

Report for Congress

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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. The law states specific requirements for the HRM system. Federal workforce improvements to be applied governmentwide also are authorized by P.L. 107-296. OPM has established several working groups to begin developing the new HRM system and hopes to have a draft proposal of the system ready by June 1, 2003.

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 which relate to labor management relations and collective bargaining.³

¹For a legislative history, see CRS Report RL31645, *Homeland Security Act of 2002: Legislative History and Pagination Key*, by Sharon S. Gressle.

²For a legal analysis, see CRS Report RL31548, *Homeland Security Department Proposals: Scope of Personnel Flexibilities*, by Thomas J. Nicola.

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

P.L. 107-296, Homeland Security Act of 2002⁴

Establishment of Human Resources Management System⁵

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, 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 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

⁴For 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; and CRS Report RL31677, *Filling Presidentially Appointed, Senate-Confirmed Positions in the Department of Homeland Security*, by Henry B. Hogue.

⁵The 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.

(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;

[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 Improvement⁶

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

⁶The 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.

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 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 become effective 180 days after the Act's enactment (May 24, 2003) under Section 1305 of the law.

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 Programs 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

⁷The 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.

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

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 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

⁹§3319(a).

¹⁰§3319(b).

¹¹§3319(c)(1)(2).

¹²§3319(d).

¹³§3319(e).

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

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

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 (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 had not been issued as of February 25, 2003.

Implementation of the Law

Some 22 agencies employing about 170,000 employees will be transferred to the new homeland security department.¹⁶ The Bush Administration published a

¹⁴§4107(a).

¹⁵§4107(b).

¹⁶In a January 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 March 1, 2003 were directed to submit their information on appropriations and funds and personnel and positions by February 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. Available on the Internet at [<http://www.whitehouse.gov/omb/memoranda/print/m03-04.html>], visited Feb. 26, 2003.

Reorganization Plan for the department on November 25, 2002.¹⁷ 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, 2002.¹⁸ A Web site, available to the public, has been established for the department.¹⁹ To keep employees informed about the creation of the department, an internal Web site also has been established.

The public Web site provides the following information with regard to a new human resources management system for the department:

DHS [Department of Homeland Security] is working with OPM to create a new HR [human resources] personnel system over the next year. Plans are already underway to make sure that the new system incorporates rewards for excellent performance, maintains a cooperative labor-management work environment, and designs and implements innovative recruiting programs. In establishing the specifics, DHS is consulting a number of different sources, including employees, agency leadership, unions, and other vital stakeholders. DHS will continue to provide details as they emerge in the coming months.²⁰

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.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

¹⁷White House Office, “Department of Homeland Security Reorganization Plan,” Nov. 25, 2002, Washington, DC. Available on the Internet at [http://www.whitehouse.gov/news/releases/2002/11/reorganization_plan.pdf], visited Jan. 3, 2003. Also see CRS Report RL31493.

¹⁸White 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. Available on the Internet at [<http://www.whitehouse.gov/news/releases/2002/12/print/20021217-14.html>], visited Jan. 3, 2003.

¹⁹See [<http://www.dhs.gov/dhspublic/index.jsp>], visited Feb. 26, 2003.

²⁰U.S. Department of Homeland Security, FAQs [Frequently Asked Questions]. Available on the Internet at [<http://www.dhs.gov/dhspublic/faq.jsp>], visited Feb. 26, 2003.

²¹U.S. Department of Homeland Security, Working With DHS. Available on the Internet at [<http://www.dhs.gov/dhspublic/display?theme=81&content=278>], visited Feb. 26, 2003.

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, 2003²³ and he was sworn into office by President Bush on January 24, 2003.

According to the *Federal Times*, the department has established policies and procedures for recruitment and retention, telecommuting, work schedules, leave policy, travel, and payroll administration.²⁴

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 hopes to have a draft proposal of the new system ready by June 1, 2003.²⁵ 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.²⁶

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;

²²Jason Peckenpaugh, “Ridge Vows to Set Performance Targets for Homeland Security,” Jan. 17, 2003. Available on the Internet at [<http://www.govexec.com>], visited Feb. 26, 2003.

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

²⁴Tim Kauffman and Bridgette Blair, “Assembly Required: With Bare-Bones Staff and Budget, Ridge Faces Ambitious Schedule,” *Federal Times*, Jan. 27, 2003. Available on the Internet at [<http://federaltimes.com/index.php?S=1531070>], visited Feb. 26, 2003. As this report went to print, CRS was unable to obtain details about these policies from the Department of Homeland Security.

²⁵Tim Kauffman, “OPM Promises Homeland Security Personnel System by June,” *Federal Times*, Dec. 2, 2002. Available on the Internet at [<http://federaltimes.com/index.php?S=1344152>], visited Feb. 26, 2003.

²⁶Daalder, 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>], visited Feb. 26, 2003.

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

All the HRM offices, except TSA, reported that they 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.²⁷

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.²⁸

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.”²⁹ 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

²⁷Information provided to CRS by human resources management offices by telephone, June 12-13 and 17-19, 2002.

²⁸For 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.

²⁹“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>], visited June 26, 2002.

September 11” and “is now stretched beyond the limit.”³⁰ 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 from five of the major agencies being folded into the new department are going to have their people eligible for retirement ... in five years.”³¹

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.”³² 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 authority³³ or exceptions (such as category ranking) to the Rule of Three,³⁴ 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 — 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.”³⁵ TSA is in the excepted service and, therefore, not

³⁰National 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,” visited June 26, 2002.

³¹The Federal Document Clearing House transcript of the Senate Committee on Governmental Affairs hearing, June 20, 2002.

³²Written statement of Governor Tom Ridge, June 20, 2002. Available on the Internet at [http://www.senate.gov/~gov_affairs/hearings.htm], visited June 26, 2002.

³³Direct hiring authority would allow agencies to appoint candidates directly to positions.

³⁴This term refers to providing the appointing authority with a certificate that includes the names of three eligibles and requiring appointment from those three names.

³⁵“AFGE Responds to President’s Homeland Security Bill,” June 18, 2002. Available on (continued...)

covered by the Title 5 *United States Code* provisions, except for those on veterans preference.³⁶ 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.³⁷ 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.”³⁸ 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.³⁹

On July 31, 2002, the Partnership for Public Service issued a preliminary report which recommended that the Department of Homeland Security adopt pay banding and critical pay authorities, category ranking systems for hiring, and voluntary separation incentive payments.⁴⁰

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 department⁴¹ and what kind of automated human resources and payroll systems the

³⁵(...continued)

the Internet at [<http://www.afge.org>], choose “News Releases,” visited June 26, 2002.

³⁶P.L. 107-71, Nov. 19, 2001, 115 Stat. 601.

³⁷Pay bands provide greater discretion to federal managers in setting salary levels for employees.

³⁸Dan Morgan and Greg Schneider, “Lawmakers Fear Costly Price Tag to Create Homeland Dept.,” *Washington Post*, June 20, 2002, p. A 21.

³⁹19 U.S.C. 267.

⁴⁰Partnership 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.

⁴¹Since enactment of the Government Performance and Results Act, P.L. 103-62, on Aug. (continued...)

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.

⁴¹(...continued)

3, 1993, Congress and the Administration have been encouraging agencies to elevate the role of human resources management in strategic planning.