

**Statement of Senator Daniel K. Akaka**

**“Unlocking the Potential within Homeland Security:  
the New Human Resources System”**

**The Subcommittee on Oversight of Government Management,  
the Federal Workforce and the District of Columbia**

**Thursday, February 10, 2005**

Thank you Senator Voinovich. I am especially pleased to join you as the ranking member of this subcommittee. You and I enjoy a long and successful partnership.

Our hearing this morning marks the first public forum on the final personnel rules issued jointly by the Department of Homeland Security (DHS) and the Office of Personnel Management (OPM). I know there is strong disagreement over these final regulations. Many who join us today believe their input was not valued and their views were not fully addressed.

However, I want to commend DHS and OPM for the collaborative and open manner in which employee groups and stakeholders were involved in the development of these regulations. All agencies should undertake organizational change in a similar cooperative and inclusive manner.

I, too, participated in the consultation process by submitting detailed comments on the proposed regulations last year which discussed the preservation of employee rights and protections. I am pleased that some of my suggestions were included in the final regulations, which are an improvement over those proposed a year ago. The rules retain protections found in current law that permit judicial review, use the preponderance of evidence standard for employee appeals, provide for employee grievances, and govern the awarding of attorney fees.

Unfortunately, the regulations fall short of our common goal of protecting the merit principles on which our country’s federal civil service has been developed and which serve as a model throughout the world. The principles of merit and fitness call for fair and equitable treatment of employees and protection from arbitrary action, personal favoritism, and coercion for political purposes. We must avoid undermining the merit system, and we do not want a return to the spoils system. Mr. Chairman, I ask consent that section 2301 of title 5, which contains the merit systems principles, be included in the hearing record.

Without adhering to this provision of law, we may put at risk the government’s ability to attract skilled new workers and retain experienced employees who have already chosen federal service. The intent of allowing the Department of Homeland Security to implement a new personnel system is to ensure an effective and efficient workforce to meet the challenges and fulfill the missions of the Department. As such, it is essential that this and any human resources

system be both fair and perceived as fair in order to be credible. I believe the DHS regulations fall short of this goal.

The final rules will bring dramatic changes in the way DHS hires, fires, classifies, and pays employees. It will also seriously diminish collective bargaining rights of employees. The rules eliminate bargaining for a majority of routine issues and deny union input on policy implementation.

The creation of an internal Homeland Security Labor Relations Board and an International Mandatory Removal Panel, coupled with the restrictions on the Merit Systems Protection Board and the Federal Labor Relations Authority to review DHS cases, undermines the effectiveness and credibility of these procedures.

These regulations will curtail employee bargaining rights and deny opportunities for frontline employees to provide critical input on departmental programs and directives. A well-managed organization values employee input and its senior managers understand the critical role frontline workers have in protecting against mismanagement.

I am concerned that these changes could be detrimental to carrying out the Department's programs and directives successfully.

Mr. Chairman, you and I believe that the government's most important asset is the federal workforce, whose dedication – commitment – and courage – are demonstrated every day. We should value the work performed by these men and women, which requires our unwavering effort to make sure that any government reorganization is done right the first time. Nor should we ignore employee morale which plays a significant role in maintaining the DHS workforce.

Congress was told that DHS and the Department of Defense (DOD), which will release its proposed personnel system next week, needed, and I quote, "flexible and contemporary" personnel systems to meet their national security missions because title 5 was outdated and inflexible. We know from the President's FY06 budget proposal that the Administration wants to let all federal agencies use these new regulations to modify existing personnel systems.

It is premature and shortsighted to open the door to untried and untested regulations for the entire federal government given the lack of employee protection in the DHS rules. I support modernizing and strengthening civil service laws, which is one reason why I have worked with Senator Voinovich over the years to enact legislation such as categorical ranking and compensatory time for travel. Unfortunately, many agencies fail to use existing flexibilities, and most agencies lack funds to train managers on measuring performance and disciplining problem employees.

As long as these regulations and the soon-to-be released DOD rules are seen as a template for civil service reform, we need to be sure that the concerns expressed today are addressed. I want to make sure that there is a process by which employees have a real voice in policy decisions and agency missions, and I am ready to work with DHS to:

- provide increased opportunities for employees to bargain over issues such as scheduling and posting of employees,
- increase employee input in department programs,
- provide opportunities for meaningful and independent oversight, and
- develop fair, credible, and transparent performance criteria and training programs.

Thank you, Chairman Voinovich. I look forward to hearing from our distinguished panelists, and I thank all of you for being with us today.