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## **Homeland Security: Human Resources Management**

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# Homeland Security: Human Resources Management

## Summary

P.L. 107-296, Homeland Security Act of 2002 (H.R. 5005), authorizes the Secretary of Homeland Security and the Director of the Office of Personnel Management (OPM) to establish, and from time to time adjust, a human resources management (HRM) system for some or all of the organizational units of the new Department of Homeland Security (DHS). The law states specific requirements for the HRM system. Federal workforce improvements to be applied governmentwide also are authorized by P.L. 107-296.

On February 20, 2004, DHS and OPM jointly issued proposed regulations for the DHS HRM system which were published in the *Federal Register*. The proposed regulations cover job evaluation, pay and pay administration, performance management, labor-management relations, adverse actions, and appeals. Some 8,000 employees (primarily from DHS headquarters and nonmilitary members of the Coast Guard) will be covered by the system beginning in fall 2004 and the remainder of employees will be covered by the system beginning in fall 2005. The Budget of the United States for FY2005 proposes funding of \$112.5 million to develop and implement a performance-based pay system and to train personnel.

This report discusses the provisions of P.L. 107-296 as they relate to human resources management. It does not discuss provisions of the law that relate to labor management relations and collective bargaining.

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# Homeland Security: Human Resources Management

## Introduction

President Bush signed the Homeland Security Act of 2002 on November 25, 2002 and it became P.L. 107-296.<sup>1</sup> The law includes several provisions related to human resources management, including those which authorize a human resources management (HRM) system for the Department of Homeland Security and federal workforce improvements to be applied governmentwide.

DHS and OPM jointly issued proposed regulations to implement the DHS HRM system which were published in the *Federal Register* on February 20, 2004. The proposed regulations are discussed under the section entitled “Implementation of the Law.”

This report discusses the provisions of P.L. 107-296 as they relate to human resources management.<sup>2</sup> It does not discuss provisions of the law that relate to labor management relations and collective bargaining.<sup>3</sup>

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<sup>1</sup> For a legislative history, see CRS Report RL31645, *Homeland Security Act of 2002: Legislative History and Pagination Key*, by Sharon S. Gressle. See also CRS Report RS21366, *Department of Homeland Security: Organization Chart*, by Sharon S. Gressle.

<sup>2</sup> For legal analysis of this issue, see CRS Report RL31548, *Homeland Security Department Proposals: Scope of Personnel Flexibilities*, by Thomas J. Nicola. For discussion of other issues surrounding establishment of the department, see CRS Report RL31493, *Homeland Security: Department Organization and Management-Legislative Phase*, by Harold C. Relyea (hereafter referred to as CRS Report RL31493); CRS Report RL31751, *Homeland Security: Department Organization and Management-Implementation Phase*, by Harold C. Relyea; and CRS Report RL31677, *Filling Presidentially Appointed, Senate-Confirmed Positions in the Department of Homeland Security*, by Henry B. Hogue.

<sup>3</sup> For discussion of these issues, see CRS Report RL31520, *Collective Bargaining and Homeland Security*, by Jon O. Shimabukuro; and CRS Report RS21268, *Homeland Security: Data on Employees and Unions Potentially Affected*, by Gail McCallion.

## P.L. 107-296, Homeland Security Act of 2002

### Establishment of Human Resources Management System<sup>4</sup>

Title VIII, Subtitle E, §841 of P.L. 107-296 amends Title 5 *United States Code* by adding a new Chapter 97 — Department of Homeland Security to Part III, Subpart I. The new §9701(a) provides that notwithstanding any other provision of Part III, the Secretary of Homeland Security may, in regulations prescribed jointly with the Office of Personnel Management (OPM) Director, establish, and from time to time adjust, an HRM system for some or all of the organizational units of the Department of Homeland Security.

**Requirements for the HRM System.** The HRM system must be flexible and contemporary. It cannot waive, modify, or otherwise affect:

- the public employment principles of merit and fitness at 5 U.S.C. §2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;
- any provision of 5 U.S.C. §2302 relating to prohibited personnel practices;
- any provision of law referred to in 5 U.S.C. §2302(b)(1)(8)(9); or any provision of law implementing any provision of law referred to in 5 U.S.C. §2302(b)(1)(8)(9) by providing for equal employment opportunity through affirmative action; or providing any right or remedy available to any employee or applicant for employment in the civil service;
- Subparts A (General Provisions), B (Employment and Retention), E (Attendance and Leave), G (Insurance and Annuities), and H (Access to Criminal History Record Information) of Part III of Title 5 *United States Code*; and Chapters 41 (Training), 45 (Incentive Awards), 47 (Personnel Research Programs and Demonstration Projects), 55 (Pay Administration), 57 (Travel, Transportation, and Subsistence), 59 (Allowances), 72 (Antidiscrimination, Right to Petition Congress), 73 (Suitability, Security, and Conduct), and 79 (Services to Employees) of Title 5; or

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<sup>4</sup> The provisions under establishment of human resources management (HRM) system were §761 of H.R. 5005 as reported on July 24, 2002 and as passed on July 26, 2002 in the House of Representatives. They were not included in S. 2452 or in the Lieberman amendments in the nature of substitute to H.R. 5005. H.R. 5710, as passed by the House of Representatives on Nov. 13, 2002, included the HRM provisions at §841. Sen. Fred Thompson's substitute amendment (S.Amdt. 4901) to H.R. 5710, adopted by the Senate on Nov. 19, 2002, also included the provisions at §841.

- any rule or regulation prescribed under any provision of law referred to in any of the statements in bullets immediately above.

The use of a category rating system for evaluating applicants for positions in the competitive service is permitted under the new system.

**Limitations Relating to Pay.** Nothing in §9701 constitutes authority to:

- modify the pay of any employee who serves in an Executive Schedule position or a position for which the rate of basic pay is fixed in statute by reference to the Executive Schedule;
- fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under 5 U.S.C. §5307 in a year; or
- exempt any employee from the application of 5 U.S.C. §5307.

**Provisions Relating to Appellate Procedures.** It is the sense of the Congress that employees of the Department of Homeland Security are entitled to fair treatment in any appeals that they bring in decisions relating to their employment. In prescribing regulations for any such appeals procedures, the Secretary of Homeland Security and the Director of the Office of Personnel Management (OPM) should ensure that employees of the department are afforded the protections of due process and, toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

Any regulations which relate to any matters within the purview of chapter 77 (on appeals) must be issued only after consultation with the Merit Systems Protection Board and must ensure the availability of procedures which must be consistent with requirements of due process and provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department of Homeland Security. Any regulations must modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department of Homeland Security.

**Sunset Provision.** Effective five years after the conclusion of the transition period defined under §1501 of the act, all authority to issue regulations under the section (including regulations which would modify, supersede, or terminate any regulations previously issued under the section) must cease to be available.

**Effect on Personnel.** Except as otherwise provided in the Homeland Security Act of 2002, the transfer, under this Act, of full-time personnel (except special government employees) and part-time personnel holding permanent positions must not cause any such employee to be separated or reduced in grade or compensation for one year (until March 1, 2004) after the date of transfer to the Department of Homeland Security. Any person who, on the day preceding their date of transfer to the new department, held a position compensated on the Executive Schedule, and who, without a break in service, is appointed in the Department of Homeland Security to a position having duties comparable to the duties performed

immediately preceding such appointment must continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of the person's service in the new position. Any exercise of authority under the new Chapter 97, including under any system established under the chapter, must be in conformance with the requirements of this subsection.

**Sense of the Congress.** In authorizing the establishment of an HRM system for the new department, Congress stated that —

[I]t is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

[S]uch employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

[T]he 21<sup>st</sup> century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

[T]his collaborative effort will help secure our homeland.

## Federal Workforce Improvement<sup>5</sup>

Title XIII of P.L. 107-296 authorizes the establishment of Chief Human Capital Officer (CHCO) positions in federal executive branch agencies and reforms relating to federal human capital management. Discussion of these provisions follows.

**Agency Chief Human Capital Officers.** Title XIII, Subtitle A, §1301 of P.L. 107-296 provides that the title may be cited as the Chief Human Capital Officers Act of 2002. Section 1302 of the law amends Part II of Title 5 *United States Code* by adding a new Chapter 14 — Agency Chief Human Capital Officers. The new §1401 provides that the agency head must appoint or designate a CHCO who must advise and assist the agency head and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles; implement

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<sup>5</sup> The provisions under federal workforce improvement originated in the Senate version of the homeland security department legislation and were not in H.R. 5005 as reported on July 24, 2002 and as passed on July 26, 2002 by the House of Representatives. During the business meeting on the Lieberman amendment in the nature of a substitute to S. 2452 on July 24, 2002, the Senate Committee on Governmental Affairs agreed by voice vote to an amendment offered by Sen. George Voinovich, which added the federal workforce improvement provisions to the legislation. The Lieberman amendment (S.Amdt. 4467) in the nature of a substitute to H.R. 5005 was offered in the Senate on Aug. 1, 2002. Several of the amendment's provisions had been introduced by Sen. Voinovich in S. 2651 (107<sup>th</sup> Congress). See CRS Report RL31516, *Civil Service Reform Proposals: A Side-by-Side Comparison of S. 129 and H.R. 1601 (108<sup>th</sup> Congress) With Current Law*, by Barbara L. Schwemle and L. Elaine Halchin; and CRS Report RL 31518, *Federal Workforce Flexibility Act of 2003: S. 129 and H.R. 1601 (108<sup>th</sup> Congress)*, by Barbara L. Schwemle and L. Elaine Halchin.

the rules and regulations of the President and OPM and the laws governing the civil service within the agency; and carry out such functions as his or her primary duty.

The agencies covered by the CHCO provision are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, Veterans Affairs, the Environmental Protection Agency, and the National Aeronautics and Space Administration. Other agencies covered are the Agency for International Development, the Federal Emergency Management Agency, the General Services Administration, the National Science Foundation, the Nuclear Regulatory Commission, the Office of Personnel Management, the Small Business Administration, and the Social Security Administration.

Under the new §1402, CHCOs have six functions, including (1) setting the workforce development strategy of the agency; (2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan; (3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes; (4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities; (5) identifying best practices and benchmarking studies; and (6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth. CHCOs must have access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that are the property of the agency or are available to the agency; and relate to programs and operations with respect to which the CHCO has responsibilities. The CHCO may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by Chapter 14 from any federal, state, or local governmental entity.

Section 1303 of the law establishes a CHCO Council consisting of the OPM director who acts as chairperson; the OMB deputy director of management who acts as vice chairperson; and CHCOs of executive departments and any other members designated by the OPM director. The council must meet periodically to advise and coordinate the activities of the member agencies on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations. The CHCO Council must ensure that representatives of federal employee labor organizations are present at a minimum of one meeting of the council each year. The representatives are not members of the council. Each year the CHCO Council must submit a report to Congress on its activities.

Section 1304 of the law amends 5 U.S.C. §1103 by adding a subsection (c) which provides that OPM must design a set of systems, including appropriate metrics, for assessing the management of human capital by federal agencies. The systems must be defined in OPM regulations and include standards for (A) aligning agency human capital strategies with their missions, goals, and organizational objectives and integrating those strategies into agency budget and strategic plans; (B) closing skill gaps in mission critical occupations; (C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans; (D) sustaining a culture that cultivates and develops a high performing



workforce; (E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and (F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.

The CHCO provisions became effective 180 days after the act's enactment (May 24, 2003) under §1305 of the law. On May 24, 2003, OPM Director Kay Coles James announced the names of the CHCOs.<sup>6</sup> The CHCO Council conducted its first meeting on June 11, 2003, and partly focused on encouraging federal agencies to use the personnel flexibilities that have already been authorized. The July 2003 meeting included discussions on career development in the federal government. Other issues expected to be addressed by the CHCOs are recruitment and retention and continuity of operations during an emergency.

## Reforms Relating to Federal Human Capital Management

Subtitle B of Title XIII of P.L. 107-296 provides for reforms relating to federal human capital management as the following discusses.<sup>7</sup>

**Inclusion of Agency Human Capital Strategic Planning in Performance Plans and Program Performance Reports.** Section 1311 of the law amends 31 U.S.C. §1115(a)(3) to read: “provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.” With respect to each agency with a Chief Human Capital Officer (CHCO), the CHCO must prepare that portion of the annual performance plan described under 31 U.S.C. §1115(a)(3).<sup>8</sup> The section also amends 31 U.S.C. §1116(d) by adding a new paragraph (5) (old (5) redesignated) to require agencies to include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management in program performance reports.

**Reform of the Competitive Service Hiring Process.** Section 1312 of the law amends 5 U.S.C. §3304(a) by adding a new paragraph (3) providing authority

<sup>6</sup> U.S. Office of Personnel Management, *OPM Director Announces Members of the New Chief Human Capital Officers Council*, May 24, 2003. Available on the Internet at [<http://www.opm.gov/pressrel/2003/EB-CHCO.asp>].

<sup>7</sup> The Lieberman amendments in the nature of a substitute to H.R. 5005 (S.Amdt. 4467, S.Amdt. 4471) also included an additional provision under reforms relating to federal human capital management. Section 2403 of the Lieberman amendment would have amended 5 U.S.C. Subchapter V, Chapter 55 by adding a new §5550b providing that an employee would have received one hour of compensatory time off for each hour spent by the employee in travel status away from his or her official duty station, to the extent that the time spent in travel status was not otherwise compensable. OPM would have prescribed regulations to implement the provision.

<sup>8</sup> The law redesignates 31 U.S.C. §1115(f) and insert this provision as a new subsection (f).

for agencies to appoint, without regard to 5 U.S.C. §3309 through §3318, candidates directly to positions for which public notice has been given and OPM has determined that there exists a severe shortage of candidates or there is a critical hiring need. OPM regulations must prescribe criteria for identifying such positions and may delegate authority to make determinations under such criteria.

Section 1312 also adds a new §3319 — Alternative Ranking and Selection Procedures to Title 5 *United States Code*. OPM, or an agency which has been delegated examining authority, may establish category rating systems for evaluating applicants for positions in the competitive service. Applicants may be evaluated under two or more quality categories based on merit, consistent with OPM regulations, rather than be assigned individual numerical ratings.<sup>9</sup> Within each quality category, applicants who are eligible for veterans' preference must be listed ahead of applicants who are not eligible for preference. Except for applicants for scientific and professional positions at GS-9 (equivalent or higher), each applicant who is a disabled veteran with a compensable service-connected disability of 10% or more must be listed in the highest quality category.<sup>10</sup>

An appointing official may select any applicant in the highest quality category, or, if fewer than three candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories. The appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of 5 U.S.C. §3317(b) or §3318(b), as applicable, are satisfied.<sup>11</sup>

Each agency that establishes a category rating system must submit in each of the three years following that establishment, a report to Congress on the system that must include information on the number of employees hired under the system; the system's impact on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and the way in which managers were trained in the administration of the system.<sup>12</sup>

OPM could prescribe regulations to carry out the provisions.<sup>13</sup>

**Student Volunteer Transit Subsidy.** Section 1314 of the law amends 5 U.S.C. §7905(a)(1) to provide that a student who provides voluntary services is eligible for a transit subsidy.

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<sup>9</sup> §3319(a).

<sup>10</sup> §3319(b).

<sup>11</sup> §3319(c)(1)(2).

<sup>12</sup> §3319(d).

<sup>13</sup> §3319(e). See U.S. Office of Personnel Management, "Organization of the Government for Personnel Management, Overseas Employment, Temporary and Term Employment, Recruitment and Selection for Temporary and Term Appointments Outside the Register, Examining Systems, and Training," *Federal Register*, vol. 68, no. 114, June 13, 2003, pp. 35265-35270.

Subtitle D of Title XIII of P.L. 107-296 amends current law provisions on academic training.

**Academic Training.** Section 1331 of the law amends 5 U.S.C. §4107. The section, renamed “Academic degree training,” provides that an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of the training from appropriated or other available funds. The training must contribute significantly to meeting an identified agency training need, to resolving an identified agency staffing problem, or to accomplishing goals in the agency’s strategic plan; be part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the agency’s strategic goals; and be accredited and provided by a college or university that is accredited by a nationally recognized body.<sup>14</sup>

In exercising the authority, an agency must, consistent with the merit system principles at 5 U.S.C. §2301(b)(2) and (7), consider the need to maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in government service and provide employees effective education and training to improve organizational and individual performance. The agency also must assure that the training is not for the sole purpose of providing an employee with an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the degree is a basic requirement; and assure that no authority is exercised on behalf of any employee occupying or seeking to qualify for a noncareer appointment in the Senior Executive Service; or appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making, or policy-advocating character. The agency must, to the greatest extent practicable, facilitate the use of online degree training.<sup>15</sup>

P.L. 107-296 also includes provisions on voluntary separation incentive payments (commonly referred to as buyouts) at §1313, to repeal the requirement that members of the Senior Executive Service be recertified at §1321, and to amend the 5 U.S.C. §5307 limitation on total compensation for employees in certain positions from Executive Schedule level I (\$175,700 in 2004) to the Vice President’s annual salary (\$203,000 in 2004) at §1322.

OPM published regulations to implement the human capital management reforms in the June 13, 2003, *Federal Register*.<sup>16</sup>

Subtitle H, §881 of P.L. 107-296 mandates that the Secretary of Homeland Security, in consultation with the OPM Director, review the pay and benefit plans of each agency whose functions are transferred to the new department. Within 90 days

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<sup>14</sup> §4107(a).

<sup>15</sup> §4107(b).

<sup>16</sup> U.S. Office of Personnel Management, “Organization of the Government for Personnel Management, Overseas Employment, Temporary and Term Employment, Recruitment and Selection for Temporary and Term Appointments Outside the Register, Examining Systems, and Training,” *Federal Register*, vol. 68, no. 114, June 13, 2003, pp. 35265-35270.

after the Act's enactment (Sunday, February 23, 2003), the secretary must submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the department, especially among law enforcement personnel, that are inconsistent with the merit system principles set forth at 5 U.S.C. §2301. The report, which consists of two tables transmitted with a cover letter, was submitted to Congress on March 5, 2003. According to Secretary of Homeland Security Tom Ridge, DHS plans

to address the issue of pay disparities within the new human resources system design. This report accordingly focuses on identifying differences in pay and benefits among employees transferring to DHS without reaching specific conclusions about whether those differences constitute unwarranted disparities or making specific recommendations regarding how those differences might be eliminated. Those findings and recommendations will be included in our HRM systems proposal which will be submitted to you later this year [now expected in spring 2004].<sup>17</sup>

Testifying before the House Committee on Government Reform's Subcommittees on Civil Service and Agency Organization and Criminal Justice, Drug Policy, and Human Resources July 23, 2003, hearing on federal law enforcement personnel, Kay Frances Dolan, director of human resources policy at DHS, stated that addressing the issue of disparities in pay and benefits among law enforcement personnel is "[o]ne of the most significant challenges" the department faces. Differences in policies on overtime pay, commuting time pay, Sunday pay, night pay, holiday premium pay, premium pay caps, and creditable pay for retirement purposes are exacerbated by the effort to integrate various agencies into DHS, she said.<sup>18</sup>

## **Implementation of the Law**

The Bush Administration published a Reorganization Plan for the department on November 25, 2002.<sup>19</sup> Homeland Security Director Tom Ridge, nominated by

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<sup>17</sup> Letter from Tom Ridge to Rep. J. Dennis Hastert, Speaker of the House of Representatives, Mar. 5, 2003. The letter transmits two tables to Congress entitled "Employees Transferring to the Department of Homeland Security Who Have Law Enforcement Duties" and "Summary of Differences By Type of Pay or Benefit."

<sup>18</sup> Testimony of Kay Frances Dolan, director of human resources policy at the Department of Homeland Security, before the hearing of the House Subcommittees on Civil Service and Agency Organization and Criminal Justice, Drug Policy, and Human Resources on Federal Law Enforcement Personnel in Post 9/11 Era, July 23, 2003. (Unpublished)

<sup>19</sup> White House Office, "Department of Homeland Security Reorganization Plan," Nov. 25, 2002, Washington, DC. The reorganization plan is available on the Internet at [[http://www.whitehouse.gov/news/releases/2002/11/reorganization\\_plan.pdf](http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf)]. Also see CRS Report RL31493.

President Bush to head the department, conducted a town hall meeting with future employees of the department on December 17, 2002.<sup>20</sup>

The Senate Committee on Governmental Affairs conducted a confirmation hearing for Mr. Ridge on January 17, 2003. During the hearing, Mr. Ridge said that he would “solicit the advice from men and women who work in the new department ... about how to improve day-to-day operations that they have been involved in for years, if not decades” and “pledged to create a merit-based personnel system.”<sup>21</sup> The Senate confirmed him as the Secretary of Homeland Security on January 22, 2003<sup>22</sup> and he was sworn into office by President Bush on January 24, 2003.

Some 22 agencies employing some 160,000 on-board employees were transferred to the new homeland security department on March 1, 2003.<sup>23</sup> The Budget of the United States for FY2005 states that the department has 183,000 employees in 2004.<sup>24</sup>

In December 2002, OPM, in conjunction with the Department of Homeland Security, established several working groups to begin developing a personnel system for the department. The working groups focused on the issues of performance appraisals, job classifications, pay, labor management, and discipline and employee appeals. OPM initially stated that it hoped to have a draft proposal of the new system ready by June 1, 2003,<sup>25</sup> but *Government Executive* reported on March 18, 2003 that an OPM official stated that this deadline would not be met.<sup>26</sup> According to the report:

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<sup>20</sup> White House Office, “Remarks by Governor Tom Ridge, Homeland Security-Designate in a Town Hall Meeting for Future Employees of the Department of Homeland Security,” Dec. 17, 2002, Washington, DC. The remarks are available on the Internet at [<http://www.whitehouse.gov/news/releases/2002/12/print/20021217-14.html>].

<sup>21</sup> Jason Peckenpaugh, “Ridge Vows to Set Performance Targets for Homeland Security,” Jan. 17, 2003. Available on the Internet at [<http://www.govexec.com/>].

<sup>22</sup> By a unanimous vote of 94 yeas (Vote No. EX. 13).

<sup>23</sup> In a Jan. 7, 2003 memorandum, Office of Management and Budget Director Mitchell E. Daniels, Jr. directed the agencies being transferred to the Department of Homeland Security to document key financial, logistical, and human resources for transfer. Entities transferring on Mar. 1, 2003 were directed to submit their information on appropriations and funds and personnel and positions by Feb. 14, 2003. An attachment to the memorandum provided the format for listing personnel and positions. See U.S., Executive Office of the President, Office of Management and Budget, Memorandum for the Heads of Selected Departments and Agencies, Determination Orders Organizing the Department of Homeland Security, M-03-04, Jan. 7, 2003. The memorandum is available on the Internet at [<http://www.whitehouse.gov/omb/memoranda/print/m03-04.html>].

<sup>24</sup> U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government Fiscal Year 2005* (Washington: GPO, 2004), p. 161.

<sup>25</sup> Tim Kauffman, “OPM Promises Homeland Security Personnel System by June,” *Federal Times*, Dec. 2, 2002. Available on the Internet at [<http://federaltimes.com/>].

<sup>26</sup> Tanya N. Ballard, “Report Lacks Details on Merging Homeland Personnel Systems,” Mar. 18, 2003. Available on the Internet at [<http://www.govexec.com/>].

Until recently, the department didn't have officials in place to make key decisions to get the design process rolling, Jeffrey Sumberg, OPM's principal policy adviser on labor relations said ... [He] said that [OPM director] James and Homeland Security officials would meet with federal union leaders to agree on a process for setting up the new system. Once they agree on the process, actual planning will begin.<sup>27</sup>

*Government Executive* reported that department officials and union leaders agreed on the numbers of personnel to be involved with and the basic timeline for the design of the new personnel system.<sup>28</sup>

On April 1, 2003, Secretary of Homeland Security Tom Ridge and OPM Director Kay Coles James announced that they were launching the process for designing a new human resources management system for the Department of Homeland Security. According to the press release on the announcement, "The goal is to create a 21<sup>st</sup> century personnel system that is flexible and contemporary while preserving basic civil service principles and the merit system."<sup>29</sup> Creating the system will involve this process:

A Senior Review Committee will develop personnel system options to be considered by the Secretary and the Director and their senior staff. The committee will include, among others, the Under Secretary for Management, Department program leaders, officials from OPM, and major union leaders. A small number of academics and policy experts will serve as ex officio members who will advise the committee on specific issues.<sup>30</sup>

A Design Team will be tasked with conducting research and outreach to provide a full range of options for the Senior Review Committee to consider. The team will include DHS program managers from all directorates and disciplines, union and employee representatives and human resource specialists from DHS and OPM. Expert consultants from the private sector will also support the team.<sup>31</sup>

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<sup>27</sup> Ibid.

<sup>28</sup> Brian Friel, "New Department Begins Pay and Personnel Overhaul," April 1, 2003. Available on the Internet at [<http://www.govexec.com>].

<sup>29</sup> U.S. Department of Homeland Security, Department of Homeland Security Personnel System Fact Sheet, April 1, 2003. Hereafter referred to as DHS Fact Sheet.

<sup>30</sup> The members of the Senior Review Committee are Undersecretary for Management Janet Hale; Secret Service Director Ralph Basham; Chief of Administrative Services J. Michael Dorsey; Director of the Bureau of Citizenship and Immigration Services Eduardo Aguirre, Undersecretary of Transportation for Security James Loy; Commissioner of Customs and Border Protection Robert Bonner; American Federation of Government Employees President John Gage; National Treasury Employees Union President Colleen Kelley; National Association of Agriculture Employees President Michael Randall; and OPM officials — Senior Adviser for Homeland Security Steven Cohen, Senior Policy Advisor to the Director and Chief Human Capital Officer Doris Hausser, Associate Director of the Division for Strategic Human Resources Policy Ron Sanders, and Associate Director for Human Capital Leadership and Merit System Accountability Marta Perez.

<sup>31</sup> DHS Fact Sheet. According to the Washington Post, the design team is composed of (continued...)

In announcing the launching of the design process for the new personnel system, Under Secretary for Management Janet Hale said that “We want this process to be very inclusive, and we will seek out and listen to DHS employees and managers, and experts both inside and outside of Government.”<sup>32</sup>

The initial meetings of the design team began on April 1, 2003. The team “will deliver a full range of options to the Senior Review Committee.”<sup>33</sup> Field meetings were conducted by the design team in several cities including El Paso, Atlanta, Miami, Norfolk, Detroit, New York City, Seattle, Los Angeles, Washington, DC, and Baltimore, locales with the largest concentrations of DHS employees. Testimony was received from more than 2,000 DHS employees, including 44 employee focus groups and 10 manager focus groups.<sup>34</sup> The field meetings concluded in late June 2003. On July 25, 2003, the design team reported to the Senior Review Committee on those field meetings. Pay, performance management, and labor-management relations were among the issues discussed. Steven Cohen, senior adviser for homeland security at OPM, was quoted at the time by *Federal Times* about the design process: “It really is wide open.... There’s nothing that’s off the table.”<sup>35</sup> The meeting also was intended to “outline the research strategy, present guiding principles for the design, and provide guidance to the Design Team.”<sup>36</sup>

On October 3, 2003, the design team presented its final report with 52 options for the new human resources management system to the Senior Review Committee.<sup>37</sup> None of the options represented the consensus of the design team and none covered the Senior Executive Service (SES). Modifications to Title 5 *United States Code* pay and performance management provisions for the SES will be addressed through a separate process. The options were grouped into two categories — Pay, Performance Management and Classification, and Labor Relations, Adverse Actions, and Appeals. Among the options in the first category were those to continue or amend the current General Schedule pay system; establish a compensation system based on pay bands; create a system based on longevity, competency, and performance; and continue or

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<sup>31</sup> (...continued)

some 60 members. Stephen Barr, “Work Begins on Rules for New Department — and Perhaps All of Government,” *The Washington Post*, April 2, 2003, p. B2. The team is co-chaired by Kay Frances Dolan, director of human resources policy at DHS, and Steven Cohen, senior adviser for homeland security at OPM.

<sup>32</sup> U.S. Department of Homeland Security, Personnel System Design Launch Memo from Under Secretary Janet Hale, April 1, 2003. Available on the Internet at [<http://www.dhs.gov>].

<sup>33</sup> DHS Fact Sheet.

<sup>34</sup> Bridgette Blair, “Experts Debate Pay Rules for New Personnel System,” *Federal Times*, Aug. 18, 2003. Available on the Internet at [<http://www.federaltimes.com>].

<sup>35</sup> *Ibid.* See also Tanya N. Ballard, “Homeland Security May Retain Standard Pay System,” *Government Executive*, July 25, 2003. Available on the Internet at [<http://www.opm.gov>].

<sup>36</sup> Testimony of Kay Frances Dolan, July 23, 2003.

<sup>37</sup> Options for DHS Human Resources Management Systems are available on the Internet at [[http://www.opm.gov/Strategic\\_Management\\_of\\_Human\\_Capital/HC\\_Systems/DHS/index.asp](http://www.opm.gov/Strategic_Management_of_Human_Capital/HC_Systems/DHS/index.asp)].

amend the existing performance management system. Options under the second category included continuing the current labor relations procedures, providing for national level bargaining, continuing or amending the current adverse actions and appeals procedures, creating an Ombudsman Office, and establishing procedures for alternative dispute resolution.

According to the Foreword that accompanied the options list, the options were developed

based on the assumption that DHS employees covered by the pay, performance, classification, labor relations, adverse actions, and appeals chapters of title 5, United States Code, will remain covered by those provisions unless and until DHS and OPM jointly exercise their authority to waive those title 5 provisions and establish alternative rules. The joint DHS/OPM authority to establish new systems for DHS generally does not reach to provisions of law outside title 5 ... In some cases, however, laws authorizing separate pay and classification systems for DHS employees not covered by title 5 provide considerable administrative discretion for modification of those systems.<sup>38</sup>

The Senior Review Committee examined and deliberated the options at a public meeting conducted October 20 through 22, 2003. A summary of the proceedings of the meeting was posted on OPM's website on December 5, 2003.<sup>39</sup> The summary document states that "a great deal of consensus" formed around six core design and process principles. These principles are that the new HRM system (1) must be mission centered, and its design must facilitate performance; (2) must be fair, transparent, and credible; (3) must establish broad general principles that could be tailored to specific parts of DHS; (4) must be developed collaboratively with involvement by employees and their unions; (5) will take time and require substantial investment; and (6) will require employee development and training.<sup>40</sup> The committee presented the design team options and the proceedings of its meeting to the Secretary and the Director in late autumn 2003.

On February 20, 2004, DHS and OPM jointly issued proposed regulations for the DHS HRM system which were published in the *Federal Register*.<sup>41</sup> The proposed regulations cover job evaluation, pay and pay administration, performance management, labor-management relations, adverse actions, and appeals. The regulations are open for comment for 30 days. Comments must be received on or before March 22, 2004, and may be made via the Internet or by U.S. mail.

The proposed regulations include the following details.

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<sup>38</sup> Foreword to Options for DHS Human Resources Management Systems, p. 3.

<sup>39</sup> DHS Human Resources Management System, Senior Review Committee Meeting, Held October 20-22, 2003, *Summary Report of Proceedings*, October 2003.

<sup>40</sup> *Ibid.*, pp. 3-5.

<sup>41</sup> U.S. Department of Homeland Security and U.S. Office of Personnel Management, "Department of Homeland Security Human Resources Management System," *Federal Register*, vol. 69, no. 34, Feb. 20, 2004, pp. 8029-8071.



The new personnel system will cover about 110,000 of DHS' 180,000 employees (about 70,000 DHS employees will not be covered by the system). Among the employees who will not be covered by the new system are military personnel, screeners with the Transportation Security Administration, individuals in Executive Schedule and Presidentially appointed with Senate confirmation positions, administrative law judges, and employees of the Office of Inspector General. Blue-collar workers under the Federal Wage System and members of the Senior Executive Service will keep their current pay and classification systems, but will be covered by all other applicable provisions of the new personnel system. The system will be implemented in phases. Some 8,000 employees (primarily from DHS headquarters and nonmilitary members of the Coast Guard) will be covered beginning in fall 2004 and the remainder of employees will be covered beginning in fall 2005.

The proposed regulations make no changes to the Civil Service merit system principles and prohibited personnel practices. They also do not change current policies on retirement, health or life insurance, or leave entitlements. Current overtime pay policies will not be changed at this time, but overtime policies will continue to be reviewed. DHS officials stated that jobs will not be eliminated with transition to the new system.

For job evaluation, the proposed regulations would organize the department's jobs into 10-15 clusters by major occupational groups, such as law enforcement, administration, and intelligence. With regard to the pay structure, the current 15 grades of the General Schedule pay system would be abolished and within-grade pay increases based on time in a pay grade would no longer be provided. Instead, within each occupational cluster, open pay bands with no steps would be established. Each pay band would have typically four levels - entry level, full performance, senior expert, and first level supervisor. Salaries within the pay bands would be set based on local labor market rates. Employees would progress through a pay band based on performance or enhanced skill level. Promotion to another pay band would be achieved through skill assessment and/or competition.

As for the pay adjustments, for each occupational cluster, there would be an annual pay adjustment based on labor market conditions, the department's mission, availability of funds, and the level of pay adjustments received by federal employees in other agencies. There also would be a locality pay adjustment based on an assessment of pay rates for similar private sector jobs in the same geographic area. A "fully successful" or better performance rating would be required to receive these pay adjustments. In addition, employees who meet organizational expectations would receive a performance-based pay increase; higher increases would go to outstanding performers. Gainsharing, special act awards, and other performance bonuses also could be paid. Exact payouts for pay adjustments and awards will depend on funding for DHS. The formula to award performance-based pay adjustments has not yet been defined.

Employees would not lose any salary as they move into the new system. Some employees may receive a pay raise to compensate them for the time that they have accumulated toward a within-grade pay adjustment.

With regard to performance management, the proposed regulations would tie employee performance appraisal to the DHS mission and to specific performance standards based on job assignments. There would be three or four rating levels: “unacceptable,” “fully successful,” and at least one level above “fully successful.” The performance management system would not have quotas or a forced distribution of performance ratings. Managers and supervisors will be trained to appraise employee performance. A Performance Review Board will oversee the performance management system. Performance ratings could be grieved and unacceptable performance ratings that result in adverse actions may be appealed.

The House Subcommittee on Civil Service and Agency Reorganization and the Senate Subcommittee on Financial Management, the Budget, and International Security have scheduled a February 25, 2004, joint hearing on the proposed HRM system.

The Budget of the United States for FY2005 proposes funding of \$133.5 million to implement the new HRM system at DHS. The proposed funding includes \$112.5 million to develop and implement performance-based pay and to train personnel, and \$21 million to create the information technology framework for the new system.<sup>42</sup>

A website, available to the public, has been established for the department.<sup>43</sup> To keep employees informed about the creation of the department, an internal website also has been established.

According to the agency, it has “entered into Memoranda of Agreements (MOAs) with other federal Departments to ensure that all management, administrative and other support functions for the incoming organizational elements continue after March 1 and until DHS establishes the necessary infrastructure to perform these functions.”<sup>44</sup>

On May 5, 2003, President Bush announced his intention to appoint Ronald James as the Chief Human Capital Officer (CHCO) for the Department of Homeland Security. P.L. 107-296 created the CHCO position as a presidential appointment not requiring confirmation. The CHCO reports to the Secretary of Homeland Security, or to another department official as the secretary may direct. He ensures that all employees of the department are informed of their rights and remedies under 5 U.S.C. Chapters 12 (Merit Systems Protection Board, Office of Special Counsel, and Employee Right of Action) and 23 (Merit System Principles) by participating in the certification program of the Office of Special Counsel, achieving certification from the OSC of the department’s compliance with 5 U.S.C. 2302(c); and informing

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<sup>42</sup> Press Release, “Department of Homeland Security Announces FY2005 Budget in Brief,” Feb. 2, 2004.

<sup>43</sup> See [<http://www.dhs.gov>].

<sup>44</sup> U.S. Department of Homeland Security, Department of Homeland Security Facts for March 1, 2003.

Congress of such certification not later than 24 months after the enactment of the Homeland Security Act of 2002 (November 25, 2004).<sup>45</sup>

Laura Callahan, who had been appointed as deputy chief information officer (CIO) at DHS on April 1, 2003, was placed on paid administrative leave by the department on June 5, 2003, after her academic credentials were questioned by several Members of Congress. Her resume apparently listed a bachelor's degree, a master's degree, and a doctoral degree (computer information systems) from Hamilton University in Evanston, Wyoming. The university is apparently not licensed by the state of Wyoming or accredited by the U.S. Department of Education.<sup>46</sup> The deputy CIO position at DHS was posted on the USAJOBS website on July 7, 2003.<sup>47</sup>

During an April 29, 2003 House Subcommittee on Civil Service and Agency Organization hearing and a May 6, 2003 House Committee on Government Reform hearing, both on proposed personnel flexibilities for the Department of Defense, several Members of Congress stated that they had, thus far, learned few details about the establishment of the new human resources management system at the Department of Homeland Security. A hearing on human capital management at DHS conducted on October 29, 2003 by the House Civil Service and Agency Organization Subcommittee heard testimony from the Chief Human Capital Officer at DHS, the co-chair of the Senior Review Committee and OPM Senior Advisor for Homeland Security, and union representatives. The DHS and OPM testimonies again provided few details about the new HRM system and instead focused on the design team's collaborative process.

On July 31, 2002, the Partnership for Public Service issued a preliminary report which recommended that the Department of Homeland Security adopt pay banding and critical pay authorities, category ranking systems for hiring, and voluntary separation incentive payments.<sup>48</sup> A January 2003 report by the Brookings Institution noted the "vast array of largely incompatible management systems, including at least 80 different personnel systems mixed in and among the agencies" being transferred to the new department.<sup>49</sup>

An August 25, 2003, special report prepared by the Transactional Records Access Clearinghouse, a data gathering, data research, and data distribution

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<sup>45</sup> P.L. 107-296, Nov. 25, 2002, 6 U.S.C. 344, 116 Stat. 2219.

<sup>46</sup> Linda Rosencrance, "Deputy CIO at Homeland Security Department Placed on Leave," *ComputerWorld*, June 6, 2003, [<http://www.computerworld.com>].

<sup>47</sup> "Callahan's Job on the Market," *Washington Technology*, July 21, 2003. Available on the Internet at [<http://www.washingtontechnology.com>].

<sup>48</sup> Partnership for Public Service, *Homeland Security: Winning the War for Talent to Win the War on Terror* (Washington: The Partnership), July 31, 2002, pp. 24-25.

<sup>49</sup> Daalder, Ivo H., et. al., *Protecting the American Homeland: One Year On* (Washington: The Brookings Institution, Jan. 2003), pp. 14-15. Available on the Internet at [<http://www.brook.edu/views/papers/daalder/20030101.htm>].

organization associated with Syracuse University, examined staffing at DHS. Among the report's findings are the following.

- There were 160,201 employees on the DHS payroll as of March 2003. One out of every 12 workers in the federal government works for DHS.
- An internal OPM report documented employees transferring to DHS as including Transportation Security Administration (66,998), Immigration and Naturalization Service (35,761), Customs Service (21,601), Federal Emergency Management Agency (8,292), U.S. Coast Guard (6,171 civilians), Secret Service (5,929), Office of the Secretary of Health and Human Services (5,826), Import and entry inspection functions of the Animal Plant and Health Inspection Service (2,160), and Federal Protective Service (1,175). Employees also were transferred from more than 12 smaller federal offices.
- “Other than the move to DHS, re-organization within the agencies so far appears to be modest or non-existent.”
- Government records list more than 300 different occupational specialities within DHS. Eight out of 10 full-time employees are classified under these titles: safety technicians, plant protection and quarantine, general inspection investigation and compliance, compliance inspection and support, criminal investigating, immigration inspection, customs inspection, and border patrol agents. The report characterizes these occupations as “various kinds of ‘watchers’ or investigators.”
- Four out of every 10 full-time DHS employees are airport screeners who are classified as safety technicians. The agency employs 8,997 full-time employees as criminal investigators and 641 as intelligence officers. It also employs a wide range of full- and part-time support staff, including 324 funeral directors, 128 pharmacists, 55 general anthropologists, 41 fingerprint specialists, and 30 chaplains.
- For full-time employees, administrative law judges earn the most (\$135,994 per year). Criminal investigators earn an average of \$68,673. The average salary for airport screeners is \$29,195.<sup>50</sup>

After researching mergers in the public sector, Peter Frumpkin, an Associate Professor of Public Policy at Harvard University, identified various implementation and follow up steps in his August 2003 report entitled *Making Public Sector Mergers Work: Lessons Learned*. Among these are the following.

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<sup>50</sup> Transactional Records Access Clearinghouse, *Department of Homeland Security — The First Months*, August 25, 2003. Printed from the Internet at [<http://trac.syr.edu/tracreports/index.html>].

**Implementing the Merger:** Make sure that whoever is making executive decisions with regard to the merger understands all the cultural issues involved. Communicate openly with constituency groups and other public sector agencies. Find clear benefits for employees and publicize them. Build something new, rather than adding two systems together.

**Following Up on the Merger:** Keep the focus on the customer. Prepare for potentially high transaction costs due to the merger. Be sensitive to lingering effects of physical and cultural consolidation. Reform or standardize performance measurement methods. Always be ready to adjust.<sup>51</sup>

Mr. Frumkin states that communication, quick implementation, creating a new culture, and adjusting over time are critical areas to be considered in implementing mergers in the public sector. With regard to changing an organization's culture, he writes that:

Breaking free from existing routines, traditions, and customs does not mean obliterating everything and starting anew. Instead, it requires the selective adoption of those cultural artifacts that are positive and the elimination of those that are counterproductive. What emerges is a new organizational culture that is fresh and welcoming to all.<sup>52</sup>

The General Accounting Office (GAO) evaluated the process being used to design the new human resources management system at the DHS and reported in September 2003 that it is "collaborative and facilitates participation of employees."<sup>53</sup> GAO recommended that "once the [DHS] strategic plan is completed the Secretary of DHS and the Director of OPM ensure that the options selected for the new human capital system support and facilitate the accomplishment of the department's strategic goals and objectives." The DHS Secretary is advised to "ensure the message communicated across DHS components is consistent, and [to] maximize opportunities for two-way communication and employee involvement through the completion of the design process, the release of the system options, and implementation, with special emphasis placed on seeking feedback and buy-in of front-line employees in the field."<sup>54</sup>

## **Human Resources Management at Selected Agencies Transferred to DHS**

An issue that might be considered as the new personnel system is implemented is the kind of automated human resources and payroll systems the various agencies

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<sup>51</sup> IBM Center for The Business of Government, *Making Public Sector Mergers Work: Lessons Learned*, by Peter Frumkin (Arlington, VA: Aug. 2003), p. 29.

<sup>52</sup> *Ibid.*

<sup>53</sup> U.S. General Accounting Office, *Human Capital DHS Personnel System Design Effort Provides for Collaboration and Employee Participation*, GAO report GAO-03-1099 (Washington: Sept. 2003), p. 5.

<sup>54</sup> *Ibid.*, p. 27.

proposed for transfer to the new department currently have and how those systems might be merged if a consolidation of HRM services were to occur.

Prior to the March 1, 2003, transfer of employees to DHS, human resources management (HRM) offices were providing a full range of services at six of the eight large agencies being transferred to the new department. The Transportation Administration Service Center (TASC) of the Department of Transportation provided human resource services to the Transportation Security Administration (TSA) on a fee-for-service basis. Federal Protective Services had a personnel representative in the central office in Washington, DC, and in each of its 11 regional offices. HRM offices and the number of their employees included:

- Animal and Plant Health Inspection Service (APHIS) — 180 employees located in Washington, DC; Riverdale, MD; and Minneapolis, MN;
- Federal Emergency Management Agency (FEMA) — 93 employees;
- TSA — 15 employees, but anticipate having 45 to 50 employees;
- Coast Guard — 400 employees at headquarters and 2,600 to 2,700 employees working in the field at seven training centers, a pay center, and the personnel and recruiting commands;
- Customs Service — 268 full-time permanent employees;
- INS — approximately 552 full-time permanent and temporary employees in Washington, DC; and approximately 200 employees located in Burlington, VT; Dallas, TX; and Laguna Niguel, CA; and
- Secret Service — 407 employees (the office is allocated 471 positions).

All the HRM offices, except TSA, reported that they provided various personnel services that generally included staffing, position classification, payroll preparation, employee relations, labor relations, processing of personnel actions, benefits (retirement, health insurance, life insurance) counseling, and development of policies on various personnel issues.<sup>55</sup>

In his testimony before the Senate Committee on Governmental Affairs and the House Committee on Government Reform on June 20, 2002, then-Governor Ridge stated: “In order to respond to rapidly changing conditions, the Secretary [of homeland security] would need to have great latitude in re-deploying resources, both human and financial. The Secretary should have broad reorganizational authority in

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<sup>55</sup> Information provided to CRS by human resources management offices by telephone, June 12-13 and 17-19, 2002.

order to enhance operational effectiveness, as needed.”<sup>56</sup> A consolidated human resources management office to serve some of the agencies transferred to a new department would, perhaps, be an example of such a redeployment. If so, there would be the potential that not all current HRM employees would be needed to perform personnel services under the new system. Details about possible retraining or reassignments of personnel have not been provided.

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<sup>56</sup> Written statement of Governor Tom Ridge, June 20, 2002. Available on the Internet at [[http://www.senate.gov/~gov\\_affairs/hearings.htm](http://www.senate.gov/~gov_affairs/hearings.htm)].