.

We first broke the story two weeks ago with a report that two Washington-area Army installations spent $235,000 over a two-year period on equipment—including a microwave oven, a bar stool, slide projectors and an exercise machine—through "interagency agreements" with the Graduate School. The purchases were disguised as "educational services" to bypass the regular procurement process.

A few days later, the Agriculture Department's inspector general reported that the Graduate School had acted as a "pass-through contractor" to purchase supplies and equipment and to hire employes wanted by client agencies. The Graduate School collected commissions of up to 30 percent, which were concealed as "overhead fees."

The school, which offers adult education courses, receives no appropriations and is supposed to subsist on tuition fees. But with a $30 million contract income, its annual budget soared from $4.9 million in 1980 to $23 million in 1985. There was so much money coming in, said one insider, that the school "couldn't handle it" and began to have billing and accounting problems.

It will be a few months before the scandal runs its course. One Graduate School official, director Edmund Fulker, has resigned under pressure, and a federal grand jury is looking into the operation. Other investigations may be in the offing.

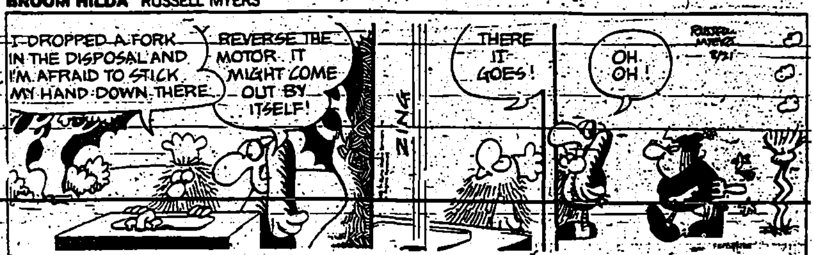
Our reporter Kenneth Reid has learned that a federal grand jury probe of the Army's contracts with the school has snared one person who pleaded guilty to filing fraudulent claims. "There's a lot more to come," said a source in the U.S. attorney's office in Alexandria.

The inspector general at the Agency for International Development is also auditing the $11 million in contracts his agency signed with the Graduate School. In one case, an AID official requested that the school hire a particular person and assign him to a foreign aid project. "We would like to have him report for work on or about Sept. 8," the official wrote in a letter to the school's head of international programs on Aug. 22, 1983.

Federal regulations flatly forbid agencies to designate who is to be hired on contract jobs. By using "interagency agreements" with an entity that is not a federal agency, the foreign-aid officials were able to circumvent the rules.

Footnote: Fulker said his school had "saved the government money," not the other way around. The overhead fees were legitimate, he said, and often necessary because the agencies he dealt with took so long to pay.

BROOM HILDA RUSSELL MYERS




MIDDLE AGES RON JAUDON

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64 Comp.Gen. 110, **B-214810**

MATTER OF: Department of Agriculture Graduate School--Interagency orders for training

November 29, 1984

DIGEST:

Graduate School of Department of Agriculture, as a non-appropriated fund instrumentality (NAFI), is not a proper recipient of "interagency" orders from Government agencies for training services pursuant to the Economy Act, 31 U.S.C. Sec. 1535, or the Government Employees Training Act, 5 U.S.C. Sec. 4104 (1982). Interagency agreements are not proper vehicles for transactions between NAFIs and Government agencies.

This is in response to a request from the Secretary of Agriculture for a decision regarding the propriety of "interagency agreements" under which the Graduate School of the Department of Agriculture provides education or training services to Federal agencies on a reimbursable basis. As authority for these agreements, the Secretary cites provisions of the Economy Act, 31 U.S.C. Sec. 1535, and the Government Employees Training Act, 5 U.S.C. Sec. 4104 (1982). As set forth below, we conclude that neither of these statutes constitutes authority for the agreements in question.

The Graduate School of the U.S. Department of Agriculture conducts academic courses and training programs in a large number of disciplines, ranging from Arts and Humanities to Secretarial Studies. The Graduate School is a non-profit organization under the general supervision of the Department of Agriculture. The Secretary of Agriculture appoints a General Administration Board of 15 members (more than half of whom are Department of Agriculture officials,) which functions similarly to a university board of trustees. The Graduate School receives no appropriated funds, but rather operates with funds derived from student fees and revenue from training services. Full time employees of the Graduate School are not Federal employees for purposes of the Federal employment laws. Most of the instruction is conducted by independent contractors.

It is the position of the Secretary that the Graduate School constitutes a non-appropriated fund instrumentality (NAFI) of the Department of Agriculture. NAFIs encompass a wide range of activities and resist a general definition. They share common characteristics in that they are associated with governmental entities, and, to some extent, are controlled by and operated for the benefit of those Government entities. However, the essence of a NAFI is that it is operated with the proceeds of its activities, rather than with appropriated funds. For purposes of this decision, we agree with the Secretary's opinion that the Graduate School constitutes a NAFI.

Page 53662 follows

As indicated above, the Department of Agriculture cites the Economy Act, 31 U.S.C. Sec. 1535, and the Government Employees Training Act, 5 U.S.C. Sec. 4104 (1982) as authority for the "interagency agreements" here under review. These two statutes, although not interchangeable, are substantially similar in some respects. The first statute authorizes reimbursable orders for goods or services between agencies or major organizational units within agencies. The second statute authorizes reimbursable agreements between agencies for training services.

This Office consistently has taken the position that interagency or intra-agency agreements are not appropriate vehicles for transactions between NAFIs and Government agencies. We conclude that this position is valid whether the transaction in question is purportedly based on the Economy Act or on the Training Act.

The leading case in this area is 58 Comp.Gen. 94 (1978), wherein we considered the propriety of procurement of services and merchandise by the Army from Army-related NAFIs through the use of "intra-Army orders." In that decision, we observed:

"Although the NAFIs are recognized as being Government activities, they differ significantly from other Governmental activities, particularly with respect to budgetary and appropriation requirements.

* * * * *

"We believe that it is these differences, rather than the status of NAFIs as Government instrumentalities, which must be controlling here. In all three cases, what is involved is the transfer of moneys from the Army's appropriation accounts to the accounts of the NAFIs over which there is no direct control either by the Congress (through the appropriation process) or this Office (through the account settlement authority of 31 U.S.C. 71, 74 (1970)). Thus, for all practical purposes from an appropriation and procurement standpoint, the obtaining of goods and services from a NAFI is tantamount to obtaining them from non-Governmental, commercial sources." 58 Comp.Gen. at 97-98

Accordingly, because "obtaining goods and services from a NAFI is tantamount to obtaining them from non-governmental commercial sources," a regular purchase order rather than an intra-agency or interagency order should be used when services are furnished by a NAFI to an appropriated fund activity. 58 Comp.Gen. at 98-99. See also B-199533, August 25, 1980 (Army acted improperly in purchasing services from NAFI without contract or regular purchase order processed through contracting official); B-192859, April 17, 1979 (disposition form, amounting to inter-office memorandum, is not proper vehicle for transaction between NAFI and Army).

Page 53663 follows

We have recognized that sole source procurement through a NAFI may be permissible in certain circumstances such as when there are "organizational or functional reasons which dictate the impracticability of having services furnished by other than a NAFI" or when only a NAFI can provide goods and services in "extreme exigency situations." 58 Comp.Gen. at 98. However, where such procurements are justified, "appropriate sole-source justifications" and the use of regular purchase orders are required. 58 Comp.Gen. at 98-99. See B-148581, et al., September 2, 1980 (fact that NAFI had regular supply channel and established transportation and warehouse system for items to be procured was not itself sufficient to justify sole-source procurement). Additionally, of course, a NAFI may compete in, and be awarded a contract under a competitive procurement unless otherwise precluded by its charter from doing so.

The Department of Agriculture cites 37 Comp.Gen. 16 (1957) in support of its position that the Graduate School is a proper recipient of an "interagency" order. In that decision we considered a protest by a disappointed bidder on a contract for laundry service ultimately awarded to a NAFI. The contracting officer had solicited bids from commercial services, but then procured the services from a NAFI on the basis of a cost comparison. We decided to take no action on the protest. However, we did state our view that "it would be solely a matter of administrative discretion as to whether or not to procure the work or service from another Government agency or instrumentality when determined that its prices are lower than all bids received in response to a formal advertisement." 37 Comp.Gen. at 18-19.

The decision in 37 Comp.Gen. 16 concerned the propriety of the contracting officer's rejection of the submitted commercial bids. The decision did not reach the issue of whether the procurement from the NAFI was proper, and whether, if proper, such procurement could be done by interagency agreement. Accordingly, to the extent our language in 37 Comp.Gen. 16 suggests a different result than our holding in 58 Comp.Gen. 94 (1978) and similar cases, discussed above, it should not be followed.

. Further, the Department of Agriculture contends that 58 Comp.Gen. 94 can be distinguished from the instant case. The Secretary specifically points to language in that decision where we observed:

"This does not mean that Defense Department NAFIs must now compete with regular commercial contracting services. NAFIs exist to help foster the morale and welfare of military personnel and their dependents. DOD Directive 1330.2; Army Regulation 230-1. Providing regular Defense Department operating activities with goods or services is not directly related to that purpose. This is particularly so with respect to the resale NAFIs such as the exchanges, which operate for the purpose of selling goods and services primarily to military personnel and dependents; they are not expected to sell to the 'Government' itself. Thus, as a general proposition, we would view the sale of goods and services by NAFIs to regular Governmental operating activities to be outside the scope of the NAFIs' proper functions. Accordingly, as a general rule there should be no competition between NAFIs and commercial sources simply because NAFIs are not in the business of supplying the Government with its procurement needs." 58 Comp.Gen. at 98.

———————— Page 53664 follows ————————

Agriculture infers from this paragraph that the "principle factor leading to the conclusions [of 58 Comp.Gen. 94] is the fact that the sale of goods and services to regular Governmental operating activities is outside the scope of the authorized activities of the Defense non-appropriated fund instrumentalities." On the other hand, the Secretary observes, the mission of the Graduate School specifically includes cooperation with other agencies. Accordingly, he concludes that the rationale of 58 Comp.Gen. 94 is not applicable in the instant case.

The analysis quoted above regarding the "scope of the NAFIs' proper functions" was not the basis of our conclusion that interagency agreements are not proper vehicles for transactions between

NAFIs and Government agencies. That conclusion was based on several critical differences between NAFIs and Government agencies, including coverage under the procurement and appropriation laws. 58 Comp.Gen. at 98. The analysis regarding the "scope of the NAFIs proper function" was merely an observation that, although military NAFIs for some purposes were not required to compete with commercial enterprises, it seldom would be appropriate for a Government agency to purchase goods and services from Defense NAFIs, by any procurement method, "because NAFIs are not in the business of supplying the Government with its procurement needs." 57 Comp.Gen. at 98.

We agree with the Secretary that this analysis would not be fully applicable in the instant case, given the wide range of activities of the Graduate School. However, our agreement in this regard, indicates that it is more likely that the Graduate School would be an appropriate recipient of a sole source or competitive procurement contract. It does not affect our conclusion that the Graduate School, as a NAFI, is not a proper recipient of an interagency order.

Finally, Agriculture has included in its submission an internal Civil Service Commission memorandum dated December 13, 1978. The memorandum concludes that there is "no legal impediment to designation of DOA [Agriculture] as the lead agency for Federal interagency training of auditors" under the Economy Act or the Training Act. Further, it concludes that there is "no legal problem with the assignment by DOA of the training responsibility to the Graduate School." However, this memorandum is not helpful to DOA's position in this case. As the memorandum correctly points out, the "issue of whether the [training] may be assigned to the Graduate School through DOA under section 601 of the Economy Act without going through contracting-out procedures is subject to the supervening authority of GAO to determine." In exercising this authority, we have determined that training may not be obtained from the Graduate School by interagency order either under the Economy Act or under the Training Act.

———————— Page 53665 follows ————————

Accordingly, it is our conclusion that neither the Economy Act, 31 U.S.C. Sec. 1534, nor the Government Employees Training Act, 5 U.S.C. Sec. 4104 (1982), constitutes authority for the Graduate School to enter into "interagency agreements" with Federal agencies. However, in view of the longstanding uncertainty in this area qf the law, this decision should be applied prospectively only, and the termination of agreements now in effect will not be required.

Milton J. Socolar

for Comptroller General of the United States

ORIGINAL

**Interagency Agreement**

**Between**

**U.S. Nuclear Regulatory Commission (NRC)**

**and**

**Graduate School, U.S.Department of Agriculture (GS/USDA)**

**For Operation of the NRC Training Facility**

A. **Acquisition Authority** - Economy Act 31 U.S.C. and Farm Bill, 1991.

B. **Background**

1. Objective
The NRC Office of Personnel (OP) provides a full range of instruction to employees in the areas of nontechnical expertise from basic secretarial skills to advanced management training, acquisition management, sociological and ethical topics, statistics, and nontechnical, NRC-specific issues. For purposes of this agreement, these training courses will be referred to as "professional development courses." In addition, OP also provides hands-on instruction in computer software applications necessary to agency operations. These training events are provided on-site at its training facility located at Two White Flint North, Rockville, Maryland and at remote training sites at regional offices and the Technical Training Center. The purpose of this agreement is to provide on-site contractor support for administrative aspects of the training program including scheduling, registering, reporting, and administering classroom details. The on-site contractor should further provide course development and presentation of all classroom computer training.

2. NRC's Training Environment
NRC's Office of Personnel, Division of Organizational Development and Training (ODT), has a training facility at Two White Flint North to support all in-house training requirements (July, 1994). Seven classrooms are provided and each is equipped with projection screens, white boards, VHS, and will soon have portable televideo capability.

   a. OP/ODT's staff contract for several professional development courses. The OP Project Managers are responsible for defining needs, developing course materials, and arranging presentation dates for those courses. Classes that fall in this category are usually instructor-based and are given in one of three classrooms capable of holding up to 30 students, or a fourth classroom configured to support up to 50 individuals.

**NRC Training Facility**
**Summary of Estimated Costs**
**Interagency Agreement**
**June 1994 through May 1995**

| | 1994-95 | 1995-96 | 1996-97 | Totals | G&A | Grand Total |
|---|---|---|---|---|---|---|
| Personnel | 285,592.11 | 305,583.55 | 326,974.40 | 918,150.06 | 174,448.51 | 1,092,598.57 |
| Presentations | 170,040.00 | 175,664.00 | 190,532.00 | 536,236.00 | 101,884.84 | 638,120.84 |
| Design | 131,446.48 | 131,446.48 | 131,446.48 | 394,339.43 | 74,924.49 | 469,263.92 |
| Travel | 12,765.71 | 13,276.34 | 13,807.39 | 39,849.44 | 7,571.39 | 47,420.84 |
| Outside Services | 23,700.00 | 25,359.00 | 25,359.00 | 74,418.00 | 14,139.42 | 88,557.42 |
| Conferences | 5,000.00 | 5,000.00 | 5,000.00 | 15,000.00 | 2,850.00 | 17,850.00 |
| ostage & Shipping | 178.33 | 178.33 | 178.33 | 535.00 | 101.65 | 636.65 |
| | $628,544.30 | $656,329.37 | $693,119.27 | $1,977,992.93 | $375,818.66 | $2,353,811.59 |

**Travel Estimate**
Average of past three years
Adjusted by 4% increase per year in expense

| Design Requirements | |
|---|---|
| Adj* 1992 | 109,447.38 |
| Adj* 1993 | 119,516.04 |
| Adj* 1994 | 165,376.00 |
| *Adjusted to current design rate | |
| Averaged | 131,446.48 |

**'utside Services Defined:**
terials unavailable at the NRC Supply store
.raphics Artist for illustrations in manuals, televideo sessions, etc. ($50 / hour)
Preparation of Training Announcements, Catalogs, etc. (@30 / hour)

| Estimates | |
|---|---|
| Materials | 1,500.00 |
| Graphics | 22,200.00 |
| Total | 23,700.00 |

# INTERAGENCY AGREEMENT

# BETWEEN

# NASA/GODDARD SPACE FLIGHT CENTER

# AND

# GRADUATE SCHOOL, U.S. DEPARTMENT OF AGRICULTURE

# FOR TRAINING AND RELATED SERVICES

A. **Acquisition Authority** - Economy Act 31 U.S.C. 1535 and Section 203(c) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473(c).

B. **Background**

1. Need

The Goddard Space Flight Center (GSFC) is committed to the training and development of its workforce and recognizes the demands for human resource development are inherent in a changing, highly technical environment. In addition, the Center recognizes the complexities that accompany a large, highly diversified research and development organization and that organizational effectiveness is central to the accomplishment of assigned missions.

The Center has a widely diversified human resource program to address mission requirements including individual training, employee recognition, employee involvement activities, organizational development, and other human resource support services. To meet these requirements, a wide range of civil service, contracts, and agreements are necessary to provide the services and products to develop and maintain the GSFC workforce.

2. Objective

The purpose of this Agreement is to obtain a number of training services with the Graduate School, U.S. Department of Agriculture (GS/USDA).

3. **ARTICLE T - ACCOUNTING AND APPROPRIATION DATA** is modified to add the following:

| | |
|---|---|
| PCN: | 114-22604A (1C) |
| JON: | 114-010-01-03-44 |
| APP: | 8050112(95) |
| BLI: | A2-32 |
| OBJ: | 11-2596 |
| AMT: | $155,000.00 |
| B/NC: | 063 |
| PPC: | 98 |

Funds currently obligated to this Agreement are changed:

| | |
|---|---|
| Basic: | $175,000.00 |
| DO 1: | 50,000.00 |
| DO 3: | 270,669.40 |
| DO 4: | (45,100.00) |
| DO 6: | 239,700.00 |
| DO 7: | 155,000.00 |
| **Total:** | $845,269.40 |

The total contract value is NTE $907,173.20. The obligated amount of funds for this contract is $845,269.40.

**INTERAGENCY AGREEMENT
BETWEEN
U.S. PATENT AND TRADEMARK OFFICE
AND
GRADUATE SCHOOL, U.S. DEPARTMENT OF AGRICULTURE
FOR
MANAGEMENT AND ADMINISTRATION
OF
THE PTO UNIVERSITY**

**A. ACQUISITION AUTHORITY** - Economy Act U.S.C. 31 and Farm Bill, 1991.

**B. BACKGROUND**

Technology is changing the way the U.S. Patent and Trademark Office (PTO) conducts business. According to various studies, many positions are becoming increasingly high tech resulting in the need for some post-secondary education for the first time in our history. As we look within the clerical, administrative, and technical ranks, many of our employees, because of the advances in technology, will require additional knowledge, skills, and abilities to perform the jobs of the future.

PTO University was created to ensure that our employees would not be displaced due to the demands made by a more sophisticated PTO workplace environment. New training approaches are needed to address specific worker learning problems associated with changes anticipated to meet future demands. PTO University is prepared to:

- Provide college tuition assistance programs,
- Award certificates of competency, and initiate work towards completion of AA/BA degrees in critical and short occupations,
- Provide a competency-based curriculum tied to future occupational paths,
- Provide counseling, assessment, and placement assistance.

Training and educational objectives are balanced to meet the needs of the individual as well as the needs of PTO, in accordance with specific performance targets. Without a performance target, employees have no guidance, policy makers do not know what is working, and customers have no idea where they may be served best. Employees need to understand that throughout their careers, their most important task is to continue learning and applying new knowledge to the challenges they face.

***1. Objective***

The purpose of this agreement is to provide on-site contractor management and

**If by check:**
Graduate School, USDA
Business Office
Room 108
600 Maryland Avenue, S.W.
Washington, D.C. 20024

**If by electronic funds transfer:**
First Union Bank
600 Maryland Avenue. S.W.
Washington, D.C.
ATTN: Maria Holland
ABA Number: 054 000 043
Account # 3 795 330
Account Name: Graduate School, USDA

4. *Invoices to PTO/ Office of Finance* must be in accordance with the prompt payment Act and mailed to:

U.S. Patent and Trademark Office
Office of Finance
Box 17
Washington, D.C. 20031

5. *The total amount of this annual Interagency Agreement* will be chargeable to the appropriations and account data cited below:

| Appropriations | Amount |
|---|---|
| 81350 011712 2597 | $244,398.91 |

J. **RESOLUTION OF DISAGREEMENTS**

Any disputes arising from disagreements may be settled mutually by both parties. Tasks may be added and length of the Agreement extended, and costs may be adjusted as determined and agreed to by both parties.

K. **AMENDMENTS**

This Agreement may be amended by mutual consent of both parties. Tasks may be added and length of the Agreement extended, and costs may be adjusted as determined and agreed to by both parties.

Mr. MICA. I thank you. I didn't mean to cut you off, but we do have a series of votes coming up. I want to try to get Mr. Reischl in before the votes, and then we will recess for a series of four votes. We'll be gone for at least a half hour or more.

Mr. Reischl, if you'll go ahead. When the bell goes off, you'll have another additional 2 to 3 minutes. We'll let you proceed. Welcome, and thank you.

Mr. REISCHL. Thank you, Mr. Chairman and members of the committee. We greatly appreciate our opportunity to be here this afternoon. I'm going to shorten my comments and deviate slightly from them, because I see no point in retreading ground that has already been covered. I'm quite sure you've picked up a number of the points already.

Several things I would like to say. We're a small company that has been in business now for 10 years. And we produce a variety of training materials, instructional materials, and publications that we sell to various Federal agencies. In the course of doing that, our primary competitor has been the U.S. Office of Personnel Management.

And, of course, in dealing with them, we have learned a lot about what it's like to deal with a federally sponsored business, one that has, as Mr. Dungan has just addressed, the advantage of not having to compete for business, for one thing, and second of all, having the enormous advantage of having inside access to its customer base.

These combine for an enormous competitive advantage, obviously. But one of the things that I wanted to address today in talking about the problems with having any government entity, I think, being a private, profit-driven business, mixing governmental privilege, if you will, and position with a profit motive, is that we found to our dismay over the last 10 years that even with those advantages, all too often, we found OPM officials in different parts of the country seem to feel it absolutely necessary to engage in what, for lack of a better term, I'll simply call what it is, coercive tactics.

I'm going to skip over this part, since I have 2 minutes. It's covered in our longer submission, and we'll pick that up. Let me jump right to what I think to be the biggest problem we see with this transfer, if you will.

And it really comes off something Mr. Dungan started to address near the end of his presentation. And that's just this, that in moving this operation over there, we have—I'll put this bluntly—you're creating or allowing to be created if it stands the worst nightmare I can imagine for a small, private firm.

We will have sitting over there an operation that can chameleon-like contend 1 day it's a government entity with the purpose of avoiding competition, avoiding taxes, having insider access to the customer base, being able to sidestep the ethics rules that restrict the kinds of things we're able to do, such as having Federal employees sit on our boards of directors, that sort of thing—it can avoid all of those things, can avoid most public scrutiny and much congressional scrutiny as a NAFI, and yet they're after a profit motive.

This is extremely difficult to compete with, gentlemen and Mrs. Morella. It's a very, very difficult kind of a thing to confront. I don't think, frankly, any business could really deal with that very well if it's allowed to stand. What we're asking today, I think, is probably the same kind of thing that you're going to hear from some of the other witnesses. We're asking you to take a look at this hard and come to one of several conclusions.

We think the most appropriate conclusion would be just to get the USDA Graduate School out of business. Frankly, we don't think, in our opinion, the government belongs in a commercial business.

The government is here, we think, to govern. We also think government entities, in our perhaps simple-minded view, should exist to serve the people of this country, the taxpayers of this country, not to compete with them for business. And that's precisely what we have. We have a governmental entity competing for business with us.

So we would ask that you either take whatever steps are appropriate to end this entirely or, if that is not for some reason preferable or possible, at the very least put them on the same playing field with us. If they want to be in business, fine. But then I think they should have to compete for their contracts. I think they should have to pay taxes like the rest of us. I think they should have to adhere to the same ethics rules.

And, in short, if they're going to be in business, do so on a field that's level. Thank you very much. I greatly appreciate the opportunity to be here.

[Note.—The appendixes to Mr. Reischl's prepared statement can be found in subcommittee files.]

[The prepared statement of Mr. Reischl follows:]

# Testimony of FPMI Communications, Inc.

**before**

## The House of Representatives
## Committee on Government Reform and Oversight
## (Subcommittee on Civil Service)

My name is Dennis K. Reischl. I am the co-owner of FPMI Communications, a small firm that develops training seminars and instructional publications for federal agencies. Beside me is my business partner, Mr. Ralph Smith.

Our company employs 14 people full-time, and 5 people part-time—most of them located in Huntsville, Alabama. We are currently in our tenth year of operation, and have grown steadily after starting our business, literally, on our kitchen tables.

We greatly appreciate the invitation to appear before you today, and wish to take the opportunity to address two areas of considerable concern to us that are related to OPM's version of training privatization. The first is the manner in which OPM selected the USDA Graduate School as the recipient of its business, despite our attempts to purchase it and similar expressions of interest from more than 30 other organizations. The second area of concern we wish to address is our experiences in competing with a federally-funded, competition-sheltered, tax-exempt offshoot of the federal government, and our conclusions as to the unsuitability of allowing government agencies to sponsor commercial business ventures.

**Chronology of Events**

It may prove helpful to start by providing a brief chronology of the events that have led up to OPM's agreement to effectively transfer its training operations to the USDA Graduate School. They include the following:

• In late 1994 the National Performance Review (NPR) directed OPM to privatize its reimbursable training operation.

• Shortly thereafter OPM Director King announced OPM would consider a variety of options for complying with the mandate. Subsequently, OPM developed a Privatization Options Paper which identified 5 alternatives.

• On February 14, 1995, in response to media reports of OPM interest in sending its training business to the USDA Grad School, we wrote to Director King, pointing out a number of problems with that course of action. By a letter dated 3 weeks later—but which arrived over a month later—King replied that OPM was "considering" several options.

• On March 6, 1995, concerned at reports that OPM officials were already meeting with Grad School officials to work out the details of a transfer, we contacted Director King with an unsolicited proposal to purchase the bulk of OPM's reimbursable training operations. (Appendix 1)

• We subsequently contacted OPM Transition Director Kirke Harper seeking information on OPM's financial records, the numbers, classifications and salaries of employees, and other information necessary to prepare for meaningful negotiations.

• A month later, on April 3, 1995, we received a letter from Director King informing us that OPM was "drafting legislation that would authorize the transfer of programs to successor organizations," but that currently its "options [were] limited."

• In late April, transition director Harper agreed to meet with us to provide some of the information we had sought. At the meeting an OPM lawyer stated that the representatives present could not discuss our proposal, since more than 30 other organizations had also expressed interest in acquiring OPM's training business.

• Mr. Harper also stated that OPM's general counsel had determined it could not transfer any of its assets to a private organization without first obtaining authorizing legislation, but that the chances of obtaining it appeared slight.

Mr. Harper and the OPM attorney also contended that, although the USDA Grad School was essentially a private organization, it could be the recipient of OPM assets. They declined to explain the apparent contradiction with their previous statement that OPM lacked authority to transfer assets to any private organization. Mr. Harper ended by stating, however, that no decision had been made in favor of any option.

• Following the meeting, we filed several FOIA requests for OPM course materials, wishing to analyze their quality and potential value as part of the asset base. Contrary to a publicly-reported statement by Ms. Judith Jaffe, Associate Director for OPM's Workforce Training Service that such materials were "available for a 32 cent stamp," however, we soon discovered that OPM demanded sums of up to $22,500 to provide various portions of the information. (Appendix 2)

• Following the meeting we also provided Mr. Harper with a letter OPM agreed to distribute to its training employees. The letter (Appendix 3), dated May 1, 1995, contained information about FPMI, described our proposal to purchase OPM's training operation, and invited employment applications from interested employees. In response to repeated inquiries, we subsequently learned that it was not until after OPM had announced it's agreement with the USDA Grad School, however, that the letter was finally distributed to OPM employees.

• On May 4, 1995, we received a letter from Ms. Jaffe stating that the agency was "considering a proposal" to transfer its programs to the USDA Grad School, and that OPM employees "favored" it.

• On May 16, without further notice, with no discussion—much less negotiation—of our proposal to buy the operation, and with no apparent effort to obtain legislative approval to sell its business, OPM signed a deal giving its $30 million a year operation to the Grad School—for free. (Appendix 4)

**Terms of the Transfer**

And what a deal it was. Among the highlights were the following:

- OPM transferred all of the training contracts it had booked for the final quarter of the fiscal year—amounting, usually, to about 60% of its annual training revenues—to the Grad School for delivery. Thus the Grad School was able to lock in the revenues without having absorbed any of the advertising or administrative costs involved in securing those contracts.

- OPM declared all the business equipment involved in its training operations—computers, furniture, etc.—surplus, and gave them to the Grad School at no cost.

- The Grad School agreed to make employment offers to 134 of the approximately 190 training employees still on OPM's rolls.

- The Grad School paid nothing for the business, despite reportedly having a multi-million dollar "surplus fund" available. Consequently, the OPM training operation's accumulated debt—over $15 million according to OPM officials—was left behind, presumably to be written off as a loss to the public.

In sum, rather than attempting to sell its business to one of the more than 30 interested suitors, OPM had chosen to hand its $30 million a year business to the USDA Grad School, a purportedly private organization, absolutely free of cost. As if that were not sufficiently generous, it had thrown in all its equipment and other assets, as well as more than half its FY 95 training revenues to sweeten the deal.

**OPM's Rationalization**

In response to inquiries as to the reasons for this astonishing deal, OPM Director King labeled it a "model privatization effort," and offered the following defenses:

1. It provided for a "seamless transition" of OPM's training functions
2. It was a "humane" way to privatize.

It certainly was that. One would be hard pressed to imagine a more "seamless" transition than one in which nothing significantly changed. One in which most of the same employees simply started drawing paychecks from a different federal entity—in compensation for doing the same old things, the same old way, and, in most cases, at the same old address. Probably sitting at the same old computer.

In his pious enthusiasm for seamlessness, however, Director King failed to explain how this maneuver met the NPR's order to get OPM's reimbursable training operation out of the government—precisely because it didn't belong there; ie, was not an "inherently governmental function."

Also unaddressed in Director King's feel-good pronouncement was any explanation of how sending the operation to an organ of the federal government amounted to "privatization."

After some probing, it turns out that OPM's contention that this is, indeed, privatization hinges entirely on the fact that the USDA Grad School is a non-*appropriated* federal entity. But then, so are military exchanges and commissaries, and no one would mistake them for private supermarkets.

OPM's contention that the USDA Grad School is not *really* a part of the federal government is a pretty tough line to deliver, at least with a straight face. Especially when its entire board of directors is appointed by the Secretary of Agriculture, when it occupies USDA space and uses its name, and when it is equipped with *inter-agency service agreement authority*—which enables it to evade procurement rules that apply to everyone *but* federal agencies.

This is a private organization to the same extent that Air America, otherwise known as CIA Airlines, is a private carrier. In short, the contention that OPM moved its operation to a private location collapses under the mildest scrutiny.

Despite the flimsy rationalizations offered by OPM Director King and Grad School Director Hudson, it's easy to see this deal for exactly what it is: A cynically blatant attempt to avoid downsizing by simply re-creating OPM's training jobs in a somewhat less visible federal location. One in which they can continue business as usual, while remaining shielded from private competition by special governmental privileges that exempt them from the procurement rules that apply to genuinely private firms. Humane and seamless indeed.

Exposed to the light of day, it is glaringly apparent that this exercise amounts to nothing more than a transparent scam, a glorified paperwork exercise designed to allow OPM to take credit for major "downsizing," while simply shifting its employees to a new federal address.

**The Other Side of the Equation**

OPM's role in this mock "privatization" may be at least understandable, if not admirable, if one assumes that it was primarily interested in finding jobs for its about-to-be-unemployed workers.

On the other side of this cozy little deal, however, no such altruistic motives can be attributed to the USDA Grad School. Its objective, pure and simple, is to make money. There's nothing inherently wrong with that, of course, if it involves the pursuit of legal business objectives, and is carried out in a legal and ethical manner.

But in this case, the "business" itself is a chameleon-like federal entity that relies on the advantages its quasi-federal status grants it to compete from a grossly unfair position. Paying no taxes, evading procurement rules applied to its competitors, and able to ignore the ethics requirements that limit private companies' access to federal customers, it "competes" for business from a grotesquely tilted playing field.

Ironically, it doesn't even deliver the services it sells. Rather, it farms them out to private vendors for delivery, garnering its profits—as OPM did—from the brokerage fees it receives in return for "administering" training contracts; ie, functioning as a gatekeeper at the center of federal training procurement.

It offers no training services that are not already amply available elsewhere. It increases costs by allowing agencies to avoid competitive bids and by tacking on its brokerage fees. And it benefits none but the "off-the-rolls" feds on its payroll.

In short, the Grad School has managed to reproduce the same inefficient, unfair system that OPM had erected. And it serves exactly the same purpose: providing employment opportunities for those intent on remaining on a federal payroll.

**Who *Are* These Guys?**

How did the Grad School get itself into this position? The answer is slowly, at least until recently. It was established in the 1920's to provide then-unavailable training to Department of Agriculture employees. But as with some other federal entities that have been allowed to expand with little or no scrutiny, it continued to add courses and grow. Until now it has become a $25 million a year training services broker, competing for market share head-to-head with the colleges, universities and private companies that provide the same services it offers.

Clearly the key to the Grad School's recent explosive growth, however, was its 1990 attainment of "interagency service agreement authority" (ISAA)—which allows it to sidestep procurement requirements in getting federal contracts.

Bolstered by its ability to utilize the ISAA, it has recently expanded into conference management, outplacement, and contract personnel services as well. And ISAA was just the magic tonic it needed to accelerate into the fast lane.

Before 1990, the Grad School was unable to obtain ISAA, which, after all, is available only to appropriated federal agencies. Not that it hadn't tried, having recognized the tremendous competitive advantage it would provide.

But the Comptroller General had ruled—twice in fact (1978 and 1984)—that since the Graduate School isn't a federal agency, it wasn't entitled to use the ISAA in competing with other, private vendors.

But the Grad School solved that program by sliding authorization for ISAA into the mammoth 1990 Agriculture Appropriations bill—thus making it the only non-appropriated fund activity in the government to have such authority.

Since then everything's been coming up roses, with the cost-free acquisition of OPM's training business standing out as the crowning accomplishment in its unrestricted growth surge.

Other factors that have aided its growth, of course, include freedom from all federal, state and local taxes; having well-placed federal executives from customer agencies sitting on its board of directors; and being able to provide managers from customer agencies with paid speaking engagements. Private companies engaging in such practices, of course, would be barred from federal contracts or worse.

A final factor in its rapid growth has been its chameleon-like ability to stress its federal aspects when helpful, but to downplay them when it is more advantageous to appear "private." Its "private" NAFI status allow it to avoid congressional budget scrutiny. But its "federal" status shields it from suit. On the other hand, because it is not a federal agency, it refuses to reveal data in response to FOIA requests. The crowning achievement in this game of "now I am, now I'm not, of course, is its simultaneous contention that it is a non-federal entity possessed of an exemption from procurement rules that is available only to federal entities. A conundrum, apparently, that did not trouble Director King in making his privatization decision.

In short, the USDA Grad School currently exists as every small company's nightmare of a competitor. It is an operation that has the inside track to federal customers, is financed by the government but pays no taxes, is free of regulatory oversight, and cannot be sued for unfair or unethical business practices.

In allowing the Grad School to write its own competitive rules, USDA has essentially created a predator with no natural enemies. Small businesses attempting to compete with it face a grotesque combination of governmental special privilege wedded to a profit-making objective.

To call this an unfair and unreasonable exercise of taxpayer-funded resources would be a masterpiece of understatement.

**What's Wrong With This Picture?**

We have two fundamental objections to OPM's approach to privatization— above and beyond the fact that it hasn't actually privatized anything.

***Problem # 1: Threats, Lies and Strong-arm Tactics***

Our first problem with this approach is that, based on ten year's experience competing with OPM's training operation, we've accumulated ample evidence that when they find themselves under anything resembling bottom line pressure, government entities do not hesitate to abuse their position and status to protect their business interests.

The most obvious abuse of power to protect parochial interests, of course, is the propensity of agencies to write the very rules of competition to advantage themselves. A prime example of that was OPM's authoring of both legislation and regulations requiring agencies, absent exigent circumstances, to purchase training services from it.

A more current example is the USDA Grad School's slick efforts to exempt itself from the competitive bid requirements by burying the exemption deep in the bowels of the USDA appropriations bill.

But even on a day-to-day basis, we soon discovered that when faced with competition—even from an operation as small as ours—federal businesses quickly resort to abusive uses of position, authority, and whatever coercive power might be available, in order to win or retain a business advantage.

For example, agency training officers in several regions told us that OPM officials had advised them they might have trouble passing its dreaded Personnel Management Evaluation inspections if they used private training vendors. This sort of thing is inevitable, we believe, when the fox gets to rate the sufficiency of the security arrangements the chickens have made.

In other instances, OPM officials told agencies that we had plagiarized OPM training materials. That the claim was ludicrous, particularly since the higher quality of our materials is one of our few advantages in this rigged market, made no difference. The mere assertion hurt our reputation with potential customers—as it was obviously intended to do.

We've also been told by numerous freelance instructors—and several former OPM officials—that OPM officials routinely threatened to blacklist freelancers from all future OPM contract work if they worked for any private sector competitors. The theory being, of course, that if one can cut off the competition's access to skilled labor, it's a lot easier to maintain the upper hand.

Nor, when necessary to forestall competition, has OPM hesitated to ignore the law. For example, when we filed FOIA requests for OPM mailing lists, most regions simply ignored them. Of the few that answered, one, the Philadelphia Region, said we'd have to pay over $7,000 to get the list, claiming two clerks would require several weeks to copy it from index cards.

Since that region advertised its own training courses by sending out dozens of mailings each year, and had long since discovered the computer, that was obviously untrue. More recently, OPM regions have played the same game in response to FOIA requests for copies of public domain training materials—which in most cases, are already printed and sitting in storerooms. No matter, as indicated in their responses to us (Appendix 2), prices ranged up to $20,500—considerably more than the "32 cent stamp" OPM training director Jaffe claimed to the media.

In short, the agency has blatantly thumbed its nose at the requirements of the FOIA? But how, exactly, can a small company force a federal entity to comply with anything?

The answer, of course, is that it can't. Nor can it sue the government-run business for unfair and unethical business practices—such as false statements to customers and threats to potential employees. That's because, unlike other private companies, federal entities are immune to suit.

***Problem # 2: Do you want to be in business or government?***

Our second objection to OPM's version of privatization is that it keeps a cadre of people who are clearly federal employees—no matter how much OPM might split hairs and prevaricate—firmly entrenched in what the NPR already has conceded to be a commercial business venture.

Worse, it allows them to retain a stranglehold on the federal training market by placing them in an operation that has carefully rigged the rules to ensure—as did OPM—that virtually all the marbles will roll downhill and into its pockets.

Having a federal business which, inevitably, is supported by tax dollars, competing directly against the firms that are required to pay those tax dollars is objectionable enough. But when the game is skewed by handing the federal enterprise an array of insurmountable competitive advantages, we're beyond objectionable and well into the land of utterly unconscionable.

Maybe we have an overly simplistic view, but we still believe that government entities should exist to serve the taxpaying public, not to compete with it for business.

If OPM's former employees want to compete in a commercial business, that's fine. But then they ought to be in business as we are; that is, playing under the same rules as the rest of us.

They definitely should not be the recipients of special competitive privileges simply because they work—or, in Mr. King's version of reality, worked —for the federal government.

Frankly, it is precisely the sort of arrogant, self-serving behavior evident in this slick little shell-game that has created deep feelings of resentment and anger toward federal agencies in this country. It is yet another deeply disturbing example of those who are being paid to serve the public serving themselves first—and at the public's expense.

**Where Do We Go From Here?**

Like most government entities, the USDA Graduate School began as a sensible solution to a real problem. It provided necessary training that was not then readily available.

But like some government creations—the old Rural Electrification Administration springs to mind—although the need underlying its mission has long since disappeared, the entity has not. Indeed, it has quietly grown—and grown—and in this case promises to grow yet more, since this one is free to enter any business it finds attractive.

At this point, however, the USDA Grad School is no longer providing necessary training that is otherwise unavailable. Quite the contrary. Now it's in a head-to-head battle for market share with its private and non-profit competitors, seeking to provide—or broker—the same services that are already amply available.

And, in an effort to gain the upper hand in that commercial battle, it has used its government status to obtain a competitive weapon that is not now—and never will be—available to its private competitors: exemption from competition under government procurement rules. Analogously, it is now the only participant in a fist fight who is permitted the use of a firearm.

In occupying this privileged position, it provides only two identifiable "benefits."

1. It allows agencies to avoid the competitive bidding process

2. It provides competition-sheltered employment for displaced feds.

Unfortunately, neither of these are of benefit to the public. In avoiding competition, agencies also avoid discovering if they have obtained maximum quality for the dollars expended. Indeed, in paying the brokerage fees associated with supporting the middleman, it's virtually certain they <u>haven't</u>.

And, in keeping the broker's employees on the federal payroll—visible or not—it continues to stick taxpayers with their cost, regardless of the fact that the cost is now hidden in the higher rates agencies pay to cover the extra brokerage fees.

To state the obvious, this is the wrong way to go about privatizing and downsizing OPM's training operation—or any other operation, for that matter.

What is the right way, then? Is the only alternative, as Director King implies, to "inhumanely" dump OPM's employees on the street and leave them to fend for themselves? Obviously not. There is a considerably better solution readily available, as we repeatedly advised Mr. King in our initial contacts with OPM.

To begin with, we would never advocate simply dumping OPM's employees on the street, labeling them as a liability on the public. Indeed, as former federal employees ourselves, the last thing we'd advocate is inhumane treatment of anyone who has served the government well and faithfully. Quite the contrary.

We know how many hard-working, talented people are in that agency. And we know what it is like to go through a major career disruption and all the uncertainty and anxiety associated with it. We know it all too well, having started this business, literally, from our kitchen tables—with the investment of our life savings. But, having stepped outside the government, we also know how many other options are available to these employees than most of them realize.

What we advocated to Mr. King—and continue to advocate today—is that OPM truly privatize by simply getting out of the business, thereby leaving the private vendors who already provide all the actual training to deal directly with agencies, without the intervention of a broker. That would open the federal training market. And, far from leaving OPM employees unemployed and without prospects, it would accomplish just the opposite.

Opening this $30 million a year market to genuine competition would cause two things to happen. First, the companies already in the market, such as ours, would quickly move to expand. Second, other new companies would spring up, responding to obvious new opportunities. Both would need employees knowledgeable in, and familiar with the federal training market. What better place to look for them than the people who have been working in exactly that market?

As we noted in our own letter to all OPM training employees, they would provide an outstanding source of new employees for companies and non-profit entities interested in expanding into this market. Which is precisely why we have already hired several of them, despite the OPM/USDA continuation of business as usual.

We firmly believe that if OPM had made any effort at all to truly privatize its operation, rather than just seeking some means of hiding it elsewhere in the government, everyone associated with this situation would have benefited—with the obvious exception of the USDA Graduate School Here's how:

1. Taxpayers would have benefited by having OPM's employees and the bloated administrative support costs associated with them off the federal budget.

2. Most OPM employees would already be employed with private and non-profit entities seeking to exploit the federal training market, many of them with superior earnings potential.

3. Agencies would be able to find a broader, better array of choices, with far more competition in both price and quality.

4. Private and non-profit training vendors would no longer be competing with hobbles around their ankles, giving them a fair opportunity to win business on the basis of the quality and price of their products and services.

The bad news is that OPM obviously didn't even consider this approach in its rush to find a new home somewhere inside the federal government. Instead of taking the NPR's directive seriously, it simply attempted to avoid its effects.

Sadly, Director King exhibited neither imagination, nor initiative—nor even an open mind—in dealing with this situation. He opted instead for the easy, obvious, and just plain wrong way out, choosing to keep doing business the same old stuff the same old way, and hoping no one would notice.

The good news is that OPM's ludicrous version of privatization is easily correctable. It's not too late to open the federal training market to competition, and to place the overwhelming majority of OPM employees with non-governmental employers.

Nor is it too late to get the USDA Graduate School out of the business of being a federally-sponsored business predator, especially since the Agriculture Appropriations bill—the source of the Graduate School's special competitive privileges—is again before the Congress for approval.

Consequently, we ask that, at the very least, you take steps to revoke the Grad School's completely unjustified use of interagency service agreement authority.

But preferably, recognizing, we hope, the fundamental unfairness of this situation and that the Grad School no longer has a legitimate function, we ask that you simply shut it down. Please end this example of the fleecing of the American public, and use the occasion to erect a wall of separation between commercial business and the real business of governing.

In pursuit of that goal, we recommend four specific actions:

1. Rescind the ludicrous sweetheart deal OPM and USDA Graduate School have engineered, applying the dollars earned by OPM's scheduled training contracts over the last quarter of FY 95 to its accumulated debt.

2. Require OPM to conduct an aggressive outplacement effort for its training employees among private and non-profit training vendors serving—or wishing to serve—the federal market.

3. Shut down the USDA Graduate School operation, since it serves no legitimate purpose.

4. Simplify procurement procedures so agencies can deal directly with vendors without having to jump through ridiculously lengthy, absurdly expensive hoops to let even the smallest contracts.

Mr. Chairman and members of the committee, thank you again for providing the opportunity for us to be heard here today. My partner and I, as well as all employees of FPMI Communications, greatly appreciate it.

**END**

Mr. MICA. Well, I thank you. We have heard from two of the not-too-happy campers. We'll get to hear from a third. But in order to be entirely fair to Mr. Wakham, what we'll do is recess this hearing. I think, Mrs. Morella and Mr. Bass said about four votes. What do you think about time?

Mr. BASS. We're going to be half an hour.

Mr. MICA. I would say quarter past, which will give people the time to get a cold drink and visit the graduate school and come back. [Laughter.]

About a quarter after, we'll reconvene for a few minutes after the last vote is called. Thank you, and we'll be back.

[Recess.]

Mr. BASS [presiding]. I think we'll call the subcommittee hearing back to order. Mr. Mica and I spoke on the floor. He is participating in the Waco hearings, which are going on next door. So as you gentlemen well know, all the testimony that's heard here today will be part of the record. It will be given just as much consideration as it would have been if every person was here who was supposed to be. So with that, we will continue. And we'll hear from you, Mr. Wakham. Welcome.

Mr. WAKHAM. Thank you, sir. Mr. Chairman, I'm E.C. Wakham, president of the Executive Seminar Center, Limited. It's a limited liability company that's organized in Colorado. My partner and the other member of the firm is Tom Connolly of Oak Ridge, TN. I appreciate your invitation to appear at this hearing. My statement will be brief, and I'll be glad to respond to any extent I can to any questions you might have.

Both Mr. Connolly and I are former employees of the U.S. Office of Personnel Management. I retired in August 1993, and he followed suit in February 1994. We both had proud public service careers spanning more than 30 years. We organized our company on July 29, 1994, so on this date, we're a small company 3 days shy of 1 year old.

I've spent 27 years in the executive and management development field. More than half that time, 14 years, I directed OPM's Western management development center, initially at Berkeley, CA, but most of the time at Denver.

I also have experience in State government, graduate level university teaching, working with profit and nonprofit private sector organizations. My partner's experience complements mine.

I am sure it comes as no surprise to you that when we opened our business, capitalized with our own money and at our own risk, we opened a business in a field that we know a good deal about. I have brought with me, if you would like them, copies of materials describing some of our programs. Some of those programs are similar to programs that are offered by OPM but less costly.

Now, that puts us on the same playing field with them and also with the USDA Graduate School. And if that field were level, we would be natural competitors.

I want to make sure that you know how much I respect many of my former colleagues at OPM's training organizations. When I directed the Western management development center at Denver, we had a diverse, talented, dedicated, productive staff. They did—and I believe they still do—fine work. They could do even better in a competitive environment, devoting more resources to their programs and less to overhead. There's no question about it, however. They're quality people, and they will find a way, I believe, to do well regardless of what environment they're in.

In point of fact, we're not really competitive to OPM and the USDA Graduate School, because they don't compete. The reason they don't compete is they don't have to. So far as I know, they're the only two institutions in America that have specially conferred statutory authority which allows them to sell training and training-related programs and services to Federal agencies without regard to any law whatsoever concerning Federal procurement.

Yes, we do have competitors, but they do not include OPM and the USDA Grad School. Not the way we see it, anyway. Their advantage is legally mandated. The allure for Federal agencies to do business noncompetitively with OPM and the USDA Graduate School is almost really irresistible. They can legally spend hundreds of thousands, even millions of dollars per year with OPM and the grad school and still avoid the time and trouble of shopping around for price and quality by getting bids.

Believe it or not, understanding as I do something about the ponderous and expensive procurement regulations in the Federal Government, I can sympathize with that. Doing business with OPM or the grad school is also a legal way to carry over spending authority that might otherwise expire. It can work out to be a parking place for money.

Agencies pay a premium, in my opinion, when they're doing this, but when spending authority would otherwise expire, they can afford it.

Given the monopoly system that I've just described, one might suppose OPM's professionals are awash in cash and can afford the absolute best quality. Not so when I was there. Things could be different now, I suppose, but I doubt it. We did take in a lot of money, but the tuitions we charged were unrelated to the cost of producing the training. Prices were administratively determined based on a variety of factors, as you would expect in any monopoly.

Out of receipts, OPM headquarters took common service charges, overhead, and fixed facilities charges. With the remainder, we paid students' food and lodging costs, we produced the programs, and we delivered the profit that OPM's headquarters required at year end. We had to produce the programs on the cheap because we simply didn't have the money.

From our perspective, all of our other costs, including the required end-of-year margin, were fixed and nonnegotiable. I credit the staff and the adjunct faculty that we did as well as we did.

Speaking now just for myself, I want to make sure that you know I'm not here as a special pleader to lobby you to change things just for my benefit. Would I like a level playing field? An emphatic "yes." Would it be fairer? Yes. Would agencies save money without loss of quality? I certainly believe yes. What would be my preference as a taxpayer? Again, the answer is obvious. But at the same time, I must tell you that I knew the lay of the land when we opened our business a year ago, and I knew OPM and the USDA Grad School had a built-in statutory advantage.

But how could I not know it? I had experienced it. And when I was experiencing it, I didn't quit then and come to petition to Congress to change things just for me. And I'm perfectly willing to play now the hand that I'm dealt now, whatever the Congress does or doesn't do.

I mentioned that we don't think of OPM and the USDA Grad School as competitors because they don't compete. And that is right. But they are certainly a big fact of life in our environment. Our business is beginning to succeed in that context for the very reason that we do compete and that we are competitive. We and they are qualitatively different animals.

We have the natural advantage any economist would predict for a competitive organization. Our prices are lower for equivalent training, and I mean hundreds of dollars lower per person.

We provide an absolute money-back guarantee. We are flexible, and we will go where the customer needs us, saving the customer additional hundreds of dollars per person in travel and per diem. In short, we are low-cost, high-quality, completely reliable, responsive, customer-friendly, and finally, entrepreneurial, which is why I could not resist putting this commercial in this statement.

Turning specifically to the question before you, should they be competitive? Should the playing field be leveled? The answer is really largely a matter of philosophy. And it's your call, not mine. I have my own views, of course, and I've already mentioned important advantages, including advantages to my company.

But I do not delude myself that it's your job to make my life easier. You must determine the public interest, and I'm not going to tell you what it is in this case, because I don't know it as well as you.

I have known about the USDA Grad School for most of my career, but I've had no occasion to work with them. I have never understood them, even why they were established. I can conceive of gain but no loss whatsoever, actual or theoretical, from the revocation of their noncompetitive privilege.

In the case of OPM, I can also conceive of much gain, but in their case, a potential loss. The 1996 edition of the OPM management development center catalogue contains a statement by Director James King. I quote: I regard governmentwide executive development as provided by the Federal Executive Institute and the Management Development Centers as a corporate resource and one of OPM's core functions, end quote.

Continuing the quote, "We serve not only our agency customers, but also the President by providing executive branch leadership for managing the government." I understand him to say that training really should be delivered by the government.

It is a truism, of course, that competition in the production and delivery of goods and services is in the public interest, absent an overriding reason to the contrary. Previous Congresses have made laws and gave OPM their preferential status at the expense of the lower cost, efficiency and responsiveness that they could have gotten from the private sector.

I assume they considered their reasons sufficient at the time. If you conclude those reasons still exist with the same force as before, then it makes no sense whatsoever to privatize them now. That is, if this must be in the public sector for the public interest. But if you disagree with Director King and find there's no longer an overriding reason for government delivery of training, then it certainly belongs in the private sector.

I think a real possibility exists now for half-measures driven by no philosophy at all and meeting no real need. Training delivery either is or isn't a governmental function. Director King seems to say it is both, and he tells us which part is to stay in government, but not why. And it's not obvious to me.

Then, of the part Director King agrees to privatize, he turns it over without competition to the public sector, noncompetitive USDA Grad School. Why? Why turn it over at all to achieve what I perceive is no net change? Again, it is not obvious to me. I've heard no serious rationale. I hope you'll explore these questions.

Mr. Chairman, thank you again for inviting me. I'll be glad to respond to any questions that you might have.

[The prepared statement of Mr. Wakham follows:]

**EXECUTIVE SEMINAR CENTER**

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STATEMENT OF E. C. WAKHAM, PRESIDENT, EXECUTIVE SEMINAR CENTER, GOLDEN, COLORADO, BEFORE THE CIVIL SERVICE SUBCOMMITTEE, HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE, JULY 26, 1995

Mr. Chairman, Members of the Subcommittee, I am E. C. Wakham, President of the Executive Seminar Center. Ltd., a limited liability company organized in Colorado. My partner, and the other member of the firm is Tom Connolly of Oak Ridge, Tennessee.

I appreciate your invitation to appear at this hearing. My statement will be brief, and then I will be glad to respond to the extent I can to any questions you may have.

Both Mr. Connolly and I are former employees of the U. S. Office of Personnel Management. I retired in August, 1993, and he followed suit in February, 1994. We both had proud public service careers spanning more than thirty years. We organized our company on July 29, 1994, so on this date we are a small company three days shy of one year old.

I have spent twenty seven years in the executive and management development field. More than half of that time, fourteen years, I directed OPM's Western Management Development Center, initially at Berkeley, California, but most of the time at Denver. I also have experience in state government, graduate level university teaching, and working with profit and non-profit private sector organizations. My partner's experience complements my own.

I am sure it comes as no surprise to you that our business, capitalized with our own funds and at our own risk, is in the field we know a good deal about. I have brought with me materials describing our programs. Some of them are similar to programs offered by OPM, but less costly. That puts us on the same playing field with them and the USDA Graduate School. If the field were level we would be natural competitors.

I want to make sure you know how much I respect many of my former colleagues in OPM's training organizations. When I directed the Western Management Development Center at Denver, we had a diverse, talented, dedicated, and productive staff. They did, and I believe they still do, fine work. They could do even better in a competitive environment, devoting more resources to their programs and less to overhead. There is no question about it, however; they are quality people who will find a way to do well, regardless of environment.

In point of fact we are not really competitors to OPM and the USDA Graduate School, because they don't compete. The reason they don't compete is that they don't have to. So far as I know they are the only two institutions in America that have especially conferred statutory authority which allows them to sell training and training related programs and services to Federal agencies without regard to any law whatsoever concerning Federal procurement. Yes, we have competitors, but they do not include OPM and the USDA Graduate School. Their advantage is legally mandated.

The allure for Federal agencies to do business non-competitively with OPM and the USDA Graduate School is almost irresistible. They can legally spend hundreds of thousands, even millions, of dollars per year with OPM or the USDA Graduate School and still avoid the time and trouble of shopping around for quality and price by getting bids. Believe it or not, understanding as I do something about some of the ponderous and expensive procurement regulations, I can sympathize with them.

Doing business with OPM or the USDA Graduate School is also a legal way to carry over spending authority. It can be a parking place for money. Agencies pay a premium, but when spending authority would otherwise expire, they can afford it.

Given the monopoly system I have just described, one might suppose OPM's professionals are awash in cash, and can afford the absolute best quality. Not so when I was there. Things could be different now, I suppose, but I doubt it. We took in lots of money, but the tuitions we charged were unrelated to the costs of producing the training. Prices were administratively determined based on a variety of factors, as you would expect in any monopoly. Out of receipts OPM headquarters took common services charges, overhead, and fixed facilities costs. With the remainder we paid students' food and lodging costs, produced the programs, and delivered the profit headquarters required at year-end.

We had to produce programs on the cheap because we simply didn't have the money. From our perspective all other costs, including the required end-of-year margin, were fixed and non-negotiable. I credit the staff and the adjunct faculty that we did as well as we did.

Speaking now just for myself, I want to make sure you know I am not here as a special pleader or to lobby you to change things in my favor. Would I like a level playing field? An emphatic yes. Would it be fairer? Yes. Would agencies save money without loss of quality? I believe yes. What would be my preference as a taxpayer? Again, the answer is obvious. But at the same time, I must tell you I knew the lay of the land when we opened our business. I knew OPM and the USDA Graduate School had a built-in statutory advantage. How could I not know it? I experienced it. And I did not quit then and petition the Congress to change things. I played the hand I was dealt at the time. I am perfectly willing to do that now, whatever the Congress does or doesn't do.

I mentioned that we don't think of OPM and the USDA Graduate School as competitors because they don't compete. That's right, but they are certainly a big fact of life in our environment. Our business is beginning to succeed in that context for the very reason that we are competitive. We and they are qualitatively different, and we have the natural advantages any economist would predict. Our prices are lower for equivalent training -- hundreds of dollars lower per person. We provide an absolute money-back guarantee. We are flexible; we will go where the customer needs us, saving them additional hundreds of dollars per person in travel and per-diem. In short, we are low cost, high quality, completely reliable, responsive, customer friendly, and finally, entrepreneurial -- which is why I couldn't resist adding this commercial into my statement.

Turning specifically to the question before you. Should they be competitive? Should the playing field be leveled? The answer is largely a matter of philosophy. And it is your call, not mine. I have my own views, of course, and I have already mentioned important advantages, including advantages to my company. But I do not delude myself that it is your job to make my life easier. Rather, you must determine the public interest. I am not presumptuous enough to try to tell you what that is in this case.

I have known about the USDA Graduate School for most of my career, but have had no occasion to work with them. I have never understood them, even why they exist. I can conceive of gain, but no loss, actual or theoretical, from the revocation of their non-competitive privilege.

In the case of OPM I can also conceive of much gain, but in their case, a potential loss as well. The 1996 edition of the OPM Management Development Center catalog contains a statement by Director James B. King. "I regard Government-wide executive development, as provided by the Federal Executive Institute and Management Development Centers, as a corporate resource and one of OPM's core functions. We serve not only our agency customers, but also the President, by providing

Executive branch leadership for managing the Government." I understand him to say that training really should be delivered by the Government.

It is a truism, of course, that competition in the production and delivery of goods and services is in the public interest absent an overriding reason to the contrary. Previous Congresses made the laws and gave OPM their preferential status, at the expense of the lower costs, efficiency, and responsiveness of the private sector. I assume they considered their reasons sufficient at the time. If you conclude those reasons still exist with the same force, it makes no sense to privatize this function now. If you disagree with Director King, and find there is no longer an overriding reason for government delivery of training, then it certainly belongs in the private sector.

I think a real possibility exists now for half measures, driven by no philosophy at all and meeting no real need. Training delivery either is or isn't a core governmental function. Director King seems to say it is both, and he tells us which part is to stay in government, but not why. It is not obvious to me. Then, of the part Director King agrees to privatize, he turns it over, without competition, to the public sector, non-competitive USDA Grad School. Why? Why turn it over at all to achieve no net change? Again, it is not obvious to me, and I have heard no serious rationale. I hope you will explore these questions.

Mr. Chairman and Members, thank you again for inviting me. I will be glad to respond to any questions you may have.

Mr. BASS. Thank you very much, Mr. Wakham. I'll start with a question for you. You're in a rather unique position in that you've worked in OPM on one side, and then a year or so ago, as I understand it, you left their employment, started your own business, understanding the process fully and apparently, according to your testimony, able to make ends meet and make your business operate, even given the competitive disadvantage that you knew you had from the very start.

And let's assume that this subcommittee disagrees with Mr. King, as you said near the end of your testimony, and feels that we're working in the public interest by privatizing training services. How, from your perspective, can we do it legislatively in a simple way? What are your legislative recommendations? How do we address the problem legislatively?

Mr. WAKHAM. Well, I suggest that there might be a new look—and OPM, of course, could be directed by this committee or any other to take another look at which parts ought to be privatized.

And then second, I think privatization could be achieved rather quickly and rather easily if they were being privatized to one or more organizations that don't have a built-in statutory advantage and the ability to for some purposes be governmental and for other purposes on different days be considered nongovernmental.

Mr. BASS. So again, I guess what you're suggesting is that in some form or fashion, we mandate that these training services cannot be subcontracted to any agency that has conceptually a competitive advantage. But I'm looking for a little handle, if you will. For somebody who's in the inside, what's the best way to deal with the problem, if you agree? I guess I'm asking the same question again.

Mr. WAKHAM. Mr. Bass, yes, in my judgment, if the USDA Grad School, regardless of name, were, in fact, severed from the Federal Government and did not have a mandated board of directors of Federal agency officials who are in a position to be customers, as well as the board of directors, and if they did not have the right to enter into noncompetitive agreements and contracts, regardless of their name, they would be a private firm. And my guess is that people who work in private business would have no objection.

Mr. BASS. Thank you. I appreciate your delineating the difference between the policy decision as to whether or not we want to privatize versus the process itself, which clearly is noncompetitive at the present time.

Do any of you other three gentlemen have any comments on that question that I just posed to Mr. Wakham?

Mr. REISCHL. If I may.

Mr. BASS. I know you address it to some extent. You recommended abolishing the USDA Graduate School, I think.

Mr. REISCHL. Yes, sir. If your question is, as I understand it—and correct me if I miscast it here—if your question is how legislatively that could be done, I don't pretend to be an expert in legislation. However, it seems to me that there are at least several options I could see here.

One would be—perhaps the simplest would be a piece of legislation that simply prohibited government entities from being in commercial profit-seeking ventures. A simpler and much smaller-scale approach to this particular problem with the USDA Grad School would be simply to remove the authorization that they slipped through so neatly in 1990 as part of their appropriations bill granting them interagency service agreement authority. That, in effect, would remove their ability to obtain contracts without competition.

I suppose yet a third approach might be to simply require them to be disassociated from any Federal agency; that is, no longer have the use of its name, no longer have the use of this noncompetitive ability to round up contracts, require it to pay taxes and, in effect, truly become what it contends it is, which is a business like others.

Mr. BASS. Mr. Dungan, do you have any comments, or not? I'm not expecting that you don't.

Mr. DUNGAN. I just see the two clear choices. One is a true privatization, while the second choice is to clean up the act and let them compete on a level playing field, in which case the marketplace will make the determination of how successful the organization is.

Mr. BASS. Mr. Dungan, can you describe the extent of your current training that's done under contract for Federal agencies?

Mr. DUNGAN. Yes, we do have Federal contracts existing in the organization as it stands now. That's correct.

Mr. BASS. Can you describe them at all, or the extent to which you do contract with the Federal Government now?

Mr. DUNGAN. Fairly extensively, yes.

Mr. BASS. The Committee on Government Reform and Oversight is developing legislation to reform procurement procedures. And I was part of a process on another committee assignment whereby we were working on the same project in the defense area, the idea being to enable more flexibility.

Your testimony highlights the benefits of full and open competition—I think all three of you do—a requirement that would be relaxed under the proposed procurement legislation that this committee is considering.

Are any of you concerned about competing in an environment that would give Federal officials greater flexibility in determining the range of competition, which would envision—again, it's a subset of the issue of privatization versus public. Are any of you concerned about giving Federal officials more flexibility?

Mr. Dungan.

Mr. DUNGAN. Mr. Bass, I would like to address that. Under the present arrangement in the FAR as a result of the Competition In Contracting Act, we have what's called "free and open competition," which you're, I'm sure, familiar with. And in House Resolution 1670, in Representative Clinger's resolution, he has talked in terms of "maximum practicable competition," which I think now has moved to "open access."

I think all of that has come into focus as a result of streamlining the process; that is, Representative Clinger feels that, clearly, too many bidders are dragged through a long process, which I happen to agree with very strongly. I feel that it's not so much the process as it is the inability of Federal requirements personnel to not clearly address their specifications, their needs, then clearly establish evaluation criteria which are used to sort out offers and then have those properly evaluated, giving the contracting officer the ability to sort out people very, very quickly.

So I don't see it as a problem with the process. To me, full and open competition is very, very important to small businesses. It ensures that we're not prescreened out, that everybody has an opportunity to submit a proposal or, for that matter, a bid to ensure that we have a whack at obtaining the Federal funds.

And ironically, we're really kind of talking about this right here, where you have interagency agreements that have gone on a sole source basis directly to a particular agency. Thus, I feel very strongly about it.

Mr. BASS. Yes?

Mr. REISCHL. If I could respond to that, also, Mr. Bass. I'm not familiar with the specific legislation you're alluding to, so I can't comment in any detail on how that would work. I disagree to some extent with Mr. Dungan that the process itself isn't a problem. I think it is, to some extent.

The procurement rules now are so complicated that they create the problem to a large extent. It imposes a tremendous burden on the Federal agencies who are just trying to get the job done from day-to-day with a shrinking resource base that when they have to jump through all of those hoops to buy the simplest service, often at a very low expenditure for them, they still have to jump through a surprising number of hoops to get there.

That's what provides the impetus, the motivation to start looking around for sole source, noncompetitive sources for those services, such as the graduate school. So to my way of thinking, what I would suggest this committee look at or consider the possibility of distinguishing perhaps by level of expenditure somewhere in there setting a threshold where you have simpler rules for having an open competition, but doing it quickly and simply.

In effect now, right down to sometimes purchases of just a couple thousand dollars, agencies have to expend an amazing amount of time to figure out who has the best price and the best quality. And it's impracticable to have them sitting around writing lengthy requirements.

I would also tell you from our side of this telescope, at the small end of it, that it's impracticable for a small company to fill out, as we get them all the time, some 50- or 60- or 70-page request for a proposal. That's an enormous amount of investment of time that a small company can't afford to make.

So you just let those go by. In effect, those in and of themselves, as Mr. Dungan said, will just screen small competitors out of the field. So I would recommend looking at perhaps simplifying the procedures and perhaps simplifying tying that to some sort of threshold expenditure amount. Thank you.

Mr. BASS. The reason I'm nodding my head is because as one who—there are a lot of differences between the 104th Congress and the 103d Congress, and one of them is that there are a fair number of people here who have actually been in that very position. And I'm one of them. I can't tell you how many times my little business wanted to buy or sell something to the Federal Government, and when we received all the applications it wasn't worth the effort.

Mr. REISCHL. You know what I mean, then.

Mr. BASS. It's much easier to go down the street.

Mr. DUNGAN. My comments are based on a threshold of 100,000. I'm not talking in terms of something lower than 100,000. I'm talking about a threshold of 100,000.

Mr. BASS. I have a couple questions I would like to get out of the way so that we can conclude our testimony. We have a series of votes coming up, so I'm going to ask them as quickly as I can to get them on the record. I hope you'll excuse the formality of it.

This is for you, Mr. Wakham. You testified that during your experience at OPM, that tuitions charged were not related to the costs of producing the training. Could you describe for us some of the differences that you find in operating as a private company providing these services?

Mr. WAKHAM. May I say I'm glad you asked? We're a small business, and we have to have something that sets us apart from everybody else. In our case, we decided that it was going to be a money-back guaranteed quality and responsiveness in price. And so price must be kept low, period.

And if we're going to make that work, we have no choice but to spend our revenue differently. We have to spend whatever it takes to provide quality programs. And so that has to come first, meeting and exceeding customers' needs.

If there's anything left from our revenues, and only after we know for sure that there's something left and money in hand, then we can think about overhead, a new desk and all that. And then, if there's anything left out of that, we pay our taxes, and we divide it up.

OPM comes at this very question backwards to us. They set up the organization in advance. They decide on the overhead that they're going to have to have, including how many people are going to be on the payroll and the facilities they are going to use for the job that they're given and the level of business that they choose to do.

They add additional costs of common services, and these are administratively determined and also things like awards for senior governmental officials in the agency. Then, they add on a regular overhead. That's a share of the director's office costs and the IG office costs and the general counsel and the OPM library and so on. Then, they decide at that point what they're going to charge.

And finally, they decide how much profit they want from this program or function, sort of just in case, but in case plans don't go right or in case some other part of the revolving fund gets in serious trouble. And we have no choice but to operate the way we do, and they have no choice but to operate the way they do.

Mr. BASS. How much money do you have in your library?

Mr. WAKHAM. We use the public library, believe it or not. But really, they have no choice but to operate the way they do, because the Anti-Deficiency Act makes it illegal for them to go in the red. Now, when we go in the red, it comes right out of our pockets. That's our investment. It's our decision.

But it is absolutely illegal for them to go and stay in the red. They really must operate that way. That's a function of their being a different kind of animal than us.

Mr. BASS. Real quick follow-up question. OPM will be testifying that its training materials are available for the cost of copying. Does your firm use any OPM materials in its programs? If not or if so, why or why not?

Mr. WAKHAM. No, we don't. We haven't, which is not to say we wouldn't ever. I wouldn't make any such commitment. If they turned out to have something that was that good and timely, and we could get it for the cost of copying, I'm certain that we would look at that as an option. But, in fact, they develop their materials by committee. It takes quite a while.

When they get something developed and documented, most often, it's really not cutting edge. We can rely on our own adjunct faculty to produce generally more timely materials.

Mr. BASS. Mr. Reischl, do you have any observations on that?

Mr. REISCHL. Yes, I have several things I would like to say in response to that, Mr. Bass. I'll make it quick. No, we don't use their materials. In fact, what we see as one of our few advantages is the superiority of the materials we have produced from the beginning of our company.

However, as we were nearing the end of this process and we had put in a bid to purchase some of OPM's assets, we filed FOIA requests in hopes of having a look at some of their course materials as potential assets in the sale. They were not available, suffice it to say, for the cost of a 32-cent stamp. In our written submission we have turned over to you, there are appendices which include the actual replies from various OPM regions.

In some cases, the price quoted to us went as high as $20,000 and $100 and some dollars on top. This form of training materials that I would mention to the committee are, for the most part, preprinted, handed out to people routinely in the course of doing business. Now, why it would cost $20,000 to reproduce some of those, I have no idea. But it sure was a lot more than a 32-cent stamp.

Mr. BASS. It's my understanding, Mr. Reischl, that you were the company that made the unsolicited proposal for—$5 million proposal for assets of OPM.

Mr. REISCHL. Yes, sir. That's correct.

Mr. BASS. Could you explain the nature of your unsolicited proposal and identify the assets of the OPM training program that you sought to purchase?

Mr. REISCHL. Certainly, sir. First, let me reverse that and start with the assets, what we saw was there. Let me say bluntly, I thought the OPM reply to the extent that there were no assets there was disingenuous at best.

We're all, I think, familiar enough with the concept of good will in any business to recognize, for example, whether it's a dental practice, an accounting practice, a law practice, that there may not be much in the way of hard assets there. Nonetheless, there is a business there. And the transfer of that business relationship has in itself a very substantial value. That was probably the primary asset we saw.

There were other assets, as well. Some of the OPM courses, as Mr. Wakham mentioned, presumably were well-developed and had some value to them. The mailing lists had value. We saw other things like that that did have value. Our proposal—and we were trying to be innovative about it. We're a small company. We were looking for some way to finance this that would make sense.

So in effect, what we proposed to do—and again, this is included with our written materials, also—was to finance the acquisition, in effect, out of the profits we felt we could derive. Now, we shot in the blind a little bit—I'll be very frank about this—with coming up with that price, because OPM was not exactly forthcoming or forthcoming very rapidly with financial information.

We thought, "Well, at least we'll get on the board with an offer." If the assets and the revenues might be part of it that are already booked, whatever would work out in the deal we thought was negotiable, it might change the offer very considerably.

So we felt that was a reasonable approach to it, to hope to pay for them out of profits that we were confident we could derive. We do have 10 years' experience as a profitable business. We thought we could do that. But we were quite willing to negotiate from that as a starting point.

Mr. BASS. That's interesting.

Mr. REISCHL. Excuse me. Could I add one further thing to that?

Mr. BASS. Yes, certainly.

Mr. REISCHL. One of the other assets—and let me stress this, because I don't want our attitude or our approach to be mischaracterized here—one of the assets we thought was there, frankly, was the expertise of many of those OPM employees.

We were confident that if we could get many of those employees working with us in a better structured, more efficiently structured organization, that it could very easily be a profitable organization, simply for the reason, as Mr. Wakham said, that we would not have had to structure it and put the kind of overhead burdens and administrative duplication in there that OPM is forced into. But we felt the employees themselves were a big part of the assets, frankly.

Mr. BASS. OK. I appreciate your response. And I would like to ask you gentlemen—we do have some other questions which we would like to get on the record—if at the discretion of the committee, we could pose them to you and you could respond in writing, I would be very grateful to you.

I would also like to thank you all for appearing here today, understanding as I do the delicate nature of your relationship with the Federal Government with whom you do a fair amount of business and the fact of your willingness to come forward here and give this committee this important information is very much appreciated.

And it will certainly be used in our deliberations as we try to develop a solution or direction to this discussion. So thank you very much. I apologize for having to run out the door.

And we will recess now and, just to make sure everybody's here, convene in 20 minutes.

[Recess.]

Mr. BASS. The Chair will next call Mr. Philip Hudson, the director of the USDA Graduate School. Mr. Hudson, before you sit down, as is customary, we would like to swear you in. So if you would raise your right hand.

[Witness sworn.]

Mr. BASS. Thank you very much, Mr. Hudson, for appearing here today. And without further ado, you can begin your testimony. We have a 5-minute rule in effect.

## STATEMENT OF PHILIP H. HUDSON, DIRECTOR, USDA GRADUATE SCHOOL

Mr. HUDSON. Thank you and good afternoon, Mr. Chairman and members of the committee. My name is Philip Hudson, and I'm director of the graduate school of the Department of Agriculture, a nonprofit organization serving Federal employees for 74 years. I'm very pleased to be here today to provide information on the transfer of training units from the Office of Personnel Management to the graduate school. I have submitted my full statement to the committee, and I ask that that be made part of the record.

I firmly believe that the transfer of the training programs to the graduate school is in the best interest of the taxpayers of the Federal Government, and I offer you the following reasons.

First, a lower cost of training to the government. The school's programs do help agencies to contain the size of their internal training units by essentially being a resource where students from many agencies can come together and attend training at the time that they need it and in locations that are convenient to their workplace.

The addition of the OPM training units within the graduate school can be made without additional comparable investment in administrative costs. And in the long term, this will result in economies in more efficient combined operation with lower costs, and the ability to invest in improved quality.

Second, no appropriations are needed for this transfer or for the ongoing operation of the school. As a nonappropriated fund instrumentality, the graduate school supports itself entirely through its tuition. The school's personnel systems and our financial systems are independent from the Federal personnel system and from the appropriated process.

Most important, Federal employees are in need of training. Agencies are undergoing significant changes in mission requirements, and staffs are being downsized. The school is in a position to be able to continue to provide this training, so that employees can be productive. These training courses are available when they need them, but only if they need them.

Fourth, the placement of OPM training employees. OPM's decision to divest of the training programs resulted in a reduction in force. The school has provided an excellent employment opportunity for many of those workers who might otherwise have been left unemployed.

And fifth, government oversight. The graduate school serves under the control of a board appointed by the Secretary of Agriculture, which includes members from other agencies, including OPM. This board manages the school on behalf of the Federal Government. In addition, the General Accounting Office and the USDA inspector general and inspector generals of customer agencies also exercise oversight on the school.

In summary, I believe that the transfer of these training programs to the graduate school is in the best interests of the taxpayer and the Federal Government, because it helps to control the cost of training. No appropriations are needed. It provides proven quality of training for employees, a placement for OPM employees, and ongoing government oversight is in place.

I thank the chairman and the committee for this opportunity of appearing before you and will be welcome to answer any questions.

[The prepared statement of Mr. Hudson follows:]

Statement for the Record

to

# Congress of the United States
# House of Representatives
# Committee on Government Reform and Oversight
# Subcommittee on Civil Service

from

Graduate School,
United States Department of Agriculture

Philip H. Hudson
Director
Graduate School, USDA
July 26, 1995

We are pleased to be able to provide the House Committee on Government Reform and Oversight Subcommittee on Civil Service a testimony regarding the transfer of certain training functions of the Office of Personnel Management (OPM) to the United States Department of Agriculture Graduate School (Graduate School).

For 74 years the Graduate School has been devoted to lifetime learning and self improvement of government workers. The School is an ideal location for OPM's training programs for the following reasons:

- **EFFICIENCY AND LOWER COST TO GOVERNMENT**: The School's programs help agencies contain the size of their internal training units. The School is a resource where courses are attended by students from many agencies. The Graduate School has a structure and a delivery system that has been operating parallel to OPM to deliver training services to government employees. A melding of the two organizations will effect economies that will make a more efficient operation with lower costs and improved training materials for federal agencies.

- **NO APPROPRIATIONS NEEDED**: The Graduate School is an entrepreneurial organization of the type considered in discussions of reinventing government. The School's personnel and financial systems are totally independent and severed from the federal government personnel system and the treasury.

- **TRAINING IS NEEDED:** In these critical times agencies are in desperate need of timely, targeted, low-cost training. The Graduate School is in the unique position of being able to provide service to federal government customers in an efficient transfer of training delivery. This allows the agencies to continue to receive the training they need with minimal interruption.

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  **PLACEMENT OF EMPLOYEES**: OPM's decision to divest these programs resulted in reduction in force notices to employees. The Graduate School has provided employment opportunity. (~~134~~ offers were made and ~~125~~ have so far accepted~~.~~ offers at the Graduate School, and approximately 14 others have accepted positions elsewhere.)

- **GOVERNMENT OVERSIGHT**: The Graduate School operates as a self-supporting organization under the control and oversight of a Board appointed by the Secretary of Agriculture. The Board includes representatives from other agencies, including OPM. This Board exercises effective control of the School on behalf of its customers, U.S. government agencies and their employees.

- **ADMINISTRATIVE STRENGTHS**: The Graduate School provides an administrative framework that has been tested for 74 years. It has financial, registration, and management information systems that can support the additional training delivery units.

- **HUMAN RESOURCES DEVELOPMENT EXPERTISE**: The School has been a leader in adult education and training for many years. Customer agencies recognize the importance of an in-depth knowledge of government in making human resource development programs relevant to their needs. The School has a reputation and commitment to delivering high quality training to government employees and organizations.

In response to the questions contained in Chairman John L. Mica's July 19 letter, I offer the following testimony:

**Question: What factors made the transfer attractive to the Graduate School?**

The contact to the Graduate School was made by representatives of the OPM staff who came to explore alternatives for future placement of the training programs. A key factor in pursuing the School as an option was an employee survey in which affiliation with the Graduate School was the most acceptable alternative. The interest expressed by the employees was a key factor in making the transfer attractive to the Graduate School because we feel that our primary asset is a workforce trained and firmly committed to human resource development of the public service.

In considering the possibility from a business perspective the School projected that additional program units would not require increased administrative overhead at a corresponding rate. We project that over time we can provide training services on a more cost-effective basis, therefore saving taxpayer dollars.

The addition of the OPM training programs will result in a more comprehensive and coordinated training service to federal employees because most of the courses were not offered by the Graduate School or were in geographic areas (i.e. field regions) that the School did not previously provide in-depth service. We will be able to share best practices, in order to operate more effectively and improve quality.

Preservation of the capacity the programs provide for government agencies was also a key factor in the School's interest. Members of the School's General Administration Board who represent the Department of Agriculture and other Federal agencies expressed a keen desire to keep the programs operating in a viable way in order to be a resource for training needs of their employees.

In the past few years, the OPM units that the Graduate School absorbed lost money on their operations. Future years will be difficult challenges as well. We firmly believe that the USDA Graduate School provides the best opportunity for future viability and continuity of service.

**Question: How might this transfer be affected if the Graduate School were required to compete for this business with private providers?**

In regard to the transfer, the Graduate School provided OPM with a sound business proposal which OPM used as a basis for its decision. One of OPM's goals was to accomplish the transition of its non-residential training programs with minimum disruption to the ongoing training and development of its customer Federal agencies. We believe that the School was the best alternative to help them achieve this goal by offering both secure employment opportunities for the displaced workers and to provide the continuity of cost-effective training services.

In regard to its on-going activities, the Graduate School operates in the very competitive environment of training providers. Agencies have considerable procurement flexibility in the purchase of training, and they continually seek cost-effective options, particularly now. Agencies which sign interagency agreements must determine that the agreement is in the best interest of government and that the services are cost effective. When they choose the School, they do so because the School is less expensive or they are confident in the quality of our services.

As a non-appropriated fund instrumentality (NAFI) of the Federal government, the School receives no appropriated funds and is not subsidized by either Congress or the USDA. The Graduate School provides services to government agencies under provisions of 7 U.S.C. 5922, which authorizes Federal agencies to enter into agreements with the School for training and services incidental thereto in accordance with the provisions of the Economy Act 31 U.S.C. 1535, and competitive procurements.

The Economy Act sets out procedures for interagency agreements between government entities. The Graduate School is one of several government training facilities which provide training services to other government entities under these regulations. These cross-servicing agreements are cost-reimbursable and therefore contain no profit margin.

Private sector firms often overlook the limitations on the School. As a government entity, we are prevented from bidding on training contracts which are set aside for small businesses.

**Question: What procedures does the Graduate School have in place to ensure that training provided through noncompetitive procurements sustains the quality that results from market competition?**

Federal managers and training personnel are not required to avail themselves of services of the Graduate School. It is only one option for them. The Graduate School's strategy is to provide high value for our federal customers and, therefore, for the U.S. taxpayer. The School does not use full-time staff for instruction. We contract with individuals and organizations as independent contractors. Therefore, we are continually evaluating potential instructional resources to find the best value -- a balance of both cost and quality.

The Graduate School (including the OPM units) represent approximately 8 percent of total government training. Most training is done by the agencies themselves (about 57 percent of training instances in FY 1992) with 10 percent done by other government agencies, including the School. The remainder (33 percent) is done by the private sector, colleges, universities and non-profits. There is constant competition among all segments for scarce training dollars, judgements on which are made by managers who are purchasing the training services. The existing marketplace for federal training is very competitive, and the market factors impact quality and cost.

In order to ensure quality, the Graduate School collects student evaluations on all its courses. These are closely monitored in order to improve the quality of instruction and to select future independent contractors. In addition, the School regularly seeks feedback from agencies on its services, and incorporates the feedback into continuous improvement efforts.

**Question: Would a stronger oversight role for OPM be necessary to compensate for the lack of market pressure to improve quality?**

With existing Small Purchase and Training Act procurement procedures, there is strong market competition among training sources with pressure for continued cost effectiveness and quality improvement. However, we fully recognize and support OPM's continuing responsibility for overseeing the quality of the federal workforce and how it is developed. The School is proud of the quality and value of our training services and we are pleased to have OPM and others provide oversight.

**Additional Background Information:**

The Director of the School, Philip Hudson, has been an employee of the School for 14 years and Director since 1985. He has a Doctorate in Public Administration and a Master's Degree in Business Administration. Prior experience includes ten years in community college work and five years in the private sector and local government.

In fiscal year 1994 the School's budget was $19,502,000 and the School enrolled more than 47,000 students. It offered approximately 1000 different courses, using 700 part-time independent contract faculty supported by 115 full-time and 60 part-time employees.

The Graduate School is a non-appropriated fund instrumentality (NAFI) of the Department of Agriculture (USDA). It is not subsidized by either Congress or the USDA. It receives no appropriated funds. It is entirely self-supporting from tuition and fees, operating similarly to a non-profit organization. Graduate School employees are not federal employees. With few exceptions, the Graduate School buys its own furniture and equipment, pays its faculty and all other costs associated with its operation. The Graduate School serves as a training service to Federal agencies, that is also available for use by any U.S. taxpayer.

In Comptroller General Decision B-214810, November 29, 1984, the Comptroller General held for purposes of that decision that the Graduate School was a NAFI. As a NAFI of USDA, the Graduate School is under the general supervision and direction of the Secretary of Agriculture. The Secretary has issued regulations governing the Graduate School. Pursuant to those regulations, the Secretary appoints a General Administration Board (Board) to oversee its affairs. The Board acts similarly as a Board of Trustees would for a college, or a Board of Directors for a non-profit educational entity. It is pursuant to these regulations and through the Board that USDA exercises control over the Graduate School. The USDA furnishes a limited amount of space and related services (internal mail delivery, copier service, etc.) in accordance with the Secretary's regulations, which are reimbursed fully by the Graduate School to USDA.

The tax status of the Graduate School is that of an activity of the United States Government and as such is not subject to federal income tax and is not required to file federal income tax returns. Their status is reflected in an IRS ruling dated January 30, 1981.

The Graduate School provides services to government agencies under provisions of 7 U.S.C. 5922, which authorizes Federal agencies to enter into agreements with the Graduate School for training and services incidental thereto in accordance with the provisions of the Economy ACT 31 U.S.C. 1535, and competitive procurements. The Graduate School's internal procedures are covered in its handbook, *The Graduate School CODE*.

Mr. BASS. Thank you very much, Mr. Hudson. I'll start by asking a question about the issue of privatization. You cite in your testimony 7 U.S.C. section 5922, which "authorizes Federal agencies to enter into interagency agreements with the school for training and services incidental thereto." You reported "The Secretary of Agriculture has issued regulations governing the graduate school and appoints a general administration board to oversee its affairs."

You mention that as a government entity, the graduate school cannot bid on training contracts set aside for small businesses. You testified that your efforts at continuous improvement rely heavily upon feedback from agencies and describe your organization as "one of several government training facilities."

You noted that for tax purposes, the graduate school is an entity of the U.S. Government that is not subject to Federal income tax and is not required to file Federal income tax returns. I guess my question would be, why would anyone describe this transfer as "privatization" rather than a shift between agencies?

Mr. HUDSON. Well, my understanding on that is that—and essentially, I would believe that Mr. King and others from OPM may have a response on it, but that essentially, it is following the instructions in reinventing government, and that is part of the process. Going through the NPR's decision tree, you'll note that there is a privatization option.

Essentially, the graduate school is a nonappropriated fund instrumentality. It fits or is described maybe more a little bit like a government corporation, or we sort of fit in that box, if any box, on that decision tree. So in a sense, that's following the NPR's route for privatization.

As you will see in our testimony, we're very clear that we are a government entity. It is a very special, very unique government entity, I think one that has provided a lot of wonderful service over the years. But it is very unique, and its status is often misunderstood.

Mr. BASS. What portion of USDA Graduate School students are employees of Federal agencies or the government of the District of Columbia?

Mr. HUDSON. Of the prior grad school units, approximately 80 percent would be government employees. And of the units transferring in, almost 100 percent would be. The 20 percent that are not would be mostly in our evening programs, which are open to the general public and attended by others that might be friends or family or co-workers or people who are in the Washington, DC, area. So most of that 20 percent nongovernment would be evening courses.

Mr. BASS. Do the agencies provide payment to the graduate school, or do they reimburse employees for their training expenses?

Mr. HUDSON. Most of the training that occurs is daytime training, daytime seminars. And most of that is paid directly by the agencies to the graduate school in the form of either contract payments if it's a contract or what we call a "182," which is a government form where government agencies purchase essentially seats in a seminar from us or from any vendor.

Mr. BASS. With most students coming from agencies and most payments coming from reimbursements by those agencies, wouldn't you agree that the graduate school is substantially dependent on Federal payments, even if to an off budget account?

Mr. HUDSON. Absolutely. Our mission is to serve government employees and government agencies. And that is what essentially we call the bull's eye of our target, of our mission, is to serve government employees.

Mr. BASS. If you were here earlier, you probably heard other witnesses testify from private companies that their prices for comparable training are less than the graduate school's, in part because of their lesser overhead charges. Can you tell me what portion of your fees reflect overhead expenses?

Mr. HUDSON. Our overhead is about 18 to 20 percent. I think that our costs are probably lower. I'm talking about the graduate school. The overhead that was being charged to OPM training, I think, was much higher, or at least certainly was somewhat higher.

Mr. BASS. I guess my last question is, we will be hearing next from Mr. King, and he'll testify that private sector organizations have advantages in providing services over government agencies. I would like to review a few of the advantages that he cites and ask if your organization has them.

And they are: Can you accept cash from students? Do you have more flexibility in hiring and firing personnel? Do you have greater flexibility in rewarding personnel? Are you under any requirements to use the Government Printing Office? Can you expand or contract more easily in response to market conditions? Can you protect your teaching materials and innovations under patent and copyright laws? Are any of your materials considered in the public domain?

I'm sorry that's such a long question, but if you can address those factors that you can remember, I would be grateful.

Mr. HUDSON. Basically, we do have the flexibility within the graduate school to do almost all of those things that you mentioned there. We are not required to purchase through GPO. We do accept cash. We have flexibility in hiring. I would say that we probably do not have as much flexibility in reward systems as the private sector would. But we do have flexibility to expand and contract, as well.

Mr. BASS. I guess my concluding question, then, is, why do you think that—as policymakers, we're making a policy decision here—why the graduate school should retain all of these advantages of private organizations and yet also have its status, in effect, as a government agency?

Mr. HUDSON. Well, I think the graduate school was established with the express purpose, really, of having the ability to be more flexible, so that it could respond and at the same time to have a mission of serving government employees. In other words, I think that it was created initially and has been refined over the years in a way that it can work very well for the interests of government employees.

And let me say that to get back to that, that we do not accept contracts to do work for private sector firms. In other words, our focus is limited and is entirely focused on the Federal sector. That's as a part of our mission and as a part of our creation within the Department of Agriculture. So I think it was set up to work well, and I think it does for those very reasons.

Mr. BASS. Very well. Well, thank you very much, Mr. Hudson. There are no other members of the subcommittee here to ask questions. I've completed the questions that I have for you. And I would like to thank you very much for coming up here this afternoon to testify before us.

Should we leave the record open for any written questions that we may have submitted to you in hopes that you might be able to answer them in writing, in case there are other members of the subcommittee that wish to participate?

Mr. HUDSON. OK.

Mr. BASS. With that, I thank you very much for your time.

Mr. HUDSON. Thank you.

Mr. BASS. Before you sit down, we would like to welcome Mary Michelson, Carol Okin, and our friend Jim King, whom I'm getting to know. I didn't realize when I took this assignment how often I was going to be seeing you here. It's a pleasure to see you here again. And as is customary testifying before this committee, could you please raise your right hand and repeat after me.

[Witnesses sworn.]

Mr. BASS. Let the record show that the witnesses answered in the affirmative.

Thank you very much for being here today. And without any further ado, Jim, if you would like to proceed with your testimony.

**STATEMENT OF JAMES B. KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY CAROL OKIN; AND MARY MICHELSON**

Mr. KING. Mr. Chairman, I do want to thank you for this opportunity to provide testimony about the Office of Personnel Management's recent privatization of its nonresidential training programs. We believe this is the first major privatization of the kind to be carried out by this or any other administration.

Permit me, if you would, Mr. Chairman, to give the subcommittee some background on this important move. OPM has been carrying out interagency training programs since soon after the passage of the Government Employees Training Act of 1958. So it's about 37 years, Mr. Chairman.

Last year, the OPM training programs that we now have privatized earned some $40 million. They represented about 4 percent of the total training received by government employees with our remaining programs and other Federal agencies and private training companies carrying out the other 96 percent.

These private firms had certain advantages over governmental training programs, and it's intended to be self-sustaining. By the way, we were operating under what's called the "revolving fund," Mr. Chairman. So it's supposed to be run as a private sector operation as far as funding goes, but it's de facto government, because all of the people in it get their salaries through appropriated money and are civil servants. That's just a point of clarification.

And they have far more flexibility, quite frankly, in hiring and firing and can much more easily expand or contract in response to changing market conditions. They can rent office space as they wish at market prices, Mr. Chairman. They can protect their teaching materials under copyright laws and otherwise protect their innovations by legal means.

We're required to use the GPO, while private training companies can use faster and cheaper private printers. They have a larger customer pool, and they can train outside of our Federal employee customer pool. They can also train the general public.

They can accept cash from students. We couldn't and can't. They have a greater flexibility in purchasing—I'm sure you've heard a great deal about that today, Mr. Chairman—and greater freedom to reward and compensate their own employees. These and other factors, including downsizing the government, all contributed to a diminishing demand for training and, thus, to some serious financial losses for some of our training programs starting in 1991.

Mr. Chairman, we have been hearing many calls for a smaller, less costly government. And one way to achieve that is to privatize, to return to the private sector activities that can be performed as well there as by government. By the fall of last year, the officials in the National Performance Review entered phase II of the Clinton administration's reinvention of government. We are focusing on privatization as another tool for meeting those goals.

On December 19th of last year, Mr. Chairman, at a ceremony involving the President, the Vice President, and several Cabinet members, a number of steps were announced that would accelerate the downsizing of our government. Among these were OPM's privatization of its training and investigations unit.

As our staff and I studied privatization, we found several possible ways to proceed. You can contract out government services in some instances. You can sell government assets. You can form quasi-governmental corporations, such as Amtrak, or you can simply close down our operation, fire its employees, and let its customers sink or swim.

Mr. Chairman, we had some question as to whether our training staff, the majority of whom have now joined the staff of the USDA Graduate School, have, in fact, been privatized. Well, let me put it this way. The fact is that their jobs were terminated. They were RIF'd, if you will, which is a term of art within government, as you know, Mr. Chairman.

From that day forward, the annual cost of those units, more than \$10 million in salaries and benefits, would not be paid by the American public through appropriated funds. And the taxpayers were no longer at risk of further additional debt.

Some 220 career civil servants had ceased to be employees of our Federal Government or to be paid by the taxpayers. They were on their own. If you ask them, I think they'll tell you that they feel extremely privatized. As a matter of fact, Mr. Chairman, they may have another word for it, but I would yield to their judgment.

But we did not stop there. Having made a decision to separate these employees, we didn't wash our hands of them. We felt we owed them more than that and owed our customers and the taxpayers more than that. And, Mr. Chairman, that, you're going to see, is the underlying theme through our whole testimony and our actions.

We wanted to help our departing employees to do the best they could for themselves, in addition to what was best for the taxpayer.

Early this year, we set several goals for the privatization process to keep the training programs together, if possible, to provide a national delivery capacity and, thus, to have a seamless transition that would involve no disruption or additional cost to our customers.

Therein is the essence in every mandate to our employees and everything else which formed the nucleus of what the baseline was for us, to give our employees a chance to work together in a new organization if that was what they wanted and at the same time to move quickly to prevent further financial loss to the public treasury.

In order to meet those goals, we worked closely with the affected training staff to help them explore their options and decisions affecting their lives and their careers. The fact that some 220 talented training specialists were leaving OPM did not go unnoticed. Some private training firms expressed interest in hiring some or even all of our employees.

Some firms thought they could buy our training program, just as someone might buy a hardware store or a baseball team. There were two problems with this. First, we had no legal authority to sell our training program. And second, we really had nothing to sell, because basically, the real talent we're talking about and the real value we had went up and down in the elevators every day, Mr. Chairman.

The training program's one great asset was, quite frankly, its talented employees. They were free agents. Private firms were free to recruit them. They were not ours to sell. The employees believed that there was strength in numbers, and many of them negotiated together with existing firms and asked us to help them to do that. We did that at their request, Mr. Chairman.

Did we have other assets? Sure. We had course materials we had developed, but they had little value, because private firms routinely obtained them under the Freedom of Information Act for no cost beyond copying fees. We had some existing contracts, but once privatized, our customers would be free to honor them or not as they chose.

We had some used furniture, computers, office space and the like, but they were government property and not really ours to sell.

In his letter of July 19th, Chairman Mica spoke of a proposal that would have paid the government $5 million for the training program and asked why we had given away the resources when such an offer existed. That specific proposal came from FPMI Communications, which we are told has about 14 full-time employees, many of whom are former government employees, so we know that there's excellence in the corporation.

One of the partners, Dennis Reischl, did, in fact, send us a fax which expressed a wish to—and I quote—"purchase" training programs. Specifically, his fax proposed to—and now I quote again—"pay to the Federal Government in consideration for the named business units 10 percent of all pre-tax profits FPMI derives from its combined company operations in the first 36 months following the transfer of the OPM training units up to a cumulative maximum payment of $5 million."

There are some problems with this. First, it assumes we could deliver these professional employees like so many hostages. Second, insofar as the $5 millon figure is concerned, it assumes that the FPMI had made a legitimate offer and could buy whatever.

Let's assume for a second that they could, Mr. Chairman. Let's look at the particular numbers and put it in the correct context. The $5 million would reflect 10 percent of the profits to be made. That would be $50 million in profits in 36 months.

Now, assuming that you could take that base, you require—and I'm going to assume very generously that they're an extremely competent company, and they could put together a 10-percent profit margin out of this base. It means they would have to move to having a $500 million business base with a 10-percent profit to generate this in 36 months.

Now, let's put it in context, Mr. Chairman. OPM at this time is talking—we're talking about $40 million a year. In a 3-year period, that would be $120 million, operating on the assumption, Mr. Chairman, that that remain constant, the business remain constant. In that, we're losing $2.5 million a year.

But let me assume if the burdens of government were taken off the organization, that could be balanced out, and that was constant. Mr. Chairman, what we're talking about then, we're expected to believe, if you will, that a corporation with fewer than 20 full-time people will go into a diminishing marketplace nationwide, acquire a new staff 800 to 1,000 percent larger than it presently is, increase the business of $40 million a year that's losing money into a $500 million success story generating 10 percent profits. That's called La-La Land, Mr. Chairman. That is not an offer.

To bring it back, though, to put it even in its context in La-La Land, which would take us both to Hollywood—that's what they do with movies all the time. They promise you a bit of the profits if you invest, Mr. Chairman. The largest grossing films in recent American history often never show a profit, because every bucket of caviar and magnum of champagne and limousine is billed into it so that we never see a profit, although the income may be simply spectacular.

So I would really like to get this $5 million in focus so that we understand that maybe it was put in with tongue-in-cheek, but I notice that it has had a recurring theme to it. And I just want to suggest, Mr. Chairman, it's not real by any reasonable business standard. That's all.

And I'm not meaning to ridicule the people who put it forward, but it just isn't a business deal, sir. And I would never suggest for a moment that it could be seriously considered.

So, Mr. Chairman—well, I guess I have said—I would be less than candid if I didn't think it was highly unlikely that we were going to be a success story and we were ever going to see any additional moneys coming in. We're talking, again, since 1990, we have lost $17 millon in this enterprise.

Nevertheless, I am told that OPM met with the officials of FPMI. And they were always free to try to recruit our training staff. And in fact, by the way, they did hire three of them. That we understand as of today. But the vast majority of employees chose to work elsewhere. They voted with their feet, if you would, Mr. Chairman.

Mr. Mica's letter also asked about some estimates for the cost of privatization that were given in a paper our staff prepared back in February. I must say, those figures were highly tentative and were based on assumptions we would no longer make in the face of knowledge rather than guesses. We learned a great deal since those estimates were first made. No matter what we did, there were large, fixed costs.

Based on the information we now have, we estimate that the action we took cost about $3.5 million less than it would have cost to simply have terminated the training staff. I am submitting detailed explanations of those particular figures for the committee. These savings came because we moved faster than anticipated.

Let me add something here, Mr. Chairman. We had been losing over $300,000 a year on average. Mr. Chairman, pardon me. I said $300,000—a month. That's approximately a million and a quarter in a year. We're losing almost $10,000 a working day.

So when we accelerate the pace, Mr. Chairman, in making our decisions and moving forward to get people off the payroll and get this program away from the government under our management, we are saving substantial amounts of money for the taxpayers. And that's something I don't think always comes through. Because sometimes, people don't always understand that deferred costs are the savings you make by not spending.

I would like to make it very clear that every day, our career employees saved substantial money and also because we didn't need any capitalization, any feasibility studies, or outside consultants, and because the action we took resulted in less of an outlay for unemployment compensation, outplacement and retraining, and litigation of employee actions, which can be very costly, although they always seem to be hidden.

In short, the privatization that we achieved saved the taxpayers at least $3.5 million, while also helping our employees to do what we felt was best for their careers in serving our customers' best interests on their terms, our customers' terms.

Mr. Chairman, I would also like to add that what we're also doing is precedent-setting. And we're setting a tone in government that must be downsized. I think we're in universal agreement. The question is, can that be done in a humane and decent fashion. And I think we have shown that can be done. And again, we never lost sight of the bottom line, and that is the service to the American people.

Your letter also asked about the training unit's revolving fund debt, which now totals about $16 billion, Mr. Chairman. We're working with OMB to determine the most efficient way of resolving that deficit, as well as with the staff of both House and Senate Appropriations Committees. It is clear that we are no longer in a downward spiral of having good money chasing after bad.

As the training staff explored its options, they came to believe the two most viable options were to merge with an existing nonappropriated fund instrumentality such as the graduate school and for them to create an employee stock ownership plan, or an ESOP. We brought experts to brief the employees on an ESOP.

After hearing them, our employees felt that an ESOP might not be feasible from their perspective. And most of them preferred to join an existing program of excellent reputation, rather than risk the uncertainties of starting a new one. For that and other reasons, the possibility of joining the well-known and highly respected USDA Graduate School was the option most employees favored.

The graduate school was founded, as you know, almost 75 years ago and has grown into a center for continuing education that serves some 50,000 students a year. And in 1990, the Congress gave the graduate school the authority to enter into agreements with Federal agencies.

As I understand it, the graduate school receives no appropriated money and supports itself through tuition fees. Its employees are not covered by Federal personnel law. They have private health insurance and retirement plans, and their benefit package does not directly go through appropriated funds.

The graduate school is very interested in hiring many of our staff. Acting on behalf of our employees, we entered into discussions over the terms of such an arrangement. On May 16th, we and the graduate school signed a memorandum of understanding. It provided that the graduate school on July 1 would take over OPM's interagency training obligations. By the way, those are worth about $5 million, Mr. Chairman.

The graduate school agreed to interview all of our training employees who were interested in employment and to make written offers of full-time employment at levels comparable to existing staff and with its usual benefits package, to about at least, I believe, 134 of our employees.

This agreement was implemented on July 1st. The graduate school made the 134 offers. Actually, they exceeded the 134 offers. And thus far, over 100 of our former employees have accepted those offers. Nine others accepted offers from the Brookings Institution, and others took jobs elsewhere in government or in the private sector or retired.

So far, 192 of 220 employees, 87 percent, Mr. Chairman, have successfully completed their career transition. And we are continuing to work with the remaining 28 people. But most of all, we also achieved a seamless transition our customers needed and wanted. OPM's customers can now take the same high-quality courses as before, taught by excellent instructors at the same or similar institutions.

For the record, Mr. Chairman, the graduate school took over these elements of our work force training service, the career development programs, the Washington Training Center, the National Independent Studies Center, and the regional training centers in Atlanta, Chicago, Dallas, Philadelphia, and San Francisco.

We did not privatize the Federal Executive Institute or our two management development centers, because we believe that the Federal Government, like any major corporation, cannot, should not surrender control of its management executive training and the maintenance of excellence by setting high standard, thereby being a model for the Federal executive development and leadership, both in the private sector and in the public.

In closing, Mr. Chairman, this privatization is a success story. The right thing was done for our employees. It was done quickly. It was done at minimal cost to the taxpayers in the short run, real savings in the long run, and all without disruption to the American people.

I don't believe anyone questions the right of our former employees to join the graduate school. The only question is whether we should have helped them act in their own best interest. I believe it was the right thing to do for all the reasons I've indicated.

I thank you for your patience, and I would like to respond to any questions the Chair or the members may have.

[The prepared statement of Mr. King follows:]

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

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

at a hearing on

PRIVATIZATION OF OPM'S TRAINING PROGRAMS

JULY 26, 1995

Mr. Chairman and members of the subcommittee:

I thank you for this opportunity to provide testimony about the Office of Personnel Management's recent privatization of its non-residential training programs. We believe this to be the first major privatization of its kind to be carried out by this or any other administration.

Permit me, Mr. Chairman, to give the subcommittee some background on this important move.

OPM has been carrying out interagency training programs since soon after the passage of the Government Employees Training Act in 1958.

Last year, the OPM training programs that we have now privatized earned some $40 million. They represented about 4% of the total training received by government employees, with our remaining programs, other federal agencies and private training companies carrying out the other 96%.

These private firms have certain advantages over a governmental training program that is intended to be self-sustaining. They have far more flexibility in hiring and can much more easily expand or contract in response to market conditions. They can rent office space as they wish. They can protect their teaching materials under the copyright laws, and otherwise protect their innovations by legal means.

We are required to use the GPO, while private training companies can use faster and cheaper private printers. They have a larger customer pool, in that we train only federal employees and they also train the general public. They can accept cash from students and we can't. They have far greater flexibility in purchasing and greater freedom to reward and compensate their employees.

These and other factors, including the downsizing of government, all contributed to a diminishing demand for training and thus to serious financial losses for some of our training programs, starting in 1991.

As you well know, Mr. Chairman, we have been hearing many calls for a smaller, less costly government, and one way to achieve that is to privatize -- to return to the private sector -- activities that can be performed as well there as by government.

By the fall of last year, officials of the National Performance Review, entering Phase II of the Clinton administration's reinvention of government, were focusing on privatization as another tool for meeting its goals.

On December 19, at a ceremony involving the President, the Vice President, and several Cabinet members, a number of steps were announced that would accelerate the downsizing of government. Among these were OPM's privatization of its training and investigations units.

As my staff and I studied privatization, we found several possible ways to proceed. You can contract out government services. In some instances, you can sell government assets. You can form quasi-governmental corporations such as Amtrak. Or you can simply close down a governmental operation, fire its employees, and let its customers sink or swim.

Mr. Chairman, some have questioned whether our training unit, the majority of whom have now joined the staff of the USDA Graduate School, have in fact been privatized. The fact is that their jobs were terminated -- they were RIFed, if you will. From that day forward, the annual cost of the privatized units -- more than $10 million in salaries and benefits -- would not be paid by the American public through appropriated funds, and the taxpayers were no longer at risk of further debt.

Some 220 career civil servants had ceased to be employees of our federal government or to be paid by the taxpayer. They were on their own. If you ask any of them, I think they'll tell you that they feel extremely privatized.

But we did not stop there. Having made a decision to separate these employees, we did not wash our hands of them. We felt we owed them more than that -- and owed our customers and the taxpayers more than that.

We wanted to help our departing employees do what was best for themselves -- and what would be best for the taxpayers as well. Thus, early this year, we set several goals for the privatization process:

-- To keep the training programs together, if possible, to provide a national delivery capacity, and thus to have a seamless transition that would involve no disruption or additional costs for our customers.

-- To give our employees a chance to work together in a new organization if that was what they wanted, and at the same time to move quickly to prevent further financial loss to the public treasury.

In order to meet those goals, we worked closely with the training staff to help them explore their options. But the decisions affecting their lives and careers were always theirs.

The fact that some two hundred and twenty talented training specialists were leaving OPM did not go unnoticed. Some private training firms expressed interest in hiring some -- or even all -- of our employees. Some firms thought they could "buy" our training program, just as someone might buy a hardware store or a baseball team.

There were two problems with this.

First, we had no legal authority to sell our training program.

Second, we had nothing to sell.

The training program's one great asset was its talented employees. They were free agents. Private firms were free to recruit them, but they were not ours to sell. The employees believed, however, that there was strength in numbers -- in many of them negotiating together with existing firms, and we helped them do that.

Did we have other assets? We had course materials we had developed, but they had little value because private firms routinely obtained them, under the Freedom of Information Act, for no cost beyond copying fees. We had some existing contracts, but once we privatized our customers would be free to honor them or not, as they chose. We had some used furniture, computers, office space and the like, but they were government property and not ours to sell.

In your letter of July 19, Mr. Chairman, you spoke of a proposal that would have yielded the government five million dollars for the training program, and asked why we had given away the resources when such an offer existed.

That proposal came from FPMI Communications, which we are told has about fourteen full-time employees, many of whom are former government employees. One of its partners, Dennis Reischl, did in fact send us a fax which expressed a wish "to purchase" the training program.

Specifically, his fax proposed to "Pay to the federal government, in consideration for the named business units, 10% of all pre-tax profits FPMI derives from its combined company operations in the first 36 months following the transfer of the OPM business units -- up to a cumulative maximum payment of $5 million."

There are several problems with this. First, it assumes we could deliver these professional employees like so many hostages. Second, insofar as the $5 million figure is concerned, it assumes that FPMI had made a legitimate offer and could buy our employees, and would then make profits of $50 million in the next three years, from which it would give us five million.

Mr. Chairman, I would be less than candid if I didn't tell you that outcome was highly unlikely. Since 1991 the training program has lost more than $17 million.

Nevertheless, OPM met several times with officials of FPMI. They were always free to try to recruit our training staff, and in fact they did hire three of them, but the vast majority of the employees chose to work elsewhere.

Mr. Chairman, your letter also asked about some estimates of the cost of privatization that were given in a paper our staff prepared back in February. I must say that those figures were highly tentative and were based on assumptions we would no longer make. We have learned a great deal since those estimates were made.

No matter what we did, there were large fixed costs. Based on the information we have now, we estimate that the action we took cost about $3.5 million less than it would have cost simply to have terminated the training staff. I am submiting detailed explanations of those estimates.

These savings came because we moved faster than we had anticipated, because we needed no capitalization, feasibility study or outside consultants, and because the action we took resulted in less of an outlay for unemployment compensation, outplacement and retraining, and litigation and other employee actions.

In short, the privatization we achieved saved the taxpayers $3.5 million while also helping our employees do what they felt was best for their careers and serving our customers' interests.

Your letter also asked about the training unit's revolving fund debt, which has been accumulating since 1991 and now totals about $16 million. We are having discussions with OMB to determine the most efficient way of resolving that deficit, and we have raised the issue with staff of both the House and Senate Appropriations Committees. What is clear is that we are no longer in the downward spiral of having good money chasing after bad.

As the training staff explored its options, they came to believe that the two most viable options were to merge with an existing Non-Appropriated Fund Instrumentality, such as the Graduate School; or for them to create an Employee Stock Ownership Plan, or ESOP.

We brought in an expert to brief employees on an ESOP. After hearing him, our employees felt that an ESOP might not be feasible, and most of them preferred to join an existing program of excellent reputation rather than risk the uncertainties of starting a new one.

For that and other reasons, the possibility of joining the well-known and highly-respected USDA Graduate School was the option most employees favored.

The Graduate School was founded almost 75 years ago and has grown into a center for continuing education that serves some 50,000 students a year. In 1990, Congress gave the Graduate School authority to enter into agreements with federal agencies.

As I understand it, the Graduate School receives no appropriated money and supports itself through tuition fees. Its employees are not covered by federal personnel law. They have private health insurance and retirement plans.

The Graduate School was very interested in hiring many of our staff. Acting on behalf of our employees, we entered into discussions over the terms of such an arrangement.

On May 16, we and the Graduate School signed a Memorandum of Understanding. It provided that the Graduate School, on July 1, would take over OPM's interagency training obligations. The Graduate School agreed to interview all of our training employees who were interested in employment and to make written offers of full-time employment, at levels comprable to its existing staff, and with its usual benefits package, to at least 134 of our employees.

This agreement was implemented on July 1. The Graduate School made the 134 offers and thus far 125 of our former employees have accepted those offers. Nine others accepted offers from the Brookings Institution, and others took jobs elsewhere in government or the private sector or retired.

At last count, 192 of 220 training unit employees -- 87% -- had successfully completed their career transition, and we are continuing to work with the remaining 28 people.

We also achieved the seamless transition our customers needed and wanted. OPM's customers can now take the same high-quality courses as before, taught by excellent instructors at the same or similar locations.

For the record, Mr. Chairman, the Graduate School took over these elements of our Workforce Training Service: the Career Development Programs, the Washington Training Center, the National Independent Study Center, and the regional training centers in Atlanta, Chicago, Dallas, Philadelphia and San Francisco.

We did not privatize the Federal Executive Institute or our two Management Development Centers, because we believe that the federal government, like any major corporation, cannot surrender control of its management and executive training and maintain excellence.

In closing, Mr. Chairman, this privatization is a success story. The right thing was done for our employees, it was done quickly, and it was done at minimal cost to the taxpayers in the short run and real savings in the long run, all without disruption to our customers.

I don't believe anyone questions the right of our former employees to join the Graduate School. The only question is whether we should have helped them act in their best interests. I believe it was the right thing to do, for all the reasons I've indicated.

I'll welcome your questions.

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Mr. BASS. Thank you very much, Mr. King. I appreciate your testimony. I guess I have a series of questions here to get into the record. But one that pops to mind is, if you were losing $10,000 a day, what's going on over at the USDA Graduate School?

Mr. KING. Well, Carol, Ms. Okin, would you answer the Chair's question on that?

Ms OKIN. Clearly, over the last several years, Mr. Chairman, the revolving fund training program had suffered some losses. Over the last couple of years, we had put significant improvements in the process in place to turn that around. We were beginning to see that happen.

But clearly, there are things in the revolving fund training program that we managed that there were costs incurred that we were just going to have to spend more time really getting ourselves out of. The last quarter of the fiscal year is usually the period of time when most of the training income comes into the organization, so I think we would have seen a dramatic turnaround over the next few months, which I think that the grad school will benefit from.

But they are obviously taking a risk. We have had some less than stellar performances in the training program over the last few years. The training regional delivery centers that are one of the key components of the program being transferred, or the work being transferred, had been in the red for the last few years.

So they are taking a risk to turn that program around. I think it can be done. I think the grad school has some of the mechanisms and means to do that. But it is, in fact, a risk.

Mr. KING. And the key thing is flexibility, Mr. Chairman. On personnel issues, as I know you're very sensitive to, on personnel issues, we have almost no flexibility under our Federal operation, especially in the kinds of things where the market is dynamic. It is next to impossible under our present system to really work in a dynamic situation where you're being market-driven.

Mr. BASS. I can certainly sympathize, and I do, with your compassion and concern for the welfare of the employees who would otherwise have possibly lost their jobs if you had gone any other route than the one you chose to take. We have heard earlier today, especially from our first witness, Congressman Klug, that it really is our responsibility to provide the best possible services for the lowest possible cost.

Given the fact that the USDA Graduate School is really not a private entity, it has a whole series of built-in advantages that private companies don't have, don't you think that you might have been able, the employee issue perhaps not withstanding, to have been able to save substantially more money by going a different route, even given the fact that this particular agency does have advantages and may not really be private?

Mr. KING. Carol, I know you looked at that.

Ms. OKIN. Right. Going a different route, let's talk about that a little bit. What we really did, Mr. Chairman, was make an agreement. This memorandum of understanding that we signed on May 16th really enters into an agreement with the grad school for the remainder of this fiscal year. We had training obligations that we had entered into with our agencies that there was an expectation of delivery of services for those training events and experiences.

We, in order to transition in an orderly and seamless fashion, as Director King said, looked for the best way that we could seamlessly and quickly meet our obligations and also privatize the training delivery function of OPM. And I think this memo of understanding achieves that.

They, under interagency agreement, if you will—and I've heard that term used a lot this afternoon—agreed to take on our training obligations for the remainder of this fiscal year. That's what the MOU entails. And to meet those obligations. And for that, there is a $5 million projected gross receipt.

On October 1, 1995, that interagency or memorandum of understanding really ceases to exist. Then, the grad school and the employees who have been hired by the grad school from the Office of Personnel Management are really in a position to seek and gather and obtain their own commitments from the client agencies throughout government to offer and perform training delivery services.

I would suggest that in that sense, they're very much more on an equal footing with some of the private sector firms that have spoken here this afternoon. So we really have entered into a memorandum of understanding for the foreseeable and short-term future.

At that point, it remains the responsibility of the grad school and the employees who work at the grad school to offer and deliver the training that we think they can do in a very fine fashion.

Mr. KING. There's another thing in this, Mr. Chairman. We're doing a trapeze act, quite frankly, because we're going from one swinging over to the other. You're seeing us in mid-air. The only way we could make the leap was, we're talking about a revolving fund that is critical in cash-flow. You've been in business. Are you going to be dealing with me if you think in 90 days I'm not going to be there? Or do you start moving away from me?

Second, if you tell your employees that are doing the training and doing all of the management side and the ongoing selling, if you will—because some of this is short-term selling—that they're not going to be working there 90 days from now, I hate to say this, Mr. Chairman, but it's a human characteristic. They begin to understand that their future is not where they currently are.

By the way, we're one of those agencies that don't come in here with academic discussions. We have lived through it, because we have been doing it. The employees cease to function at the level of effectiveness that they historically functioned at, which has been more than reasonable.

And what would happen—and we knew it would happen—is that our receipts would plummet, the debt would go way up, and the value of anything that was being done there would fall. By the way, the major factor was the interruption to the agencies, which would be catastrophic, from their perspective.

So the idea was, how could we suspend the program and in a short period of time, move the program into the private area, set it up then so it would be competitive outside. And that begins really in October. You're seeing us in transition, Mr. Chairman.

Ms. OKIN. That's correct. That's correct.

Mr. KING. Would that be a fair characterization of it, Carol?

Ms. OKIN. That's correct.

Mr. KING. So that at the moment, nobody is really taking that 90-day gamble, as it were—and it wasn't really a gamble. The graduate school understood that it was a fairly solid program, and they hoped to build on it. But they're going to have to compete as of 1 October, I am told. That competition has not been established by me, Mr. Chairman.

They were the folks who were willing to come in and to take that risk, whatever that risk level was. And it served everyone's interest. And it kept the cost way down. So that if we're talking real cost-benefit analysis, this was the way to go. And it was even cheaper than termination. If you were just going to take the absolutely hard—say you say, "Jim, you're going to be hard, you're going to be callous. Do it."

We did it the least expensive way, the least disruptive way. We have served everyone's interest. And in the process, we have shown that it was the profitable way to go as far as the government itself was concerned.

Now, what the future holds—and I think you're addressing that in your question, too, Mr. Chairman—what the future holds is another ballgame in which we're not involved, other than we would like to maintain the quality of the programs that are there to serve the agencies. But other than that, we step back.

Mr. BASS. Thank you very much. I will yield at this time to the gentlewoman from Maryland, Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman.

Director King, always a pleasure to see you. Mr. Dungan called this merger—I quote—"a step back from the principles of the National Performance Review." What discussions did you have with the National Performance Review regarding the privatization initiative, and who at NPR and OMB sanctioned that arrangement?

Mr. KING. Well, my memory was that from the beginning, this had been an area identified, I believe, in the September 1993 announcement that both investigations and training looked like likely candidates for privatization because of the revolving fund aspects.

And then later, they profiled it as being in constant crisis from a financial point of view, and it was the inability of the governmental agency to respond to the market that put us in a downward spiral. So it was felt that these were ideal candidates for privatization because the employees were familiar with the market, and they were organizational types that could lend themselves to being privatized.

I was asked in early December the specific question by Ms. Rivlin and the Vice President as to whether we could move ahead with privatization. And I said I believed we could. And they said then they would like to put it on the agenda for the President's announcement for December 19th.

And I said I wasn't certain as to timeframe or anything else, because we had not set a timeframe. I said I would have to go back to the professional staff, but we would certainly work toward it. And the basis of it, I said, was to move to the downsizing of government. And clearly, I felt that it might be a way to reduce cost simultaneously. But I did not necessarily see any large savings to the government at that time from this action.

Mrs. MORELLA. But you feel you did get an OK, then?

Mr. KING. Oh, yes. And the public announcement came from the President, because we were swamped then by various and sundry people who were interested in the work.

Mrs. MORELLA. I'm curious also about why the ESOP was rejected as a privatization option. Could the so-called "seamless transition," which seems to be one of those vogue transitions, have been accomplished through an ESOP?

Mr. KING. Well, as you know, we're looking at two. One is our investigations. We're looking at the ESOP. And in the training, that was looked at. But why don't I yield? Because I didn't directly work with the employees on this, but Ms. Okin was responsible for the overall thrust.

Ms. OKIN. When we started this search, I as a senior manager in the program worked with line managers and workers through several months of fact-finding and data-gathering to determine what was the best option available to us.

The decision to privatize was there, and Director King gave this group of employees and managers the license to look through what would best fit the program, the needs of the customers, and the needs of the employees. And ESOP was certainly one of the four or five initial ideas that we had to pursue.

We looked very distinctly and definitely at an ESOP. We had some people come in who were experts. We had some folks do a lot of research and reading and briefing to the folks in the program.

And I think basically, the employees themselves—and I endorse this; I agree with this—felt that the kind of work that we do—because there isn't a defined market out there, a defined segment that would go with the ESOP as it started up its business—was much too much of a risk and potentially not a viable option.

So it was basically rejected because of that—predominantly for that very reason. But it was examined with some degree of care. I think it was one of the ones at first that we thought might be the most viable option for us. But the nonappropriated fund instrumentality issue became clear as we worked through the many months of data-gathering and talking to people and examining our programs and how they would best suit privatization.

Mr. KING. There's one other thing I think in this that's implied, but I would like to have the record reflect, if you would. What we were suggesting—and the chairman was correct—is that it was a moral and humane thing to do, but it was also profitable. Let's clearly understand, it was profitable.

It kept people working hard because their future was directly tied to their output doing their present work, because they knew that once that agreement was signed, that their future was going to be determined. And if they weren't producing, these other folks weren't going to be interested in them.

So really, there was a direct tie. So I'm suggesting it was the correct way to go from the moral point of view, but I must tell you, I would be less than candid if I didn't express that part of this underlying thrust was the trapeze act to make the jump over and to make everyone interested in making that jump together.

Ms. OKIN. Right. I can't endorse that more strongly. As the senior manager involved in the early days of dealing with a group of employees whose future was very, very uncertain, as soon as we could confirm and verify that there was some employment in the future for these employees, regardless of the mechanism—and the merger with the grad school ended up being the most appropriate mechanism for us, we believed—but there was a great deal of concern in the early months about any employment.

And yet we were telling our employees, "Continue to work. Continue to deliver the product. Continue to deliver the services, because if those start to dissipate, the revolving fund will worsen, and we'll be in an untenable situation."

So I wholeheartedly endorse Director King's comments about the need to move forward speedily for the benefit of our employees and our customers—agencies called me in the early days of the decision, and it was a very public pronouncement, that, "What's happening? Are you still going to deliver? What about the courses I need to have my people go through over the next several months?"

We were able to assure them because we were able to assure our work force that we were going to do this in a measured, careful, responsible way for them, as well as the Federal Government.

Mrs. MORELLA. And the ESOP, they also thought was too risky?

Ms. OKIN. Very much so, yes. Very much so.

Mrs. MORELLA. I wondered, based on current legislation, what kind of options did you have in terms of privatization?

Mr. KING. Well, you have the famous five.

Ms. OKIN. Right. Well, we started out with five options. They were out and out termination, merger with an entity that was already established like the grad school, getting a nonappropriated fund instrumentality on our own, and a variety of cats and dogs that we thought, if all else fails, maybe we can just do a variety of different things for the different programs.

And really, all of those things in the early days—and I think the options paper reflects that—identified legislative change as part of the requirement to get there. Again, we were learning, and we thought there were things that had to be done legislatively so that we could sell some of our packages, sell some of our—we had our equipment, we had our employees. There was the issue of whether we would have carryover of retirement benefits, et cetera.

So there were always legislative issues on the agenda, but we quickly, I think, over the months where we worked through this, realized that a legislative option was really going to put the timing of this whole move into jeopardy. Because a legislative option takes a long time. And so we then focused on things that didn't require legislation.

Mr. KING. And then finally, the reason?

Mrs. MORELLA. Congress can move fast when they really want to, when they see a reason for it. And that was another question I was going to ask, is why didn't you come and ask Congress for the authority legislatively to sell the assets to the private sector?

Mr. KING. Well, I was just going to say, that's why we had our general counsel with us, because during this process, I thought we might be able to move on that expeditiously. And to suggest our general counsel was a wet blanket would be an understatement in this case, with all due respect.

Well, I'll let you say it.

Ms. MICHELSON. We were cognizant of the requirement on the one hand not to dissipate or dispose of any kind of government assets without the authority of Congress. So we would have had to come to Congress in order to sell any of the physical property or physical assets we had. So that would have required legislative authority. And then there was the question of how quickly that could be pursued.

On the other hand, if the decision was to try to contract with the private sector in some manner to perform the services through the remainder of the fiscal year, we were also cognizant of contracting procedures, competitive contracting procedures.

So if the decision was going to be to go that route, we were very concerned that we do nothing to treat anyone in any kind of an unevenhanded manner. So our advice was very much, "Whatever you're doing with regard to any private sector company, do the same with regard to all." We advised the program to disseminate the same information to everybody, et cetera.

So our guidance throughout this procedure was, "Here are the bright lines prescribing our activities. Don't overstep any of them until you have determined that you are going to go to Congress and try to seek authority to do this in another manner."

Mrs. MORELLA. I know my time has probably expired, but just a final question, then. How many employees were impacted by the privatization? And then following up on that, what percentage were hired by the graduate school?

Mr. KING. Well, first, there were 220 directly. There will be some others impacted from our central core who provided overhead support. So there will be an additional spinoff in there. I don't have the exact number, but I would guess it to be somewhere between 12 and 14 people that would be in their central core.

We're talking 220 people. Presently, all but 28, 87 percent, have made a successful transition in some form, shape, or manner. But the 28 remaining people we're continuing to work with on outplacement. And we'll keep the committee advised as to how that's going.

Mrs. MORELLA. Twenty-eight that are out of work right now?

Mr. KING. Twenty-eight people, yes, about 13 percent of the entire group right now are still in transition. By the way, many of those have been offered positions and declined them because they feel there are some other kinds of options that they would like to exercise. But I'm still saying, until they can successfully make a transition, whatever they wish to do, we're going to support and work with them.

Mrs. MORELLA. Do you have a large percent that retired?

Mr. KING. A number retired. But what would you guess, Carol?

Ms. OKIN. It's not a large percentage, but a number did opt for retirement. And I can get that number for you specifically.

Mrs. MORELLA. I'm just curious. I notice that your testimony mentions 28 people.

I yield back and thank you very much.

Mr. BASS. Thank you very much, Mrs. Morella.

I have a couple very quick questions, and we'll finish up here. There are fixed assets, typewriters and space and so forth. What happened to them?

Ms. OKIN. Between now and the end of the fiscal year, we have notified GSA that we are going to relinquish the space that we occupy and that we are going to surplus the materials and equipment that we use. It is my understanding that the Department of Agriculture will enter into and negotiate with GSA for use, rental, taking over of that equipment.

But we have done, I believe, what we are expected to do when we are ceasing to do or perform or use equipment and space and have taken steps to make that happen. What happens after October 1st is really the purview of the grad school.

Mr. KING. But we're not paying for it anymore, which is the other bonus.

Ms. OKIN. That's right. Correct. We are being reimbursed by the grad school for those expenses for the remainder of this fiscal year.

Mr. BASS. I guess my follow-up question is, then, with the understanding that this is privatization, in essence, what you're talking about here, then, is transferring—is again sort of an in-house transaction between OPM and GSA for a fixed—for certain fixed assets that might not normally be available to anybody else in the outside world who is trying to compete to contract or provide services.

I guess my overall question is, is this another example of sort of nonprivatization of this whole transaction?

Mr. KING. Well, Mr. Chairman, I guess it would be almost like someone coming to you—at this moment, Walt Disney, I think, since I used a Hollywood analogy, is in a capsule where he has been frozen at some incredible below zero temperature on the assumption he's not dead, he'll be coming back.

Now, I would merely suggest, Mr. Chairman, in this case, we have got 220 people that no longer at the end of the day, no longer will work for the government. They don't draw any money from the government directly. By the way, your own Congressional Budget Office will tell you, they're no longer FTE's. They have left. They're going to be fully competitive as of October 1st, I'm told.

But my particular situation that we were faced with is, how do we move toward privatization, the first priority being, how do you continue to serve the government and the taxpayer, both from the money point of view and from the customer service standpoint? I think we have achieved that with singing success. In the process, we're able to be humane with our employees, Mr. Chairman.

And at the end of the day—and we're talking about a total of 90 days and $5 million—we will have successfully transferred out a program that does become competitive, does go into the full field and be competitive. And if there are some unfair advantages in that, that's someone else's particular set of concerns.

Ours were, that was a methodology which could be done and the only methodology open to us where it could be done successfully, cleanly, and legally. But at the end of the day, Mr. Chairman, there are 220 employees who were on the Federal payroll who aren't there, very simply.

They're not drawing down any benefits. They're not drawing down retirement rights. They're not drawing down pensions in that sense or building pension rights. And we all know the implications of all those things. So, Mr. Chairman, if it quacks, waddles, swims, and has feathers, it might pass for a duck.

Mr. BASS. Thank you very much, Mr. King. That's all the questions I have. The committee has some other questions that they may wish to ask, other members of the committee, and I would be most grateful to you if you would be willing to answer them in writing at a later date?

Mr. KING. Absolutely.

Mr. BASS. Does anybody else have any—do you have any other questions?

Mrs. MORELLA. I just might want to ask Director King, do you have any letters from Federal agencies that support your merger with the graduate school?

Ms. OKIN. I'm not sure I've seen any specific letters, but we have many conversations with our client—have had over the many months in preparation for this transition.

And it has been, in my experience, nothing but, "We're glad that the services can still be provided in a seamless way. We are glad and pleased that you are making efforts to transition this activity into a privatized mode without disrupting our needs," because that's really what we're about, is training the Federal community.

So I'm not aware of any specific letters, but I certainly am aware of conversations and communications from the agencies who we have delivered training to successfully for many, many years.

Mrs. MORELLA. That have been favorable?

Ms. OKIN. Yes.

Mr. KING. By the way, the programs have gone two ways. One went to Brookings. Some people went over to Brookings from the unit. Some went over to the graduate school. And isn't it the government programs that they'll be competing immediately?

Ms. OKIN. Right.

Mr. KING. So, Mr. Chairman, it isn't just lip service or some kind of show. It's real out there, and there is a struggle going on. And it's going to be in a very competitive way. And by the way, I know you didn't miss it, because it was clear that you had read the testimony when you were asking your questions, that 96 percent of that government training was outside of our agency. So obviously, the folks we have talked to do compete.

And on the purchasing comments that were made, about 87 percent of all the training is not done through one of these 50-page procedures. It's done on a single sheet of paper, and it's moved ahead, the vast majority of it. Is that not correct?

Ms. OKIN. I would like to just add a footnote to that. I've listened this afternoon to a lot of discussion about interagency agreement authority and the benefits that that provides for an entity who can avail themselves of it. The fact is that, of the $40 million of the training delivery work that I oversaw in fiscal year 1994, only $5 million was what we would call interagency agreement work; $35 million was individual training forms that were submitted.

The private vendors, some that were here this afternoon, can accept individual government training forms as a form of payment. The small purchase activity, which is a very simple process, certainly not the 50-page documentation that Director King mentioned, is done for the lion's share of at least the work that we are transferring or the activity that we did that we hope now will be taken on by the grad school.

So I disagree quite strongly with the significant competitive advantage that the interagency agreement authority conveys. It's there. It is a tool. But it certainly isn't the total way in which OPM—when it was doing its business or, I assume the grad school as it will continue to do business—would use to have that significant unfair advantage.

One other point, and I'll just add this very, very quickly. When I managed this program, I heard frequently from the line officials who were out there in the regions delivering the product something that I heard this afternoon. I heard our people saying, "We are at an unfair disadvantage. We're not on a level playing field with the private sector vendors. We can't compete with them in prices. We can't compete with them in speed."

And so it's a very interesting dimension, to be sitting here listening to both sides of the argument, because I think there have been some problems with the Federal community feeling that they were at an unfair disadvantage with the private sector vendors, as well.

Mr. KING. But, Mr. Chairman, this kind of a hearing truly does help to take a look at that field, whatever it is, and to create the climate that's very positive and I think will serve the American people. And that's one of the reasons I was so pleased that I was able to be with you today. And I do thank you and the committee.

Mrs. MORELLA. Could I just ask one final question? You mentioned the Brookings Institution. And I'm wondering why all of the nine people who were with the Government Affairs Institute chose the Brookings Institution?

Mr. KING. I believe it was money.

Mrs. MORELLA. Money?

Mr. KING. It was a motivator. And I've heard that sometimes influences decisions in the private sector. It doesn't in the public sector.

Mrs. MORELLA. In the public service, we don't think about that.

Mr. KING. That's what I've heard. Now, I can't vouch for it.

Mrs. MORELLA. Thank you.

Thanks, Mr. Chairman.

Mr. BASS. Thank you very much, Mrs. Morella.

Thank you very much to all three of you for appearing here today. We appreciate your testimony. And with that, we will close this subcommittee hearing.

[Whereupon, at 5:18 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Additional material submitted for the hearing record follows:]

STATEMENT OF THE
HONORABLE CONSTANCE A. MORELLA
HEARING ON OPM PRIVATIZATION:
CONTRACTING OUT TRAINING
SUBCOMMITTEE ON CIVIL SERVICE
JULY 26, 1995

I would like to thank Chairman Mica for calling this hearing. I have followed the privatization of OPM's training services very closely so it is with keen interest that I listen today. I must say Mr. Chairman, that as I read your background paper, seeing terms like "market value," "merger," "employee stock ownership plan," and "asset transfer," I had to remind myself that this was the Government. The Administration and this Congress are clearly pushing the envelope with privatization, and my paradigm of government, if not being challenged, is being "reengineered" as we speak.

Privatization is being touted as a strategy for reducing the size of government, both its programs and personnel, and for reinventing government. It is seen as a humane alternative to RIFs and other fates awaiting federal workers. We heard OPM Director James King reiterate this "humane" side of privatization at the hearing on the privatization of OPM's Office of Federal Investigations on June 15, 1995. At that same hearing, we also learned that although a humane gesture, the investigators want no part of it. The employees of the training function -- let's just say -- have been less vocal than the investigators. I believe the USDA Graduate School option was a contributing factor to their silence and acceptance.

It is no secret that I am not an advocate of privatizing government functions. For some reason, we have been induced to believe that the private sector, because it's the private sector, offers efficiency that cannot be matched by government. I have yet to be convinced of this.

I do not, however, want to confuse this effort with other privatization efforts, particularly those using OMB Circular A-76 guidelines. OPM's training services merger with the USDA Graduate School is not "true privatization" in the context of the definition that has evolved over the last several months. I hope this is not the main focus of this hearing. There are a number of other issues to explore without focusing on a moot point. However, I would venture that in December of 1994, when Director King was tasked by the Administration to privatize training and investigations, that he and most government officials would have had a hard time defining privatization, nevertheless excluding an option. I would go as far to say that Director King had no guidance on how to privatize these functions. In fact, privatization guidelines from the National Performance Review were not issued until months later.

However, there are features of this initiative that are very appealing, even to someone who does not generally support privatization.

The merger with the USDA Graduate School removed a number of employees from the federal rolls and the federal retirement system and provided those workers an opportunity to continue working in a field they enjoy and to continue earning a living. Because the USDA Graduate School is a non-appropriated fund instrumentality, any losses due to marketplace dynamics are incurred by the Graduate School and are not ultimately passed on to the government, i.e., the taxpayer. The Graduate School's status and the fact that the agreement with OPM is in the form of an memorandum of understanding (MOU) also allow OPM to maintain a certain amount of oversight over and coordination with the Graduate School. This will help maintain the currency of courses, involving personnel policy and management practices in government, and keep prices down, thereby negating possible price gouging of customers. I see these features as positives for the taxpayer.

The merger is also good for the customers. The "seamless transition" has allowed journey-level workers and managers in the Executive Potential Program, the Women's Executive Leadership Program and the LEGIS Fellows Program to remain in these long-term programs. It also allows federal agencies that had multi-year projects with OPM to continue these projects without fear of funds being returned to the treasury and of mission-based training not being developed and delivered. That's good for the customer.

The merger is also good for employees. And to understand this we must understand the mindset of these employees. These workers had traded careers in the private sector, and in some cases higher wages, for the supposed low risk and high security of the government. Many had survived three RIFs during 1994 and the announcement to privatize, for many workers, was the new code word for RIF. The option of Employee Stock Ownership Plan (ESOP) was rejected officially by employees and managers after the privatization team brought in consultants to discuss the pros and cons of employee ownership. Other options to pursue selling the assets to private firms required legislation and were also scoffed at by employees. Employees feared the selling of assets to a private firm may not have necessarily meant them.

To the employees, who were concerned about their mortgage payments, their kids' tuitions, their payments to nursing homes, and finding jobs past age forty, and for employees, who had lost weight, suffered anxiety attacks, and road an emotional roller coaster in 1994, the Graduate School was a God-send. It was familiar digs and had a similar philosophical approach to training. It was about all the entrepreneurship these public servants could stand at this time.

Those are the appealing features of the initiative -- now for the aspects of concern. It is unclear if the Graduate School will reimburse OPM for furniture and other equipment. I hope Director King and Dr. Hudson will discuss this aspect of the MOU.

OPM also did not pursue a $5 million offer from FPMI, a small, private training organization. OPM has expressed concern over the legitimacy of this offer since it was based on profits -- profits that OPM has never obtained, even in the training organization's heyday. I hope that FPMI is prepared to establish the credibility of this offer and that OPM is prepared to back its claim.

FPMI has also raised the issue of fair competition. Although the combined forces of OPM training and the Graduate School equal less than 15% of the federal training market, this is a legitimate concern. I would like answers to how federal training dollars are spent, particularly how much of those dollars go towards small firms like FPMI. My understanding is that the goal of this initiative was not designed to hurt small businesses, and I intend to find out if that is true.

There are also lessons to be learned from this privatization. OPM is ahead of the other agencies with its privatization efforts. This Subcommittee stands to gain considerable insight into the kinds of enabling legislation needed for a successful privatization.

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

GS Graduate School, USDA

Office of the Director

South Agriculture Building
Room 1025
14th St. and Independence Ave., SW
Washington, D.C. 20250-9901

(202) 720-2077

August 15, 1995

The Honorable John L. Mica
Chairman
Subcommittee on Civil Service
Committee on Government Reform and Oversight
Rayburn House Office Building - Room 2157
Washington, D.C. 20515-6143

Dear Congressman Mica:

I appreciate the opportunity to provide the additional information you requested in your letter dated July 28, 1995.

The table on the following page provides the breakdown of the full time and the part-time offers made by the Graduate School, USDA, as well as the actual acceptances by former OPM employees. As you can see, the Graduate School made a total of 137 full time offers and 5 part-time offers. Of these, a total of 111 individuals have accepted offers with the School so far. Another 9 individuals have accepted offers with Brookings, and 4 are currently employed in the European Training Program. The information contained in the table is current as of August 11, 1995, but we are continuing to review applications from OPM personnel and will make selected offers when matches are found between vacancies and applicants.

The Graduate School has filled a variety of positions with the former OPM employees from management to support staff. However, these employees are not instructors. Our instructors, as I noted in my testimony, are indeed individuals or companies with whom we do business as independent contractors on a course-by-course basis.

With regard to the number of OPM employees who were offered part-time positions and who retired, I regret that we do not have that information. We made 5 part-time offers but our personnel office did not request retirement status from any individuals hired by the Graduate School.

I appreciate the opportunity to provide the additional information and hope it answers your questions. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

Philip H. Hudson

Philip H. Hudson
Director
Graduate School, USDA

page 2.

| ORGANIZATION AND LOCATION | FULL TIME OFFERS MADE | FULL TIME OFFERS ACCEPTED | PART-TIME OFFERS MADE | PART-TIME OFFERS ACCEPTED | TOTAL EMPLOYED | |
|---|---|---|---|---|---|---|
| ATLANTA REGIONAL TRAINING CENTER | 14 | 13 | 0 | 0 | 13 | |
| CAREER DEVELOPMENT PROGRAMS, WASHINGTON, D.C. | 14 | 11 | 3 | 1 | 12 | |
| CHICAGO REGIONAL TRAINING CENTER | 15 | 14 | 0 | 0 | 14 | |
| DALLAS REGIONAL TRAINING CENTER | 15 | 12 | 1 | 1 | 13 | |
| NATIONAL INDEPENDENT STUDY CENTER, DENVER | 13 | 13 | 0 | 0 | 13 | |
| PHILADELPHIA REGIONAL TRAINING CENTER | 16 | 14 | 0 | 0 | 14 | |
| SAN FRANCISCO REGIONAL TRAINING CENTER | 11 | 10 | 1 | 1 | 11 | |
| WASHINGTON TRAINING CENTER, ROSSLYN, VA. | 26 | 21 | 0 | 0 | 21 | |
| | | | | | | |
| EUROPEAN TRAINING PROGRAM, GERMANY (a) | 4 | 0 | 0 | 0 | 0 | |
| GOVERNMENT AFFAIRS INSTITUTE (b) | 9 | 0 | 0 | 0 | 0 | |
| TOTAL | 137 | 108 | 5 | 3 | 111 | |

(a) Final decision on the European Training Center has been extended until December 31, 1995
(b) All 9 Government Affairs Institue staff members accepted offers from Brookings Institute

FPMI COMMUNICATIONS

August 1, 1995

Mr. John L. Mica
Chairman
Subcommittee on Civil Service

Dear Mr. Mica:

This is to thank you again for providing the opportunity to address the subcommittee on the issue of OPM's purported privatization of its training functions, and to respond to your request for further information.

We believe several points merit consideration in response to Mr. King's assertion that our offer to purchase OPM's training business was one it needed not view as "serious." They include the following:

1. We are not in the habit of making frivolous offers to purchase anything, much less a multi-million dollar business—particularly when doing so would have involved placing all of our corporate and personal assets on the line.

2. At the time we made the offer, we had already drawn up a business plan and met with two banks to line up the necessary financing. Both our business plan and the request for term and line-of-credit loans had been approved.

3. How could Mr. King know whether the offer was serious without bothering to discuss it with us. Instead, he chose to ignore the offer for approximately a month until his legal staff came up with the dubious assertion that OPM lacked authority to strike a deal with any genuinely private organization. Nor, of course, did he seek such authority. His behavior indicates that he understood all too well the seriousness of the offer, and used the OPM legal staff to concoct an excuse that would enable him to avoid having to deal with it. Particularly since doing so would likely open the door to other, harder to ignore offers from the more than 30 other organizations that expressed interest in acquiring OPM's training business.

4. If Mr. King felt the amount being offered was too low, or that projected profits were improbable, he could have addressed the matter through discussions with us. Had OPM done so, it would have learned a) that our historical profit margin is more than twice the number postulated by Mr. King, b) that we maintain it by running a substantially more efficient operation than OPM, and c) that we were certainly willing to negotiate further as to price and payment terms, depending on what further information might come to light in the course of negotiations.

5. Even assuming, for the sake of argument, that OPM eventually received only, say, $1 million in exchange for their moribund business, it would have been $1 million more than they got out of donating the business to the USDA Grad School. Actually, to be more accurate, it would have been about $8 million more than they got, since we were not asking them to throw in their last quarter's revenues and all their equipment. To be blunt, it's hard to imagine how OPM could have achieved a *worse* deal than they worked out with the Grad School—at least from the view of the taxpayers who are financing it.

Obviously, however, Mr. King was not interested in obtaining maximum value for the taxpayers. The only apparent objective of this exercise was to place as many OPM employees as possible in comfortably familiar surroundings; i.e., in a competition-sheltered monopoly in which they could continue doing business in the same old inefficient ways.

6. Beyond the glaring inconsistency of Mr. King's simultaneous assertions that a) the OPM training business had *no value*, and b) that he did not take our offer seriously because it was not *high enough*, while c) concluding that *giving it away for free was the best deal available*, there is the absurdity of his claim that there was nothing of value to sell.

Mr. King would apparently have us believe that he has somehow managed to escape all knowledge of the accounting concept of "good will" in evaluating business entities. In short, that a business has no value other than that of the bricks, mortar and equipment within its walls. Under King's theory, no legal, medical, accounting, consulting or dental practice would have any value upon the retirement of its chief practitioner.

That, of course, is hogwash. The primary asset in any service business is its established web of customer relationships—and we can reasonably assume that Mr. King is not ignorant of that simple principle. Indeed, his actions show he is keenly aware of it, since he and OPM scrambled to transfer exactly that asset—the established business relationship with OPM's former customers—to the Graduate School. Why else throw all of OPM's last quarter revenues to the Grad School, rather than applying them to the $16 million deficit?

7. Finally, were we to accept at face value Mr. King's assertion that neither he nor his staff took the FPMI offer seriously, that admission would tell us far more about the attitude of OPM than the validity of our offer. In summarily dismissing a formal, written offer to purchase the business, he displayed not the attitude one would expect of someone serious about considering all privatization options, but rather, that of someone intent on ignoring all but a pre-selected course of action; in this case, shuffling off to another federal address as rapidly as possible.

In sum, Mr. Chairman, I would like to note that although we did not find it surprising to hear Mr. King contend that neither he nor his staff took our offer seriously, we did find his characterization of our offer extremely objectionable.

Specifically, we take umbrage at his characterization of our financial analysis of the situation as something originating in "La-La land." If anyone inhabits La-La land in this sad tale, Mr. Chairman, it is the self-admittedly incompetent leadership at OPM, not the authors of a proposal to buy its business.

In support of this point, Mr. Chairman, I would direct the Committee's attention to the fact that it was Mr. King, not FPMI Communications, who was presiding over a business that was losing, by his own account, $10,000 per day—despite enjoying a monopolistic grip on the market.

It was Mr. King, not FPMI Communications, who could not imagine a profit margin exceeding 10%. Small wonder, since his organization had apparently logged no profit at all in several years, and showed no signs of ever being able to do so.

And it was Mr. King, not FPMI Communications, whose astute calculations found it a better deal to give away not only the business itself, but all of its last quarter revenues and business equipment—purportedly because he feared OPM might not realize the full $5 million we had offered.

With leadership and financial acumen of that caliber, Mr. Chairman, it is not surprising that OPM managed to lose $10,000 of the taxpayers' money day-in and day-out, year-in and year-out. A manager possessed of such dubious operating credentials is, we believe, in no position to make light of either the validity or the sincerity of the offer we presented. Especially one coming from an organization that has managed to grow and increase profits in the same "declining market" Mr. King used to explain away his agency's dismal record.

We would submit, Mr. Chairman, that if anyone inhabits La-La land, that distinction rightfully belongs, we believe, to Mr. King and the over-populated band of managers who not only engineered OPM's chronic multi-million dollar losses, but literally managed to give away the store in their haste to find a new federal roost for themselves and their employees.

Finally, Mr. Chairman, we feel that only someone who is truly lost in La-La land would believe that merely repeating the mantra "seamless, humane transition" endlessly will be sufficient to convince anyone capable of rational thought that this transparent scam actually had anything to do with privatization.

Thank you again, Mr. Chairman, for your time, attention, and willingness to hear both sides of the story.

Sincerely,

Dennis K. Reischl

Dennis K. Reischl
Partner

**THE RETIREMENT WORKSHOP**
SEMINARS • WORKSHOPS • PERSONAL PLANNING

P.O. BOX 21101 PHILADELPHIA, PA 19114 (215) 824-3697

August 14, 1995

Honorable John L. Mica, Chairman
Subcommittee on Civil Service
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Congressman Mica:

My partner and I would like to respond to some of the issues raised at the recent hearing you held on July 26, 1995 concerning the OPM privatization of their Workforce Training Services.

We have read the testimony given before the Subcommittee on Civil Service and we agree with the other consulting firms. Our recommendation would be to:

First, revoke the Interagency Service Agreement authority that the Graduate has. This would help in "leveling the playing field" for the small business attempting to solicit training business from the federal agencies. And,

Second, request that the director of OPM clarify, through a memo to all heads of the executive branch, the intent of his agency's "privatization" of the Workforce Training Services. This would help dispel a lot of the confusion that still persists about the status of the training services.

Because of the way the "privatization" was implemented most of the federal employees that we have contacted since July 1, don't understand the intent of privatization or their responsibility with taxpayers' money.

As a small business organized as a Limited Liability Company, (**Attachment 1**), we have been and are continuing to solicit training business. Since the OPM "privatization" of their WTS my partner and I have been contacting agencies, (**Attachment 2**), to offer our training services for programs that were already scheduled between July 1 and September 30, 1995, and for any anticipated training needs for the upcoming fiscal year.

Many of the responses were so illogical that we are convinced that the confusion caused by this secret agreement between OPM and the USDA Graduated School was done on purpose in order to keep the monopoly they enjoyed. Here is a sample of the responses from federal employees responsible for purchasing goods and services:

"We don't want to upset OPM by cancelling the current agreements."
"Well, we have this verbal agreement . . . so we think we should honor it."
"I'm not sure we can legally change the agreement now."

Now, according to testimony given by the Director of OPM, any contracts that existed before the "privatization" could be reevaluated. His words, ". . . We had some existing contracts, but once we privatized our customers would be free to honor them or not, as they chose".

Our concern is that the federal employees will continue to take the path of least resistance when it comes to contracting out services; the "Interagency Service Agreement". This is one of the most abused administrative tools on the books, and the USDA Graduate School should not be allowed to have it. Also my understanding of the Federal Acquisition Regulation (FAR 6.101), is that it requires "full and open competition in soliciting offers and awarding government contracts".

The following are specific instances where contracting offices have taken "the path of least resistance" when they could have reevaluated existing contracts, but did not because of the Interagency Agreement that OPM had before "privatization", and the Graduate School currently has:

The Training & Development Branch, (U.S. Army), Bayonne, New Jersey paid the Graduate School $5,900 for a Pre-Retirement Seminar held on July 25-27, and the training course was limited to 25 participants without additional costs. Our firm's pricing for the Pre-Retirement program is $3,500 with no restriction on the number of participants. This same branch had another Pre-Retirement Seminar scheduled for August, and they used the same higher cost provider, this time they paid $7,900 for 35 participants.

The Human Resources Office, (Naval Air Station), Patuxent River, Maryland paid the Graduate School $4,400 for a Pre-Retirement Seminar held on July 11-12, and the course was limited to 25 participants without additional costs. Again our firm's pricing for the program is $3,500 with no restriction on the number of participants. This same agency has scheduled additional Pre-Retirement Seminars for August and still refuses to consider a more cost effective method of purchasing the service.

The Directories of Civilian Personnel, (Army Garrison), Frederick, Maryland paid $5,900 to the Graduate School for a Pre-Retirement Seminar held on August 8-10, limited to 25 participants without additional costs. Again our firm's pricing for this program is $3,500 with no limit on the number of participants.

Even though these dollar amounts don't have six or seven zeros, they do reflect income levels for a small business. Three or four zeros mean a lot to a two person small business partnership.

This is only a sample of what's going on. I got so frustrated that I placed a call to the Inspector General's office for the U.S. Army Garrison at Frederick. If it's the job of the IGs to "detect and prevent fraud, waste and abuse, and to promote economy, effectiveness and efficiency within agencies" then this office apparently missed the point about promoting economy and preventing waste, **(Attachment 3)**.

Another key issue mentioned at your hearing is the "strong-arm tactics" used when a government monopoly is threatened. A good example of this is what occurred on August second. I received a phone call from an Anthony Cooper who was a former division manager in the OPM Philadelphia office. He was among the employees hired by the Graduate School on July first. The reason for his call? "He heard that I was telling government agencies OPM was out of the training business and he wanted to clarify my role." Apparently some of the former OPM employees believe they are still government employees with the power to "threaten and bully" civilians.

I did give him the name and number of my attorney. I also called the Graduate School Director's office and informed them about one of their employees harassing another private contractor.

As entrepreneurs my partner and I accept the risk involved in business competition. We're willing to let the market place dictate who gets the business based on experience, quality and price; but we can't compete against organizations who get "special deals" that allow them to maintain a monopoly.

Thank you for your consideration in this matter.

Sincerely,

Manning H. Mosley III
General Manager

## Attachment 1

The partners of ***The Retirement Workshop L.L.C.*** represent over 40 years of management, supervisory and consulting experience in the public and private sectors. This includes over 15 years in the investment industry providing financial planning and investment guidance for the clients of Merrill Lynch and Waddell & Reed, Inc.

Manning H. Mosley III, the General Manager is enrolled to represent taxpayers before the Internal Revenue Service, and holds licenses with the National Association of Securities Dealers and the Pennsylvania Insurance Commission. As a training consultant he has developed and implemented seminars and orientation programs for the federal government since 1983. This also includes training programs for the 1987-88 transition to the FERS benefit system.

Audrey J. Manley, Partner was a member of OPM's Retirement and Insurance Group in Washington, D.C. and later a member of the Philadelphia Regional training staff; designing and conducting retirement seminars for federal personnel specialists and employees.

### Clients of *The Retirement Workshop* (Partial Listing)

**The Philadelphia Gas Works**, Internal Revenue Service, **Social Security Administration**, AT&T, U.S. Mint-Philadelphia, **Naval Air Warfare Centers**, Philadelphia Naval Shipyard, **Federal Executive Board-Baltimore**, U.S. Office of Personnel Management, **Military Academy-West Point**, U.S. Department of Housing and Urban Development, **Federal Women's Program Managers Council**.

### What Others Have Said . . .

*"Your vivid and informative explanation of how to determine financial goals . . . taking into account civil service retirement benefits, was highly praised by the participants".*

**Chief, Personnel Branch, Internal Revenue Service**

*"I want to express my deep appreciation for your excellent presentation and contribution to the National Army Library Institute held at West Point. I applaud your professionalism and expertise".*

**Brigadier General, U.S. Army, Dean of the Academic Board**

*"Participants rate your classroom performance as superior, making you a valued member of our extended training family in the Philadelphia Region".*

**Chief, Regional Training Center-OPM**

*"I would like to express my appreciation for the seminars you gave on the [FERS] . . . The information has given, [the participants], a better understanding of how to approach the decision making process".*

**Chief, Management and Technical Support Division, U.S. Army Material Systems Activity**

*"Your presentation on Personal Financial Planning was well done. The information my wife and I obtained will help us receive the joy that should result when you decide to give up full-time employment".*

**Office Of The Director, U.S. Small Business Administration**

*"Your presentations during the Pre-retirement Seminars have consistently received superior evaluations from the participants".*

**Director, Human Resources Office-Philadelphia Naval Shipyard**

*Attachment 2*

**THE RETIREMENT WORKSHOP**
SEMINARS • WORKSHOPS • PERSONAL PLANNING

P.O. BOX 21101 PHILADELPHIA, PA 19114 (215) 824-3697

July 5, 1995

COPY

Dear:

**On July 1, OPM ended its training business** and in the spirit and intent of privatization **you will now be able to utilize the most cost effective method of providing training** for your agency/activity, while **still maintaining the quality educational** experiences that you have scheduled in the past.

My partner, Audrey J. Manley, and I **will** **not** be associated or affiliated with any other public, non-profit, or private enterprise that will be providing training. We will be offering training directly to you.

Over the years the success of the retirement seminars has been the quality of instructors; instructors who not only have the depth of subject knowledge but the educational techniques to design and present the complex issues with clarity and understanding. Until now you had to go through a third party to obtain these services. No more third parties, you now have direct access, eliminating any "go-betweens", and greatly reducing your costs.

The response to the May survey overwhelming requested that the courses be designed to be more cost effective and provide only the most important elements of retirement/job separation planning - Financial Planning, CSRS/FERS Benefits, Social Security, and Wills & Estates - the outline of courses in the enclosed brochure reflects this request.

In order to respond to your budget needs we have eliminated the "frills" and most of the overhead expenses. The fee for the ***two day*** courses will be $3,500, and the ***one day*** courses will be $1,500. This will include all expenses, (except air fares if needed). There will be **no** restrictions set on the number of participants you can schedule for the on site courses.

The enclosed will give you more details of our training proposals. I look forward to our continued success. My partner and I stand ready to help you implement your agency/activity training goals and objectives for any scheduled retirement courses for the remaining of this fiscal year, and those in the planning stages for fiscal '96.

Sincerely,

Manning H. Mosley III,
General Manager

**DEPARTMENT OF THE ARMY**
HEADQUARTERS, FORT DETRICK
FREDERICK, MARYLAND 21702-5000

REPLY TO
ATTENTION OF

August 3, 1995

*Attachment 3*

Office of the
Inspector General

Mr. Manning Mosley
P.O. Box 21101
Philadelphia, Pennsylvania 19114

Dear Mr. Mosley:

I have researched your allegations against the US Army Garrison, Directorate of Civilian Personnel, Training Division, and the Office of Personnel Management (OPM), Training Division, and the results are as follows:

The allegation that the OPM, as of Jul 1, 1995, divested itself of the training business and was falsely operating under the Graduate School, USDA, is not substantiated. In a letter dated 2 Jun 95, OPM explained that their regional training centers would be joining the U.S. Department of Agriculture Graduate School effective Jul 1, 1995. The OPM programs will now continue with USDA being the training organization.

The allegation that the Fort Detrick Civilian Personnel Office (CPO), Training Branch, is ignoring the fact that the OPM is no longer in the training business is not substantiated. There is a Memorandum of Understanding between the General Counsel of OPM and the General Counsel of USDA in which they agreed to a transfer of responsibilities, contracts, training aspects, etc. The Fort Detrick CPO had entered into a contract with OPM in October 1994 for retirement training on August 8, 9, and 10 1995. The Graduate School, USDA, is now honoring all former OPM contracts.

You had also mentioned that the USDA training catalog for 1996 misrepresented the actual relationship between the two organizations. I have received a copy of this catalog and find no misrepresentation on USDA's part. It states, "Old friends, new partners", and shows both logos.

Fort Detrick
A
Community of Excellence

Thank you for contacting us with your concerns.

Sincerely,

BRENDA D. BAKNER
Assistant Inspector General

ONE HUNDRED FOURTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143



August 25, 1995

Mr. Manning H. Mosley, III
General Manager, The Retirement Workshop
P.O. Box 21101
Philadelphia, Pennsylvania 19114

Dear Mr. Mosley:

Thank you for your letter of August 14 providing additional information related to the Subcommittee on Civil Service's hearing on the transfer of the Office of Personnel Management's Workforce Training Services to the United States Department of Agriculture Graduate School. We appreciate this opportunity to learn of your experience, and your submission will be included in our record of this hearing.

Your concerns about the capacity of the Graduate School to provide services through interagency agreements are shared by other private sector witnesses who appeared before the Subcommittee. The Department of Agriculture's authorizing legislation is scheduled for renewal this year, and the Committee on Agriculture should be made aware of your concerns, since this legislation will not fall within the jurisdiction of the Civil Service Subcommittee.

While we recognize that the Graduate School and the agencies were inclined to honor previous agreements through the end of fiscal year 1995, OPM Director James King's response to questions at our Subcommittee hearing indicated that there would be a different competitive environment after October 1, 1995. We would appreciate learning whether these conditions actually change once existing arrangements expire.

Thanks, again, for your letter. We appreciate your interest in this Subcommittee's work and the Subcommittee will continue to monitor this transition.

Sincerely,

John L. Mica
Chairman
Subcommittee on Civil Service

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

OCT - 2 1995

Honorable John L. Mica
Chairman
Subcommittee on Civil Service
Committee on Government Reform
and Oversight
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The additional information you requested regarding the privatization of OPM's Workforce Training Service is enclosed.

If you have further questions or need additional information, please contact Mr. Ira N. Forman of our Office of Congressional Relations.

You have set a very full agenda for the Subcommittee this fall, and I look forward to testifying again.

Sincerely,

James B. King
James B. King
Director

**Reductions-in-Force**

OPM issued 202 separation notices in the Workforce Training Service (WTS) Reduction-in-Force. Of that number 71 employees were eligible to retire and 61 elected to exercise this option. If buyouts had been authorized for this purpose 131 of the targeted employees would have been eligible. However buyouts were not authorized or paid as a result of the RIF due to the privatization of training functions.

All impacted employees have been offered assistance through OPM's Career Transition Program. This program provides logistical and counseling support including, but not limited to, job search, resume/application assistance, assistance in identifying occupations in demand, and assistance in identifying training necessary/available to pursue careers in such occupations.

Of the WTS employees who participated in the OPM program, 91 percent have successfully completed transition. There are 16 individuals still in the process of transitioning. Five of those are in Washington, D.C., four are in Denver, four in the San Francisco Region, and three in the Dallas Region.

Most of those separated accepted employment with either the Graduate School or Brookings. Many others found positions in Federal agencies, including OPM. As of our latest information seven people have been hired into private sector positions. Jobs have also been located in state and local government, and at least one individual has accepted such employment. Another person has started a private business.

**Overhead Accounts**

In response to the question of how much money and how many positions were attached to the training portion of the revolving fund, we can state that common services of approximately $5.8 million were associated with the training portion of the revolving fund. Based on an average annual compensation level of $43,000, this would equate to 135 positions if all funds had been directed to personnel expenses. As you might expect with common services, there were positions supporting more than one program so this is the best way to estimate the number of positions.

Elimination of revolving fund functions will result in the elimination of related overhead activities.

**Legal Authority to Sell**

The concerns Ms. Mitchelson addressed in her testimony were that, first, OPM had no statutory authority to sell to the private sector, and second, if OPM intended to contract for the performance of its training obligations then OPM would have to conduct that procurement in accordance with the requirements of the Federal Acquisition Regulations (FAR) and the Competition in Contracting Act (CICA).

Even if OPM had the statutory authority to sell to the private sector, it still would have been required to conduct a competitive procurement. Also, the statutory authority would have to be fairly specific as to what could be sold to the public, given that there are statutory authorities that allow sale of certain items by other agencies to the public. An example is the Federal Property and Administrative Services Act of 1949, which authorizes the General Services Administration to sell government property to the public. See 40 § U.S.C. 484.

**Privatization Options Costs**

In our February "Options Paper" we estimated that the cost of outright termination of the training program would be $39.2 million, versus $34.2 million for the cost of an instrumentality, as defined in the options paper. As of June 30, 1995, we estimated that these costs would be $35.0 million and $31.3 million, respectively. Included in both June estimates is $30.2 million of "fixed costs". The fixed costs represent:

a. The Revolving Fund Training Program deficit at June 30, 1995.
b. An estimate for the cost of severance pay for the employees who would be separated from government service.
c. An estimate of the undepreciated costs of the assets which would be written off when operations cease.
d. An estimate of the uncollectible accounts receivable which we would write off.

The June estimates include variable costs of $4.8 million and $1.1 million, respectively.
The variable costs represent:

a. Estimate of the cost for incremental staff time for implementation of the instrumentality option.
b. Estimates of the incremental costs for compensation, outplacement/retraining services for affected employees and costs of representing the Agency in adverse actions arising from the implementation of the termination option.
c. The decrease in the deficit for the four months ended June 30, which we estimate would not have been realized under the termination option.

These amounts are still estimates, as full costs have not yet been realized.

**Conflicting Responsibilities**

OPM has responsibility for overseeing all civil service laws, rules and regulations including those relating to training provided to Federal employees. Training is just one area where OPM has maintained an operational program and an oversight responsibility for that program. We do not believe there is an inherent conflict between direct delivery of training and our Governmentwide responsibility to oversee training. Furthermore, OPM's direct training delivery role is becoming much less extensive due to privatization.

Also, OPM has created an organizational entity, the Office of Merit Systems Oversight and Effectiveness (OMSOE), which is charged with ensuring that government human resources management programs, including training, are carried out in accordance with applicable laws and the merit system principles. This is an independent organization that reports to the Director of OPM.

While we remain ready to expand oversight of agency training programs should it become necessary, there have not historically been significant problems in this area. The primary responsibility for determining the types and methods of training to be provided and for evaluating the results of training rests with the head of each agency. We take our oversight role very seriously, but attempting to monitor closely every aspect of every training program offered at every agency is not feasible, nor is it a wise use of the limited resources available. Rather, we set broad standards and guidelines for agencies, including OPM, to follow. The independent nature of OMSOE should allow it to exercise any oversight necessary without internal conflict or compromise. Our commitment is to ensure that any training delivered by OPM meets all applicable laws and that it focuses on the goals of improving individual and organizational effectiveness.

OPM has not encountered problems meeting the standards and guidelines. If such a problem should arise the independent nature of the OMSOE should enable us to deal with the situation without any conflict of interest.

**Scope of Privatization**

Each agency will have to make decisions on what training should be conducted by its' own employees and what training should be contracted with vendors be they private companies, individuals or governmental entities. Commercial vendors provide a substantial portion of government training already either through contracts with agencies or through individual training requests. It is likely that agencies will decide to provide some "in house" training which is agency unique or for which security arrangements preclude the use of outside trainers. Nevertheless, the downsizing of government, especially administrative positions, will lead to more training being accomplished through outside vendors.

**Extent of Transfer**

The value of the prior contractual obligations which the Graduate School is fulfilling for OPM is about $8.6 million.

OPM has/or will surplus all unneeded space, facilities, equipment and furniture in accordance with GSA regulations. GSA will dispose of the space and equipment in accordance with their procedures. OPM will not transfer any space, facilities, furniture or equipment to the Graduate School.

The estimated value of the assets to be turned over to GSA cannot be calculated until they are finally surplussed. We will provide you with that estimate when it is available.

OFFICE OF PERSONNEL MANAGEMENT
COMPARISON - TERMINATION OF TRAINING VS USDA GRADUATE SCHOOL PRIVATIZATION
ESTIMATE - AS OF JUNE 30, 1995
($s IN MILLIONS)

| | TERMINATION ESTIMATE | PRIVATIZATION ESTIMATE | VARIABLE COST ESTIMATE | |
|---|---|---|---|---|
| FIXED: | | | | |
| DEFICIT - 6/30 | $15.5 | $15.5 | $0.0 | |
| SEVERANCE PAY | 5.4 | 5.4 | 0.0 | |
| ASSET WRITEOFFS | 4.9 | 4.9 | 0.0 | |
| UNCOLLECTIBLE ACCOUNTS RECEIVABLE | 4.4 | 4.4 | 0.0 | |
| SUB TOTAL | 30.2 | 30.2 | 0.0 | |
| VARIABLE: | | | | |
| MARCH-JUNE NET PROFIT | 2.3 | | 2.3 | MARCH THROUGH JUNE PROFITS NOT REALIZED IF DECISION TO TERMINATE |
| INCREMENTAL STAFF TIME | | 0.1 | (0.1) | COST OF STAFF TIME DEVOTED TO PRIVATIZATION |
| INCREMENTAL COMPENSATION COSTS | 0.4 | | 0.4 | COMPENSATION FOR 220 @ $50k FOR 1 PAY PERIOD |
| OUTPLACEMENT/RETRAINING | 0.5 | 0.3 | 0.2 | INCREMENTAL COSTS FOR TOTAL TERMINATION |
| UNEMPLOYMENT | 0.6 | 0.3 | 0.3 | INCREMENTAL COSTS FOR TOTAL TERMINATION |
| ADVERSE ACTIONS | 1.0 | 0.4 | 0.6 | INCREMENTAL COSTS FOR TOTAL TERMINATION |
| SUB TOTAL | 4.8 | 1.1 | 3.7 | |
| ESTIMATE - 6/30 | $35.0 (1) | $31.3 (2) | $3.7 | INCREMENTAL COST OF COMPLETE TERMINATION |

(1) DIFFERENCE OF $4M FROM FEBRUARY'S ESTIMATE DUE PRIMARILY TO CHANGE IN DEFICIT
(2) DIFFERENCE OF $3M FROM FEBRUARY'S ESTIMATE DUE PRIMARILY TO NO CAPITALIZATION REQUIREMENT

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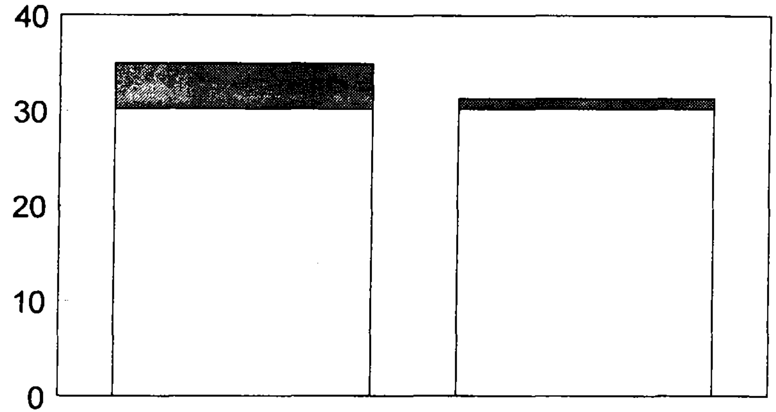
## OFFICE OF PERSONNEL MANAGEMENT
## TRAINING TERMINATION VS. PRIVATIZATION
### ($ in millions)




| | TERMINATION | PRIVATIZATION |
|---|---|---|
| FIXED | 30.2 | 30.2 |
| VARIABLE | 4.8 | 1.1 |

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