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Homeland Security: Human Resources Management

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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 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. A design team and a senior review committee will work to create the new system and will advise the secretary and the director. Implementation of the new system is targeted to begin by the end of 2003, according to a DHS fact sheet.

Key issues to be considered in establishing an HRM system for the new department might include staffing requirements and hiring and pay systems. Other issues likely to be considered would include the kind of automated human resources and payroll systems the various agencies 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.

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 which 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.[1] 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.

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

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

Establishment of Human Resources Management System[4]

Title VIII, Subtitle E, Section 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,

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[1] 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.

[2] 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; CRS Report RL31492, *Homeland Security: Management Positions for the New Department*, by Henry B. Hogue; CRS Report RL31677, *Filling Presidentially Appointed, Senate-Confirmed Positions in the Department of Homeland Security*, by Henry B. Hogue.

[3] 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.

[4] The provisions under establishment of human resources management (HRM) system were Section 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 Section 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 Section 841.

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

- 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 Section 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 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;
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> [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 21st 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[5]

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 Section 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 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

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[5] 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 (107th Congress). See CRS Report RL31516, *Civil Service Reform Proposals: A Side-by-Side Comparison of S. 129 (108th 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 (108th Congress)*, by Barbara L. Schwemle and L. Elaine Halchin.

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 Section 1305 of the law. On May 24, 2003, OPM Director Kay Coles James announced the names of the CHCOs.[6] 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.

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[6] 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].

The July 2003 meeting included discussions on career development in the federal government.

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.[7]

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).[8] 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 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 Section 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.[9] 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

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[7] 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.

[8] The law redesignates 31 U.S.C. 1115(f) and insert this provision as a new subsection (f).

[9] §3319(a).

who is a disabled veteran with a compensable service-connected disability of 10% or more must be listed in the highest quality category.[10]

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.[11]

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.[12]

OPM could prescribe regulations to carry out the provisions.[13]

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.

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.[14]

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[10] §3319(b).

[11] §3319(c)(1)(2).

[12] §3319(d).

[13] §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.

[14] §4107(a).

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.[15]

OPM published regulations to implement the human capital management reforms in the June 13, 2003, *Federal Register*.[16]

Subtitle H, Section 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 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.[17]

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[15] §4107(b).

[16] 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.

[17] 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."

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 relations 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.[18]

Implementation of the Law

Some 22 agencies employing some 160,000 employees will be transferred to the new homeland security department.[19] The Bush Administration published a Reorganization Plan for the department on November 25, 2002.[20] Homeland Security Director Tom Ridge, nominated by President Bush to head the department, conducted a town hall meeting with future employees of the department on December 17, 2002.[21]

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

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[18] Testimony of Kay Frances Dolan, director of human relations 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)

[19] 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].

[20] 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]. Also see CRS Report RL31493.

[21] 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].

years, if not decades" and "pledged to create a merit-based personnel system."[22] The Senate confirmed him as the Secretary of Homeland Security on January 22, 2003[23] and he was sworn into office by President Bush on January 24, 2003.

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 will focus 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,[24] but *Government Executive* reported on March 18, 2003 that an OPM official stated that this deadline would not be met.[25] According to the report:

> 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.[26]

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.[27]

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 21st century personnel system that is flexible and contemporary while preserving basic civil service principles and the merit system."[28] 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

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[22] Jason Peckenpaugh, "Ridge Vows to Set Performance Targets for Homeland Security," Jan. 17, 2003. Available on the Internet at [http://www.govexec.com].

[23] By a unanimous vote of 94 yeas (Vote No. EX. 13).

[24] Tim Kauffman, "OPM Promises Homeland Security Personnel System by June," *Federal Times*, Dec. 2, 2002. Available on the Internet at [http://federaltimes.com/].

[25] Tanya N. Ballard, "Report Lacks Details on Merging Homeland Personnel Systems," Mar. 18, 2003. Available on the Internet at [http://www.govexec.com].

[26] Ibid.

[27] Brian Friel, "New Department Begins Pay and Personnel Overhaul," April 1, 2003. Available on the Internet at [www.govexec.com].

[28] U.S. Department of Homeland Security, Department of Homeland Security Personnel System Fact Sheet, April 1, 2003. Available on the Internet at [http://www.dhs.gov]. Hereafter referred to as DHS Fact Sheet.

> 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.[29]
>
> 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.[30]

The initial meetings of the design team began on April 1, 2003 and will continue through September 2003, when the team "will deliver a full range of options to the Senior Review Committee."[31] Field meetings were conducted by the design team in several cities including New York City, Miami, Detroit, El Paso, Atlanta, Seattle, and Salt Lake City; locales with the largest concentrations of DHS employees. Employees in rural areas were brought to the meetings in the major cities or smaller sessions were conducted in their home areas. Testimony was received from more than 2,000 DHS employees, including 44 employee focus groups and 10 manager focus groups.[32] 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, but few details are available at this point in the process. Steven Cohen, senior adviser for homeland security at OPM, was quoted by *Federal Times*: "It really is wide open.... There's nothing that's off the table."[33] The meeting also was intended to "outline the research strategy, present guiding principles for the design, and provide guidance to the Design Team."[34] Another meeting of the Senior Review Committee is planned for early October 2003.

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[29] *Government Executive* identified the members of the Senior Review Committee as Undersecretary for Management Janet Hale; Secret Service Director Ralph Basham; administration chief Michael Dorsey; immigration chief Eduardo Aguirre, Transportation Security Administration Administrator James Loy; customs chief Robert Bonner; American Federation of Government Employees President John Gage (newly elected); 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, Chief Human Capital Officer Doris Hausser, and policy advisers Ron Sanders and Marta Brito Perez.

[30] DHS Fact Sheet. According to the Washington Post, the design team is comprised of 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 relations policy at DHS, and Steven Cohen, senior adviser for homeland security at OPM.

[31] DHS Fact Sheet.

[32] Bridgette Blair, "Experts Debate Pay Rules for New Personnel System," *Federal Times*, Aug. 18, 2003. Available on the Internet at [http://www.federaltimes.com].

[33] 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].

[34] Testimony of Kay Frances Dolan, July 23, 2003.

After receiving the options, "the Senior Review Committee will present a refined range of options to the Secretary and the Director" who will then issue proposed rules. Employee representatives and Congress will be notified and any differences will be reconciled. The Secretary and Director will issue regulations for the new system whose implementation is targeted to begin by "the end of this calendar year [2003]."[35]

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."[36]

A Web site, available to the public, has been established for the department.[37] To keep employees informed about the creation of the department, an internal Web site also has been established. Another Web site will enable employees to e-mail their suggestions for the new personnel system to the design team.

The public Web site provides the following information about human resources management at the department:

> What We Know Right Now:
> Employees will retain their current benefits.
> Employees will maintain their current civil service status, pay, and position classifications for at least a year.
> Employees who are members of collective bargaining units will see no change when they transfer to DHS since those units will transfer at the same time.
> Employees will be protected from improper political influence, reprisals against whistleblowers, and prohibited personnel practices.
> Veterans will receive the hiring preferences they are entitled to under law.[38]

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."[39]

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

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[35] DHS Fact Sheet.

[36] 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].

[37] See [http://www.dhs.gov/dhspublic/index.jsp].

[38] U.S. Department of Homeland Security, Working With DHS. Available on the Internet at [http://www.dhs.gov/dhspublic/display?theme=81&content=278].

[39] U.S. Department of Homeland Security, Department of Homeland Security Facts for March 1, 2003. Available on the Internet at [http://www.dhs.gov/dhspublic/display?theme=43&content=489].

Security.[40] 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 Congress of such certification not later than 24 months after the enactment of the Homeland Security Act of 2002 (November 25, 2004).[41]

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.[42] The deputy CIO position at DHS was posted on the USAJOBS Web site on July 7, 2003.[43]

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 have, thus far, learned few details about the establishment of the new human resources management system at the Department of Homeland Security.

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.[44]

An August 25, 2003, special report prepared by the Transactional Records Access Clearinghouse, a data gathering, data research, and data distribution organization associated with Syracuse University, examined staffing at DHS. Among the report's findings are the following.

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[40] See: CRS Report RL31492, *Homeland Security: Components and Management Positions in the New Department*, by Henry B. Hogue, p. 10.

[41] P.L. 107-296, Nov. 25, 2002, 6 U.S.C. 344, 116 Stat. 2219.

[42] Linda Rosencrance, "Deputy CIO at Homeland Security Department Placed on Leave," *ComputerWorld*, June 6, 2003. Available on the Internet at [http://www.computerworld.com].

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

[44] 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].

- 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.[45]

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.

> **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.

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[45] 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].

> 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.[46]

Mr. Frumpkin 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.[47]

Human Resources Management at Selected Agencies Being Transferred

Human resources management (HRM) offices are currently providing a full range of services at six of the eight large agencies being transferred to the homeland security department. The Transportation Administration Service Center (TASC) of the Department of Transportation provides human resource services to the Transportation Security Administration (TSA) on a fee-for-service basis. Federal Protective Services has a personnel representative in the central office in Washington, DC, and in each of its 11 regional offices. Human Resources Management offices and the number of their employees include:

- 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;

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[46] IBM Center for The Business of Government, *Making Public Sector Mergers Work: Lessons Learned*, by Peter Frumkin (Arlington, VA: Aug. 2003), p. 29.

[47] Ibid.

- 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 provide various personnel services that would generally include 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.[48]

Issues for Consideration

Authorizing a new human resources management system for the new department raises several issues, including questions about equity among the various departments and agencies in the executive branch. Discussions about a new system may include staffing requirements, hiring, and pay among the issues considered.[49]

With regard to *staffing* requirements, the Administration has stated that an increased number of employees is not anticipated. According to Press Secretary Ari Fleischer, the proposal is: "not a massive addition to the bureaucracy .... [I]f you take 100 workers from Department X and put those 100 workers in Department Y, you still have 100 workers. They've been reorganized. But it is not an addition to the government, because you're working with the same, essentially, group of people."[50] Others, however, hold a different view. For example, the National Treasury Employees Union has asserted that the Customs Service "by its own account needed an additional 14,000 employees to successfully accomplish its mission before September 11" and "is now stretched beyond the limit."[51] In his statement at the Senate Committee on Governmental Affairs hearing, Senator George Voinovich noted, "The Partnership for Public Service says that one-third of all of the employees

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[48] Information provided to CRS by human resources management offices by telephone, June 12-13 and 17-19, 2002.

[49] For discussion of Title 5 *United States Code* provisions on government management, see CRS Report RL30795, *General Management Laws: A Selective Compendium — 107th Congress*, Ronald C. Moe, project coordinator. See especially Chapter IV.

[50] "Press Secretary's Morning Conversation with Reporters," June 6, 2002. Available on the Internet at [http://www.whitehouse.gov/news/releases/2002/06/print/20020606-1.html].

[51] National Treasury Employees Union, "Proposed Homeland Security Cabinet-Level Agency No Substitute for Adequate Funding, Union Leader Questions Timing of President's Announcement," June 6, 2002. Available on the Internet at [http://www.nteu.org], choose "Press Releases."

from five of the major agencies being folded into the new department are going to have their people eligible for retirement ... in five years."[52]

During a speech before the National Association of Counties on March 3, 2003, Secretary of Homeland Security Tom Ridge said that the agency plans to hire more than 1,700 new inspectors at land, sea, and air ports of entry in FY2003 — more than 600 at airports, nearly 700 along the northern border, 100 in the southwest, and nearly 300 at maritime ports of entry — and nearly 600 additional border patrol agents.[53] On April 30, 2003, the Transportation Security Administration announced that 6,000 passenger and baggage screeners would be cut by September 30, 2003, according to the *Federal Times*. As of March 31, 2003, TSA employed 55,600 screeners, but the agency's FY2004 budget proposes a screener workforce numbering 48,100 employees.[54]

The Secret Service, Coast Guard, Customs Service, Immigration and Naturalization Service, Animal and Plant Health Inspection Service, Transportation Security Administration, Federal Protective Services, and Federal Emergency Management Agency are being transferred to the new department. Governor Ridge, in his testimony before the Senate Committee on Governmental Affairs and the House Committee on Government Reform on June 20, 2002, 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 order to enhance operational effectiveness, as needed."[55] 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. Details about possible retraining or reassignments of personnel have not been provided.

As for a *hiring* system for the new department, the use of the term "personnel flexibilities" as it relates to hiring sometimes means direct hiring authority[56] or exceptions (such as category ranking) to the Rule of Three,[57] for selection of candidates. These could help speed the selection and hiring of new staff. Concerns about these flexibilities may center on preserving two civil service standards —

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[52] The Federal Document Clearing House transcript of the Senate Committee on Governmental Affairs hearing, June 20, 2002.

[53] Remarks by Secretary Ridge to the National Association of Counties, March 3, 2003. Available on the Internet at [http://www.dhs.gov/dhspublic/display?theme=44&content=490].

[54] Tim Kauffman, TSA to Cut 6,000 Screeners in Budget Move, *Federal Times*. Available on the Internet at [http://www.federaltimes.com].

[55] Written statement of Governor Tom Ridge, June 20, 2002. Available on the Internet at [http://www.senate.gov/~gov_affairs/hearings.htm].

[56] Direct hiring authority would allow agencies to appoint candidates directly to positions.

[57] This term refers to providing the appointing authority with a certificate that includes the names of three eligibles and requiring appointment from those three names.

merit-based hiring free of political influence or favoritism, and preference in hiring for veterans. The American Federation of Government Employees (AFGE), in commenting on the proposal, stated, "This bill has the potential to allow the new Department to engage in personnel actions that are today illegal, such as picking out individual employees for transfer or removal from their jobs"; and "[i]n opening the door to hiring and firing on the basis of politics and favoritism, ... would impose a modern day spoils system."[58] TSA is in the excepted service and, therefore, not covered by the Title 5 *United States Code* provisions, except for those on veterans preference.[59] TSA is using a contractor to recruit and hire its airport screener employees. This raises the question of whether, and how, such contractors might be used in the future, as well as the relative costs and benefits of doing so.

As it relates to *pay*, the term "personnel flexibilities" sometimes means the establishment of pay bands as the compensation system. Under such a system, General Schedule pay grades are consolidated into broader pay bands.[60] Currently, the General Schedule, which provides for 15 pay grades and 10 steps within each grade, is the compensation system for employees in most of the agencies proposed for transfer. The TSA, however, is using the pay banding system to compensate transportation security screeners, criminal investigators, and civil aviation security specialists (which include federal air marshals). The existence of two distinct pay systems in one department could raise questions of pay parity between employees who are performing similar jobs. There are anecdotal reports from the Customs Service and the Secret Service, among others, that the TSA is hiring away their law enforcement officers by offering higher salaries. Further, *The Washington Post* reported that "[a]s of early June, the TSA had hired 39 general attorneys at an average salary of $111,000, compared with an average of about $80,000 at the Department of Transportation, of which the TSA is part."[61] Differences in other types of compensation systems could also raise questions of parity in a new department. The U.S. Customs Service's inspectors and the INS's border patrol officers would be incorporated into the new department, but Customs employees, for example, have their own unique and more remunerative system of overtime and premium pay.[62]

On July 31, 2002, the Partnership for Public Service issued a preliminary report which recommended that the Department of Homeland Security adopt pay banding

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[58] "AFGE Responds to President's Homeland Security Bill," June 18, 2002. Available on the Internet at [http://www.afge.org], choose "News Releases."

[59] P.L. 107-71, Nov. 19, 2001, 115 Stat. 601.

[60] Pay bands provide greater discretion to federal managers in setting salary levels for employees.

[61] Dan Morgan and Greg Schneider, "Lawmakers Fear Costly Price Tag to Create Homeland Dept.," *Washington Post*, June 20, 2002, p. A 21.

[62] 19 U.S.C. 267.

and critical pay authorities, category ranking systems for hiring, and voluntary separation incentive payments.[63]

Other issues likely to be considered during discussions about the HRM system would include to whom the head/heads of the HRM function would report in the new department[64] and what kind of automated human resources and payroll systems the various agencies currently have and how they might be merged if a consolidation of HRM services were to occur. Among other considerations are that APHIS and INS currently have staff in field offices performing personnel services; what role would they have in the new department? Also, APHIS provides personnel support to the Agricultural Marketing Service and the Grain Inspection, Packers and Stockyards Administration of the Department of Agriculture and the Merit Systems Protection Board; would these responsibilities continue in the new department?

Conclusion

Title VIII, Subtitle E, Section 841 of P.L. 107-296 provides that the Secretary of Homeland Security may, in regulations prescribed jointly with the 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. Key issues to be considered in establishing an HRM system for the new department might include staffing requirements and hiring and pay (for instance, whether General Schedule or pay banding) systems. Other issues likely to be considered would include the kind of automated human resources and payroll systems the various agencies transferred to the new department currently have and how those systems might be merged if a consolidation of HRM services were to occur.

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[63] 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.

[64] Since enactment of the Government Performance and Results Act, P.L. 103-62, on Aug. 3, 1993, Congress and the Administration have been encouraging agencies to elevate the role of human resources management in strategic planning.