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HUMAN CAPITAL

DOD's Civilian Personnel Strategic Management and the Proposed National Security Personnel System

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DOD'S CIVILIAN PERSONNEL STRATEGIC MANAGEMENT AND THE PROPOSED NATIONAL SECURITY PERSONNEL SYSTEM

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Highlights

Highlights of GAO-03-493T, a testimony before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Senate Committee on Governmental Affairs

Why GAO Did This Study

People are at the heart of an organization's ability to perform its mission. Yet, a key challenge for the Department of Defense (DOD), as for many federal agencies, is to strategically manage its human capital. With about 700,000 civilian employees on its payroll, DOD is the second largest federal employer of civilians in the nation. Although downsized 38 percent between fiscal years 1989 and 2002, this workforce has taken on greater roles as a result of DOD's restructuring and transformation. DOD's proposed National Security Personnel System (NSPS) would provide for wide-ranging changes in DOD's civilian personnel pay and performance management, collective bargaining, rightsizing, and other human capital areas. The NSPS would enable DOD to develop and implement a consistent DOD-wide civilian personnel system. Given the massive size of DOD, the proposal has important precedent-setting implications for federal human capital management and OPM.

This testimony provides GAO's preliminary observations on aspects of DOD's proposal to make changes to its civilian personnel system and discusses the implications of such changes for governmentwide human capital reform. Past reports have contained GAO's views on what remains to be done to bring about lasting solutions for DOD to strategically manage its human capital. DOD has not always concurred with our recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-03-493T.
To view the full testimony, including the scope and methodology, click on the link above.
For more information, contact Derek B.Stewart at (202) 512-5140 or Stewartd@gao.gov.

What GAO Found

DOD's lack of attention to force shaping during its downsizing in the early 1990s has resulted in a workforce that is not balanced by age or experience and that puts at risk the orderly transfer of institutional knowledge. Human capital challenges are severe in certain areas. For example, DOD has downsized its acquisition workforce by almost half. More than 50 percent of the workforce will be eligible to retire by 2005. In addition, DOD faces major succession planning challenges at various levels within the department. Also, since 1987, the industrial workforce, such as depot maintenance, has been reduced by about 56 percent, with many of the remaining employees nearing retirement, calling into question the longer-term viability of the workforce. DOD is one of the agencies that has begun to address human capital challenges through strategic human capital planning. For example, in April 2002, DOD published a department wide strategic plan for civilians. Although a positive step toward fostering a more strategic approach toward human capital management, the plan is not fully aligned with the overall mission of the department or results oriented. In addition, it was not integrated with the military and contractor personnel planning.

We strongly support the concept of modernizing federal human capital policies within DOD and the federal government at large. Providing reasonable flexibility to management in this critical area is appropriate provided adequate safeguards are in place to prevent abuse. We believe that Congress should consider both governmentwide and selected agency, including DOD, changes to address the pressing human capital issues confronting the federal government. In this regard, many of the basic principles underlying DOD's civilian human capital proposals have merit and deserve serious consideration. At the same time, many are not unique to DOD and deserve broader consideration.

Agency-specific human capital reforms should be enacted to the extent that the problems being addressed and the solutions offered are specific to a particular agency (e.g., military personnel reforms for DOD). Several of the proposed DOD reforms meet this test. At the same time, we believe that Congress should consider incorporating additional safeguards in connection with several of DOD's proposed reforms. In our view, it would be preferable to employ a government-wide approach to address certain flexibilities that have broad-based application and serious potential implications for the civil service system, in general, and the Office of Personnel Management (OPM), in particular. We believe that several of the reforms that DOD is proposing fall into this category (e.g., broad-banding, pay for performance, re-employment and pension offset waivers). In these situations, it may be prudent and preferable for the Congress to provide such authorities on a governmentwide basis and in a manner that assures that appropriate performance management systems and safeguards are in place before the new authorities are implemented by the respective agency.

However, in all cases whether from a governmentwide authority or agency specific legislation, in our view, such additional authorities should be implemented (or operationalized) only when an agency has the institutional infrastructure in place to make effective use of the new authorities. Based on our experience, while the DOD leadership has the intent and the ability to implement the needed infrastructure, it is not consistently in place within the vast majority of DOD at the present time.

Chairman Voinovich, Senator Durbin, and Members of the Subcommittee,

It is a pleasure to appear before the Subcommittee to discuss the status and future of Department of Defense's (DOD) civilian workforce—an integral part of DOD's "total force". DOD uses the term total force to refer to the different categories of workers that it uses to accomplish its mission. The total force includes military personnel, both active and reserve, federal civilian personnel, and private-sector contract personnel. Collectively, these people are at the heart of the department's ability to perform its mission.

DOD is in the midst of a major transformation and it has undertaken a number of related initiatives to transform its forces and fundamentally improve its business operations. As part of DOD's transformation process, the Secretary of Defense and senior civilian and military leaders have committed to adopt a capabilities-based approach to acquisition planning and to improve the linkage between overall strategy and individual investments. At the same time, DOD has embarked on a series of efforts to achieve strategic savings and improve its business processes, including strengthened financial management, support infrastructure reforms to include base closures, information technology modernization, logistics reengineering, and more strategic human capital management. Clearly, Secretary Rumsfeld and top DOD leadership is committed to transforming the very way that DOD conducts business. In that regard, I am pleased to serve as an observer to the Defense Business Practice Implementation Board. Notwithstanding these ongoing efforts, GAO has reported a range of DOD challenges for many years. Importantly, DOD also is covered by 9 of the 25 areas on our January 2003 high-risk list, including the area of strategic human capital management.

DOD's proposed National Security Personnel systems (NSPS) recognizes that, as GAO has stated and the experiences of leading public sector organizations here and abroad have found, strategic human capital management must be the centerpiece of any serious government transformation effort. The NSPS would provide for wide-ranging changes in DOD's civilian personnel pay and performance management, collective bargaining, rightsizing, and a variety of other human capital areas. The NSPS would enable DOD to develop and implement a consistent, DOD-wide civilian personnel system bringing together the many disparate systems that exist today.[1]

We strongly support the concept of modernizing federal human capital policies both within DOD and for the federal government at-large. Providing reasonable flexibility to management in this critical area is appropriate. At the same time, incorporating adequate safeguards in order to maximize the chance for success and prevent abuse is essential. The federal personnel system is clearly broken in

[1]DOD officials have said that the Department's current thinking is that NSPS will be based on practices were outlined in an April 2, 2003, *Federal Register 68 Fed. Reg.* 16,119-16,142 (2003) notice asking for comment on DOD's plan to integrate all of its current science and technology reinvention laboratory demonstration projects under a single human capital framework consistent with the best practices DOD identified.

critical respects—designed for a time and workforce of an earlier era and not able to meet the needs and challenges of our rapidly changing and knowledge-based environment. In this regard, many of the basic principles underlying DOD's civilian human capital proposals have merit and deserve serious consideration. At the same time, many are not unique to DOD and deserve broader consideration.

We believe that Congress should consider both governmentwide and selected agency, including DOD, changes to address the pressing human capital issues confronting the federal government. Agency-specific human capital reforms should be enacted to the extent that the problems being addressed and the solutions offered are specific to a particular agency (e.g., military personnel reforms for DOD). In addition, targeted reforms should be considered in situations where additional testing or piloting is needed for fundamental governmentwide reform. Several of the proposed DOD reforms meet this test. At the same time, we believe that Congress should consider incorporating additional safeguards in connection with several of DOD's proposed reforms.

In our view, it would be preferable to employ a government-wide approach to address certain flexibilities that have broad-based application and serious potential implications for the civil service system, in general, and the Office of Personnel Management (OPM), in particular. We believe that several of the reforms that DOD is proposing fall into this category (e.g., broad-banding, pay for performance, re-employment and pension offset waivers). In these situations, it may be prudent and preferable for the Congress to provide such authorities on a governmentwide basis and in a manner that assures that appropriate performance management systems and safeguards are in place before the new authorities are implemented by the respective agency. This approach is not intended to delay action on DOD's or any other individual agency's efforts, but rather to accelerate needed human capital reform throughout the federal government in a manner that assures reasonable consistency on key principles within the overall civilian workforce. This approach also would provide agencies with reasonable flexibility while incorporating key safeguards to help maximize the chances of success and minimize the chances of abuse and failure. Finally, this approach also would help to maintain a level playing field among federal agencies in competing for talent.

However, in all cases whether from a governmentwide authority or agency specific legislation, in our view, such additional authorities should be implemented (or operationalized) only when an agency has the institutional infrastructure in place to make effective use of the new authorities. This institutional infrastructure includes, at a minimum, a human capital planning process that integrates the agency's human capital policies, strategies, and programs with its program goals and mission, and desired outcomes; the capabilities to effectively develop and implement a new human capital system; and importantly, the existence of a modern, effective, and credible performance management system that includes adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, to ensure the fair, effective, and non-discriminatory implementation of the system. Thus, for

example, while it is imperative that we take steps to better link employee pay to performance across the federal government, how it is done, when it is done, and the basis on which it is done, can make all the difference in whether or not such efforts are successful. Based on our experience, while the DOD leadership has the intent and the ability to implement the needed infrastructure, it is not in place within a vast majority of DOD at the present time. In that regard, last week the House Government Reform Committee marked-up H.R. 1836, which incorporates the DOD civilian personnel reforms. I was pleased to see that a number of safeguards, including several along the lines we have been suggesting, were included in the mark-up. I'm also pleased to see that the Committee added an amendment that removed language allowing DOD authority to waive the anti-nepotism requirements. As Congress continues to consider DOD's proposed reforms, I believe it is very important that such safeguards and protections be included in future legislation. I will now discuss each of these three elements of an institutional infrastructure in more detail.

Strategic Human Capital Planning and Management at DOD

With almost 700,000 civilian employees on its payroll, DOD is the second largest federal employer of civilians in the nation, after the Postal Service. Defense civilian personnel, among other things, develop policy, provide intelligence, manage finances, and acquire and maintain weapon systems. Given the current global war on terrorism, the role of DOD's civilian workforce is expanding, such as participation in combat support functions that free military personnel to focus on warfighting duties for which they are uniquely qualified. Career civilians possess "institutional memory," which is particularly important in DOD because of the frequent rotation of military personnel and the short tenure of the average political appointee. However, since the end of the Cold War, the civilian workforce has undergone substantial change, due primarily to downsizing, base realignments and closures, competitive sourcing initiatives, and DOD's changing missions. For example, between fiscal years 1989 and 2002, DOD reduced its civilian workforce by about 38 percent, with an additional reduction of about 55,000 personnel proposed through fiscal year 2007.

Without a strategic view, DOD's approach to civilian downsizing in the early 1990s relied primarily on voluntary turnover and retirements and varying freezes on hiring authority. DOD also used existing authority for early retirements to encourage voluntary separations at activities facing major reductions in force. The fiscal year 1993 National Defense Authorization Act authorized a number of transition assistance programs for civilian employees, including financial separation incentives, or "buyouts," to induce the voluntary separation of civilian employees and reduce authorized positions. DOD has credited the use of separation incentives, early retirement authority, and various job placement opportunities as ways to avoid nearly 200,000 involuntary demotions and separations.

While the tools available to DOD to manage its civilian downsizing helped mitigate the adverse effects of force reductions, DOD's approach to the reductions was not oriented toward shaping the makeup of the workforce. During our work on the early phases of the DOD downsizing, some DOD officials voiced concerns about what was perceived to be a lack of attention to identifying and maintaining a balanced basic level of skills needed to maintain in-house capabilities as part of the defense industrial base. Historically, DOD has not focused on human capital planning for civilians to the extent that it has for its military force. In 2000, the Defense Science Board reported that senior civilian and military leaders have devoted "far less" attention to civilian personnel challenges than the challenges of maintaining an effective military force.

The consequences of the lack of attention to force shaping can be seen in the current age distribution of the civilian workforce in comparison to the distribution at the start of the drawdown. Today's workforce is older and more experienced; and not surprisingly, 58 percent of the workforce will be eligible for early or regular retirement in the next 3 years.

The net effect is a workforce that is not balanced by age or experience and that puts at risk the orderly transfer of institutional knowledge. The continuing increase in the number of retirement-age employees, as well as the loss of experienced personnel which can result from ongoing emphasis on public-private sector competition involving commercial activities under OMB Circular A-76, could make it difficult for DOD to infuse its workforce with new and creative ideas and develop the skilled civilian workers, managers, and leaders it will need to meet future mission requirements. With senior management attention, strategic leadership and results-oriented performance management, however, DOD can rebuild its civilian workforce to meet future requirements for specific skills and experience. The work of the congressionally mandated Commercial Activities Panel, which I chaired, noted the importance of government human capital practices in sourcing decisions. In fact, one of the ten principles adopted by the Panel to guide future sourcing decisions, stipulates that sourcing and related policies should be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing workforce.[2]

This principle underscores the importance of considering human capital concerns in connection with the sourcing process. While it does not mean that agencies should refrain from outsourcing due to its impact on the affected employees, it does mean that the federal government's sourcing policies and practices should consider the potential impact on the government's ability to attract, motivate, retain, and reward a high-performing workforce both now and in the future.

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[2] The Panel, mandated by section 832 of the Defense Authorization Act for fiscal year 2001, required the Comptroller General to convene a panel of experts to study the process used by the federal government to make sourcing decisions. After a yearlong study, the Panel published its report on April 30, 2002. See Commercial Activities Panel, *Improving the Sourcing Decisions of the Government: Final Report*, (Washington, D.C.: April 30, 2002). The report can be found on GAO's web site at www.gao.gov under the Commercial Activities Panel heading.

Regardless of the result of specific sourcing decisions, it is important for the workforce to know and believe that they will be viewed and treated as valuable assets.

The Acquisition and Logistics Workforces

These human capital challenges are even more severe in certain areas, such as acquisition and logistics. The acquisition area is a part of the workforce that the United States has relied upon to maintain the technological superiority that plays an essential role in the national security strategy. According to DOD's Acquisition 2005 task force report, the rate of reduction in the civilian acquisition workforce has substantially exceeded that of the rest of the DOD workforce. In the past decade, DOD has downsized its acquisition workforce by almost half. More than 50 percent of the remaining acquisition workforce will be eligible to retire by 2005; and in some occupations, DOD projects that half of the current employees will have retired by 2006.

The task force report made a series of recommendations to DOD in October 2000. In April 2002, we reported on DOD's plans to implement these recommendations. We noted that DOD has made progress in laying a foundation for reshaping its acquisition workforce. Taking a strategic approach to human capital can be challenging itself. First, it requires a shift in how the human resources function is perceived, from strictly a support function to one integral to an agency's mission. Second, agencies may also find that they need some of the basic tools and information to develop strategic plans, such as accurate and complete information on workforce characteristics. Consequently, DOD views implementation of the recommendations as long-term efforts with specific outcomes taking years to achieve.

As a result of downsizing initiatives, the increased use of the private sector for logistics support activities, and other factors, the civilian workforce in DOD's industrial activities--maintenance depots, arsenals, and ammunition manufacturing plants--was reduced by about 56 percent between 1987 and 2002. The result is that many in this workforce—which comprises about twelve percent of DOD's total civilian workforce—are currently eligible to retire and about 43 percent will be eligible to retire by 2009. In recent years, we have specifically identified deficiencies in DOD's planning for depot maintenance operations. In October 2001, we reported that DOD had no overall plan that tied investments in depot maintenance facilities and equipment with future workloads and, in turn, with human capital needs.[3] We recommended, among other things, that DOD develop a depot strategic plan that would delineate future workloads to be accomplished in each of the services' maintenance depots. We recently reported

[3] U.S. General Accounting Office, *Defense Logistics: Actions Needed to Overcome Capability Gaps in the Public Deport System*, GAO-02-105 (Washington, D.C.: Oct. 12, 2001).

that while DOD has initiated some action toward developing a depot strategic plan, the department still has no depot strategic plan. We also reported that while DOD has initiated some action toward developing a depot strategic plan, the department still has no depot strategic plan and the future of these activities is uncertain.[4]

Without the benefit of a departmentwide strategic depot plan, the services' efforts to develop comprehensive depot strategic plans vary. For example, the Army, Air Force and Marine Corps have developed depot plans, but the Army plan has been suspended, the Air Force plan does not address one depot nor identify specific new work, and the Marine Corps plan has not been approved and has no approval schedule. While the Navy has not developed a strategic depot plan, two of the Navy components—the shipyard and aviation communities—have begun strategic planning efforts.

In addition, we reported that the services have also not developed and implemented strategic workforce plans that will position the civilian industrial workforce to meet future requirements. Except for the Air Force, the services industrial activities' workforce plans are mostly short-term rather than strategic. The plans are also lacking in other areas that OPM guidance and high-performing organizations identify as key to successful workforce planning. Specifically, they (1) usually do not assess the competencies needed for current and future workforces; (2) do not develop comprehensive retention plans that identify employees critical to accomplishment of organizational goals, develop an infrastructure to assist workers in becoming long-term assets of the organization, or provide meaningful incentives to retain valued employees; and (3) sometimes do not develop performance measure for evaluating workforce plans to identify corrective actions needed to improve planning efforts.

In our April 2003 report we made recommendations to strengthen strategic workforce planning for DOD industrial activities. DOD concurred with most of our recommendations and highlighted the importance the department places in human capital management. In non-concurring with two of our recommendations, DOD officials said that DOD's new NSPS will provide all the flexibilities and authorities needed to maintain and enhance human resources competencies, capabilities, and performance across the department. We believe it is premature to assume that all its provisions will be approved and that the new system will address our concerns.

DOD's Development of Strategic Human Capital Plans

Over the past few years, DOD has recognized the need for strategic human capital management. Most recently the Quadrennial Defense Review Report (2001)

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[4] U.S. General Accounting Office, *DOD Civilian Personnel: Improved Strategic Planning Needed to Help Ensure Viability of DOD's Civilian Industrial Workforce*, GAO-03-472 (Washington, D.C.: Apr. 30, 2003).

called upon DOD to modernize and transform its civilian force so that it is as equally agile, flexible, and innovative as a transformed U.S. military force. In April 2002, DOD published a department wide strategic plan, the *Civilian Human Resources Strategic Plan*, to set forth its vision to "design, develop, and implement human resource policies, strategies, systems, and tools to ensure a mission-ready civilian workforce that is motivated to excel." As we reported in March 2003, top-level leaders in the Air Force, the Marine Corps, the Defense Contract Management Agency, and the Defense Finance and Accounting Service have initiated planning efforts and are working in partnership with their civilian human capital professionals to develop and implement civilian strategic plans; such leadership, however, was increasing in the Army and not as evident in the Navy.[5]

DOD's issuance of its departmentwide civilian human capital plan begins to lay a foundation for strategically addressing civilian human capital issues; however, DOD has not provided guidance on aligning the component-level plans with the department-level plan to obtain a coordinated focus to carry out the Secretary of Defense's transformation initiatives in an effective manner. High-level leadership attention is critical to developing and directing reforms because, without the overarching perspective of such leaders as Chief Operating Officers and the Chief Human Capital Officers, reforms may not be sufficiently focused on mission accomplishment, and without their support, reforms may not receive the resources needed for successful implementation. We have previously reported that the concept of a Chief Operating Officer (COO) could offer the leadership to help elevate attention on key management issues and transformational change, integrate these various efforts, and institutionalize accountability for addressing management issues and leading transformational change both within and between administrations[6]. In our view, DOD is a prime candidate to adopt this COO concept. In addition, if Congress provides DOD with many of the flexibilities it is seeking under the NSPS, the basis for adding a COO position at DOD would be even stronger.

The human capital strategic plans we reviewed in our March report, for the most part, lacked key elements found in fully developed plans. Most of the civilian human capital goals, objectives, and initiatives were not explicitly aligned with the overarching missions of the organizations. Consequently, DOD and defense components cannot be sure that strategic goals are properly focused on mission achievement. Also, none of the plans contained results-oriented performance measures to assess the impact of their civilian human capital initiatives (i.e.,

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[5] U.S. General Accounting Office, *DOD Personnel: DOD Actions Needed to Strengthen Civilian Human Capital Strategic Planning and Integration with Military Personnel and Sourcing Decisions*, GAO-03-475, (Washington, D.C.: Mar. 28, 2003).

[6] U.S. General Accounting Office, *Highlights of a GAO Roundtable: The Chief Operating Officer Concept: A Potential Strategy To Address Federal Governance Challenges*, GAO-03-192SP (Washington, D.C.: Oct. 4, 2002).

programs, policies, and processes). Thus, DOD and the components cannot gauge the extent to which their human capital initiatives contribute to achieving their organizations' missions. Finally, the plans did not contain data on the skills and competencies needed to successfully accomplish future missions; therefore, DOD and the components risk not being able to put the right people, in the right place, and at the right time, which can result in diminished accomplishment of the overall defense mission.

Moreover, the civilian plans we reviewed did not address how the civilian workforce will be integrated with their military counterparts or with sourcing initiatives. DOD's three human capital strategic plans—two military and one civilian—were prepared separately and were not integrated to form a seamless and comprehensive strategy and did not address how DOD plans to link its human capital initiatives with its sourcing plans, such as efforts to outsource non-core responsibilities. The components' civilian plans acknowledge a need to integrate planning for civilian and military personnel—taking into consideration contractors—but have not yet done so. Without an integrated strategy, DOD may not effectively and efficiently allocate its scarce resources for optimal readiness.

In our March report we recommended, among other things, that DOD improve future revisions and updates to the departmentwide strategic human capital plan by more explicitly aligning its elements with DOD's overarching mission, including performance measures, and focusing on future workforce needs. DOD only partially concurred with our recommendation, and, as explanation stated that the recommendation did not recognize the involvement in and impact of DOD's Quadrennial Defense Review on the development of the departmentwide plan. We also recommended that DOD assign a high priority to and set a target date for developing an integrated departmentwide plan for both military and civilian workforces that takes into account contractor roles and sourcing initiatives. DOD did not concur with this recommendation and stated that it presently has both a military and civilian plan; the use of contractors is just another tool to accomplish the mission, not a separate workforce, with separate needs, to manage. Finally, we wish to note that the Under Secretary of Defense for Personnel and Readiness made a point that DOD is in the early stages of its strategic planning efforts.[7] We recognize this and believe that our recommendations represent opportunities that exist to strengthen its developing planning efforts.

The Capabilities Needed to Effectively Develop and Implement Human Capital Flexibilities

Our work has identified a set of key practices that appear to be central to the effective use of human capital authorities. These practices, which are shown in

[7] U.S. General Accounting Office, *DOD Personnel: DOD Comments on GAO's Report on DOD's Civilian Human Capital Strategic Planning*, GAO-03-690R (Washington, D.C.: Apr. 18, 2003).

figure 1, center on effective planning and targeted investments, involvement and training, and accountability and cultural change.[8]

Figure 1: Key Practices for Effective Use of Human Capital Flexibilities

Plan strategically and make targeted investments	• Obtain agency leadership commitment • Determine agency workforce needs using fact-based analysis • Develop strategies that employ appropriate flexibilities to meet workforce needs • Make appropriate funding available
Ensure stakeholder input in developing policies and procedures	• Engage the human capital office • Engage agency managers and supervisors • Involve employees and unions • Use input to establish clear, documented, and transparent policies and procedures
Educate managers and employees on the availability and use of flexibilities	• Train human capital staff • Educate agency managers and supervisors on existence and use of flexibilities • Inform employees of procedures and rights
Streamline and improve administrative processes	• Ascertain the source of existing requirements • Reevaluate administrative approval processes for greater efficiency • Replicate proven successes of others
Build transparency and accountability into the system	• Delegate authority to use flexibilities to appropriate levels within the agency • Hold managers and supervisors directly accountable • Apply policies and procedures consistently
Change the organizational culture	• Ensure involvement of senior human capital managers in key decision-making processes • Encourage greater acceptance of prudent risk taking and organizational change • Recognize differences in individual job performance and competencies

Source: GAO.

Congress should consider the extent to which an agency is capable of employing these practices before additional human capital flexibilities are implemented. In the context of NSPS, Congress should consider whether and to what extent DOD has used and is using these practices as it develops and implements its new civilian personnel system.

Adequate Safeguards, Reasonable Transparency, and Appropriate Accountability

In the absence of the right institutional infrastructure, granting additional human capital authorities will provide little advantage and could actually end up doing damage if the new flexibilities are not implemented properly. Our work looking at DOD's strategic human capital planning efforts and our work looking across the federal government at the use of human capital flexibilities and related human capital efforts underscores the critical steps that DOD needs to take to properly develop and effectively implement any new personnel authorities. As I mentioned at the outset, should Congress decide to provide DOD additional authorities, a set of adequate safeguards, including reasonable transparency and appropriate accountability mechanisms to ensure the fair and merit-based

[8] U.S. General Accounting Office, *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, GAO-03-2 (Washington, D.C.: Dec. 6, 2002).

implementation and application of the new authorities is important to maximize the chances of success and minimize the chances of abuse. Similarly, Congress should consider ensuring that safeguards are in place for any additional governmentwide human capital authorities that are provided to agencies.

The following provides some safeguards Congress should consider in regards to the proposed NSPS. First, I offer some suggestions for safeguards for the overall design for the NSPS. Second, I suggest some safeguards for specific elements of the NSPS. In that regard, last week the House Government Reform Committee marked-up H.R. 1836, which incorporates the DOD civilian personnel reforms. I was pleased to see that a number of safeguards, including several along the lines suggested below, were included in the mark-up. I'm also pleased to see that the Committee added an amendment that removed language allowing DOD authority to waive the anti-nepotism requirements. As Congress continues to consider DOD's proposed reforms, I believe it is very important that such safeguards and protections be included in future legislation.

Safeguards for the DOD's Overall Human Capital Program

Authority To Act Independently From The Director Of The Office Of Personnel Management

The DOD proposal would allow the Secretary of Defense to jointly prescribe regulations with the Director of OPM to establish a flexible and contemporary human resources management system for DOD—NSPS. The joint issuance of regulations is similar to that set forth in the Homeland Security Act of 2002[9] between the Secretary of Homeland Security and the Director of OPM for the development of the DHS human resources management system. However, unlike the legislation creating Department of Homeland Security (DHS), the Defense Transformation for the 21st Century Act would allow the Secretary of Defense to waive the requirement for joint issuance of regulations if, in his or her judgment, it is "essential to the national security"—which is not defined in the act. Congress may want to consider eliminating this provision to make the NSPS consistent with the Homeland Security Act of 2002. If Congress decides to move forward with the provision, it should consider the following safeguards:

Potential Safeguards:

- Provide statutory criteria to define what is "essential to the national security", or stipulate that such criteria should be developed in consultation with the Director, Office of Management and Budget.
- Require that the criteria consider Federal Labor Relation Authority (FLRA) administrative case law decisions. FLRA has ruled on several cases involving the application of 5 U.S.C. 7112 where the FLRA determines the appropriate units for labor organization representation.

[9]Pub. L. No. 107-296, Nov. 25, 2002.

- Require that the Director of OMB or the President certify the determination by the Secretary of Defense that an action is "essential to the national security", rather than giving the sole authority to the Secretary. This would provide for an institutionally independent "tie-breaker" approach to such issues.

Strategic Human Capital Planning

Under the DOD proposal, key governmentwide provisions of the Homeland Security Act concerning strategic human capital management and planning, such as the creation of a Chief Human Capital Officer (CHCO) Act can be waived. Congress should consider requiring that key governmentwide provisions of the Homeland Security Act concerning strategic human capital management and planning be nonwaiveable by DOD. This would include such provisions as:

- Appointment of a DOD Chief Human Capital Officer.
- Requirement that DOD's human capital planning be included in Government Performance and Results Act performance plans and programs performance reports.
- Adherence to strategic human capital management standards set by OPM. (The Homeland Security Act requires OPM to design a set of systems to assess the management of human capital by federal agencies, including appropriate metrics.)

Employee Involvement

The proposed Defense Transformation for the 21st Century Act includes provisions intended to ensure collaboration with employee representatives in the planning, development, and implementation of a human resources management system. Such provisions include allowing employees to comment on, and review the proposed human capital system and provides for a mediation procedure if agreement cannot be reached. The provisions are generally consistent with those required of DHS. In addition, the legislation provides that the Secretary may at his or her sole and exclusive discretion engage in national level bargaining.

Potential Safeguards:

- Explicitly state the intent of Congress on the importance of allowing DOD employees to participate in a meaningful way in the creation of any human resources management system affecting them. This was done for DHS in the Homeland Security Act.
- Require DOD to submit disagreements with the union over the design of the human resources system after 30 days to an independent body for some level of assistance in resolution rather than provide that the Secretary may implement and inform Congress. As the bill is now written, if an agreement has not been reached after 30 days, and the Secretary determines that further consultation with employee representatives will not produce agreement, the

Secretary may implement any or all parts of the proposal, including any modifications made in response to the recommendations. The Secretary is to notify Congress of the implementation of any part of the proposal, any changes made to the proposal as a result of recommendations from the employee representatives, and the reasons why implementation is appropriate.
- Provide guidance as to appropriate issues to be resolved at the national and local levels.

Employee Appeals Procedures

The proposal states that the appeals procedures shall ensure due process protections and expeditious handling, to the maximum extent possible. In this regard, the proposal provides that presently applicable appeals procedures should only be modified insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving DOD employees. This provision is substantially the same as a similar provision in the Homeland Security Act of 2002 allowing DHS to prescribe regulations for employee appeals related to their employment. Similar to the requirement for the Secretary of DHS, the Secretary of Defense would likewise be required to consult with MSPB prior to issuing regulations. However, neither the Homeland Security Act nor the proposed legislation expressly requires that employee appeals be heard and decided by the MSPB. There is also no express provision for judicial review of decisions regarding employee appeals decisions.

Potential safeguards:
- Require that DOD establish an independent appeals authority if it decides not to use MSPB.
- Require that the qualifications, experience, and terms of appointment of the members be specified in the statute or established jointly in consultation with MSPB.
- Expressly state that decisions of any DOD appeals board would be subject to judicial review.

Evaluation and Reporting

DOD has stated that it would continue its evaluation of the science and technology reinvention laboratory demonstration projects when they are integrated under a single human capital framework. An evaluation and reporting requirement would facilitate congressional oversight of NSPS, allow for any mid-course corrections in its implementation, and serve as a tool for documenting best practices and sharing lessons learned with employees, stakeholders, other federal agencies, and the public.

Potential safeguards:

- Require DOD to fully track and periodically report on its implementation and results of its new human capital program. Such reporting could be on a specified timetable with sunset provisions.
- Require DOD to undertake evaluations that are broadly modeled on the evaluation requirements of OPM's personnel demonstration program. Under the demonstration project authority, agencies must evaluate and periodically report on results, implementation of the demonstration project, cost and benefits, impacts on veterans and other EEO groups, adherence to merit principles, and extent to which the lessons from the project can be applied elsewhere, including governmentwide. Provide that such reports be done jointly, in consultation with, or subject to review and approval of OPM.

Safeguards for Specific DOD Human Capital Policies and Practices

Performance Management and Pay Reform

DOD has said that the cornerstone of the NSPS will be a broad banded performance management and pay for performance systems. Performance-based pay flexibility for broad-based employee groups should be grounded in performance management systems that are capable of supporting pay and related decisions. DOD's personnel demonstration projects clearly provide helpful insights and valuable lessons learned in connection with broad banding and pay for performance efforts. At the same time these projects and related DOD efforts involve less than 10 percent of DOD's civilian workforce and expanding these approaches to the entire department will require significant effort and likely need to be implemented in phases over several years.

Potential safeguards:

- Establish statutory standards that an agency must have in place before it can implement broad banding or a more performance-based pay program:
- Assure that the agency's performance management systems (1) link to the agency's strategic plan, related goals, and desired outcomes, and (2) result in meaningful distinctions in individual employee performance. This should include consideration of critical competencies and achievement of concrete results.
- Involve employees, their representatives, and other stakeholders in the design of the system, including having employees directly involved in validating any related competencies, as appropriate.
- Assure that certain predecisional internal safeguards exist to help achieve the consistency, equity, nondiscrimination, and nonpoliticization of the performance management process (e.g., independent reasonableness reviews by Human Capital Offices and/or Offices of Opportunity and Inclusiveness or their equivalent in connection with the establishment and implementation of a

performance appraisal system, as well as reviews of performance rating decisions, pay determinations, and promotion actions before they are finalized to ensure that they are merit-based; internal grievance processes to address employee complaints; and pay panels whose membership is predominately made up of career officials who would consider the results of the performance appraisal process and other information in connection with final pay decisions).

- Assure reasonable transparency and appropriate accountability mechanisms in connection with the results of the performance management process (e.g., publish overall results of performance management and pay decisions while protecting individual confidentiality, and report periodically on internal assessments and employee survey results).
- Require DOD to have OPM certify that a modern, effective, credible, and, as appropriate, validated performance management system with adequate safeguards, including reasonable transparency and appropriate accountability mechanisms, is in place to support more performance-based pay and related personnel decisions, before DOD could implement a new system. OPM should be required to act on any individual certifications within prescribed time frames (e.g., 30-60 days).

SES Pay and Performance

The proposed NSPS, similar to the Homeland Security Act, would increase the current total allowable annual compensation limit for senior executives up to the Vice President's total annual compensation. However, the Homeland Security Act provides that OPM, with the concurrence of the Office of Management and Budget, certify that agencies have performance appraisal systems that, as designed and applied, make meaningful distinctions based on relative performance. NSPS does not include such a certification provision.

Potential Safeguards:

- Require OPM to certify that the DOD SES performance management system makes meaningful distinctions in performance and employs the other practices used by leading organizations to develop effective performance management systems, before DOD could increase the annual compensation limit for senior executives.
- As part of that certification, require that DOD show how its SES performance management approaches are consistent with leading organizations', particularly in regards to establishing a clear, direct connection between SES performance ratings and rewards and the degree to which the organization achieved its goals.

SES Non-Career Appointments

The DOD proposal would allow the Secretary to waive the provisions of Title 5 that limits non-career SES appointments to 25 percent of an agency's total SES. We believe that Congress should consider eliminating the proposed waiver authority or otherwise place alternative numerical or percent of SES workforce caps on DOD's authority to make non-career SES appointments.

Attracting Key Talent

The legislation has a number of provisions designed to give DOD flexibility to help obtain key critical talent. Specifically, it allows DOD greater flexibility to (1) augment the use of temporary appointment authorities, (2) hire experts and consultants and pay them special rates and (3) define benefits for overseas employees. Specifically, the Secretary would have the authority to establish a program to attract highly qualified experts in needed occupations with the flexibility to establish the rate of pay, eligibility for additional payments, and terms of the appointment. These authorities give DOD considerable flexibility to obtain and compensate individuals and exempt them from several provisions of current law.

Potential Safeguards:

- Place numerical or workforce percentage caps on the use of these provisions.
- Require these provisions only be used to fill critically needed skills that are identified as such in DOD's strategic human capital plan.
- Place limits on the terms of individuals appointed under certain of the authorities noted above (e.g., the experts and consultants). Allow for limited re-appointment.
- Periodically report on the use of such authorities.

Personal Services Contracts

The legislation gives DOD greater flexibility to enter into personal services contracts for experts and consultants for national security missions, including for service outside of the United States. Such contracts may waive the Ethics in Government Act of 1978, chapter 73 of Title 5 US Code (which includes conduct and the Hatch Act), and section 27 of the Office of Federal Procurement Policy Act (which includes limitations of subsequent employment for contracting officials). We believe that Congress should consider eliminating the waiver authority for some or all of the waiver provisions.

Reduction in Force

The legislation could also allow DOD to revise Reduction-in-Force (RIF) rules to place greater emphasis on an employee's performance. DOD has indicated that it will be considering for application DOD-wide, personnel practices that were identified in the April 2, 2003, *Federal Register* notice. This notice describes revised RIF procedures that change the order in which employees would be retained under a RIF order and does not directly provide for length of service to be considered. Specifically, employees would be placed on a retention list in the following order: type of employment (i.e., permanent, temporary), level of performance, and veterans' preference eligibility (disabled veterans will be given additional priority), which would reduce the order in which veterans' preference is currently provided.

Potential safeguards:

- See the safeguards related to modern, effective and credible performance management systems above.
- Specify in statute—rather than leaving it to DOD to determine--the criteria for the release of competing employees in a reduction in force. These may include: type of employment, (e.g., permanent, temporary), performance, veterans' preference, and length of service.

Rightsizing and Organizational Alignment

The proposal also provides that annuitants who receive an annuity from the Civil Service Retirement and Disability Fund and become employed in a position within the Department of Defense shall continue to receive their unreduced annuity. This and selected other NSPS provisions will clearly have incremental budget implications for which we have not seen any related cost estimate.

Potential Safeguards:

- Require additional financial accountability by requiring DOD to consult with OPM on the planned number of reemployed annuitants.
- Place numerical or FTE percentage limitations on the use of these provisions.
- Require these provisions only be used to fill critically needed skills that are identified as such in DOD's strategic human capital plan.
- Place limits on the terms of individuals appointed under this authority. Allow for limited re-appointment.
- Periodically report on the use of such authorities.

Summary Observations

We at GAO strongly support transforming DOD and the federal government at large. In fact, we are in the vanguard of the federal government's transformation and we plan to stay there. We applaud Secretary Rumsfeld and DOD's leadership's efforts to transform how DOD does business.

Many of the basic principles underlying DOD's civilian human capital proposal have merit and deserve serious consideration. The proposal is, however, unprecedented in its size, scope, and significance. As a result, it should be considered carefully--and not just from a DOD perspective. DOD's proposal has significant precedent-setting implications for the human capital area in government in general, and for OPM, in particular. DOD's request raises several critical questions both for DOD as well as governmentwide policies and approaches. Should DOD and/or other federal agencies be granted broad-based exemptions from existing law, and if so, on what basis? Does DOD have the institutional infrastructure in place to make effective use of the new authorities?

Agency-specific human capital reforms should be enacted to the extent that the problems being addressed and the solutions offered are specific to a particular agency (e.g., military personnel reforms for DOD). A government-wide approach should be used to address certain flexibilities that have broad-based application and serious potential implications for the civil service system, in general, and the OPM, in particular. However, in all cases whether from a governmentwide authority or agency specific legislation, in our view, such additional authorities should be implemented (or operationalized) only when an agency has the institutional infrastructure in place to make effective use of the new authorities.

As you know, we have strongly supported the concept of modernizing federal human capital policies, including providing reasonable flexibility to management in this critical area. However, adequate safeguards must be in place to prevent abuse. Significant progress has been—and is being—made in addressing the federal government's pressing human capital challenges. But experience has shown that how it is done, when it is done, and the basis on which it is done, can make all the difference in whether or not we are ultimately successful.

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

Contacts and Acknowledgments

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