

Statement of  
Director Kay Coles James  
Office of Personnel Management

before the

Subcommittee on Oversight of Government Management,  
the Federal Workforce, and the District of Columbia  
Committee on Governmental Affairs  
United States Senate

and the

Subcommittee on Civil Service and Agency Reorganization  
Committee on Government Reform  
U.S. House of Representatives

on

“The Key to Homeland Security: The New Human Resources System”

February 25, 2004

Mr. Chairman, Madam Chair, and members of the subcommittees:

I am grateful for the opportunity to appear before you today to discuss the status of the Department of Homeland Security’s (DHS’s) proposed human resources (HR) regulations. Thank you for your ongoing leadership, support, and advice regarding the Department’s operations, especially the HR system. My interaction with the various members of the Committees and your staffs has been extremely positive and informative over the past 15 months. I would especially like to thank Chairman George Voinovich, Chairwoman Jo Ann Davis, Senator Richard Durbin and Representative Danny Davis for your continued commitment to the best interests of Federal workers and your steadfast commitment to the civil service as evidenced by your support for the merit principles

which distinguish our civil service system from all others. The hearing today is important and especially well-timed for the one year anniversary of the Department.

I would also like to thank Secretary Tom Ridge and Deputy Secretary Loy for their leadership and cooperation throughout the DHS design process. Together, as a team, we have worked diligently to ensure clear communications between our two agencies, and more importantly, with the workers of DHS. Working together in a true collaboration, I can tell the Subcommittees with complete confidence that we are and have been united as one team, with a single purpose: to create a personnel system that will honor those in service to our country at DHS.

As you know, the bipartisan legislation that created the Department gave the DHS Secretary and the Director of the Office of Personnel Management (OPM) authority to jointly prescribe regulations establishing a completely new HR system for most of the Department's estimated 180,000 employees. Those proposed regulations were published last week for employee and public comment. I believe that they represent an historic step in the evolution of the Federal civil service, rewriting the laws and regulations that govern how the Department classifies, evaluates, compensates, and disciplines its employees, as well as how it deals with its labor unions. At the same time, as originally envisioned and as enacted in law, the regulations remain firmly and absolutely grounded in, and bound by, our civil service system's core principles and values: merit, equal employment opportunity, due process, veterans' preference, and protections against reprisal, discrimination, and other prohibited personnel practices.

As we discuss those proposed regulations today, let us not lose sight of their genesis. On September 11, 2001, our Nation came face to face with a horrific terrorist

attack on our homeland, another day of infamy in American history. We each remember the horror of that day, and the heroism of those public servants who responded, many making the ultimate sacrifice. By their courage, they demonstrated to the world what they are made of. On September 12, they did so again, with much less fanfare. On the day after September 11, the Federal Government was open for business, and America's civil servants demonstrated their courage and patriotism.

It was against that backdrop that President George W. Bush asked Congress to consider his proposal to create the Department of Homeland Security, an institution designed to defend against an enemy who acts ruthlessly and without remorse in targeting our citizens, our Federal employees, and our cities. When it came to the professionals who were to be charged with that defense, the men and women of this new Department, the President had no doubts. He knew how dedicated and selfless they were and would be, for they had demonstrated those qualities before, during, and after September 11. However, the Administration did have doubts about the personnel system they would labor under, its impact on their ability to respond quickly, to act decisively, to achieve and reward excellence. That system had become obsolete, not in its core principles and values, but in the way that those principles and values had been operationalized over the years. In a very real sense, the employees who were honoring their Nation by defending our homeland would have been serving under a broken and unresponsive personnel system. As a reminder, the merger represented the largest of its kind since the creation of the Department of Defense, with 22 agencies, 18 payroll systems, 180,000 employees, 17 unions and 77 bargaining units.

Congress responded with the bipartisan passage of the Homeland Security Act just about fifteen months ago. However, in the months since the legislation passed and even to this day, those who were never in the arena have claimed there was a sudden and deliberate denial of civil service rights, and with them, the demise of the Federal civil service system itself. To the cottage industry of critics and professional spectators who write such nonsense, let me say this: nothing could be further from the truth. While I fully respect alternative opinions, it is important to get the facts right.

The cherished principles and values that make up the very fabric of the Federal civil service -- merit and equal employment opportunity, veterans' preference, freedom from partisan political influence, protection for those who expose waste, fraud, and abuse -- remain intact. Indeed, they are sacrosanct. Our merit principles still serve as the immutable foundation for the DHS HR system; veterans' preference is undiluted and uncompromised; whistleblowers are still protected; employees are still afforded due process before an adverse action is taken against them; and they are still free to join unions and bargain collectively; and those personnel practices that were prohibited before are still prohibited today. As America moves forward in the protection of our homeland, the legacy of civil service principles envisioned and defended by President Theodore Roosevelt lives on.

These principles are the bedrock of our civil service system. They have not changed, and I believe that it is irresponsible to leave anyone with the impression that they have. They still apply with full force and effect to the men and women of DHS and will do so in the future. This is not an empty promise, either. The President and the Congress have charged the Director of OPM to keep it that way. The Act states that the

regulations giving rise to the Department's new HR system are to be "jointly prescribed" by the DHS Secretary and the OPM Director, and I take this to mean exactly what it says: that, as Director of OPM, I am to be held accountable for preserving and protecting our core civil service principles and values in the new DHS HR system, even as we seek to give the Department all the flexibility it needs to deal with the most ruthless and resourceful of enemies.

In fulfilling that responsibility, I am equally mindful of the Department's urgent need for better, more effective ways to manage its people. This too is a driving imperative. The Department's new HR system must advance and assure the Department's ability to achieve its primary mission: safeguarding the American people from terrorist attack and other threats, natural and manmade, to homeland security. In order to achieve that mission, DHS must have the unfettered flexibility to move people and resources without delay; it must be able to get the right people in the right jobs at the right time, to give them the technology they need, and to hold them accountable for their performance. This is what the American people expect and demand. I believe that the new HR system can and will do so without compromising the fundamental rights of the Department's civil servants. The Secretary and I are absolutely committed to that end, and we have proposed a bold new HR system that we believe will accomplish this. It includes the following key components:

- A pay-for-performance system in which high performance is expected and rewarded, to an extent not permitted under the General Schedule; that streamlines and modernizes job classifications and pay levels; and that takes into account both

national and local rates paid by employers in the private sector in setting pay for the Department's key occupational groups.

- A labor relations system that permits the Department to act quickly in situations where flexibility and swift implementation are most critical to achieving its mission (for example, in the deployment of personnel or introduction of new technology); that provides for the swift and fair resolution of labor disputes by a newly established and independent DHS Labor Relations Board; and that preserves the right of employees and their unions to bargain collectively over important working conditions.
- A streamlined mechanism for handling major disciplinary actions and employee appeals that preserves due process and retains intact all existing employee protections against reprisal, retaliation, and other prohibited personnel practices. It is important to note that the proposed regulations on employee appeals are the result of extensive and constructive consultation with the Merit Systems Protection Board, as required by the statute.

In developing this system, the process we employed was almost as important to Secretary Ridge and me as the substance of its outcome. Even before the enactment of the Homeland Security Act, well prior to the legislative debate, Secretary Ridge and I made a commitment to the Department's employees and major unions that if the legislation passed, the new HR system would be designed using a collaborative and inclusive process.

Secretary Ridge and I both trusted the practical wisdom of front-line managers and employees, and we wanted their perspectives to inform our decision-making. Accordingly, we promised that the process would involve and engage managers, employees, union representatives, and a broad array of stakeholders and experts from the Federal sector and private industry. We also promised a process that would ultimately be subject to the scrutiny of the American people, one that would be open and transparent, with numerous opportunities for public review, input, and comment -- from the very beginning of the design process.

I believe we have kept that promise. Over the course of the last ten months, we have met and talked to over 2,500 DHS employees and managers in town hall meetings and focus groups across the country. Understanding that advances in compensation strategies and system designs could inform the process, we consulted with dozens of companies and experts to identify promising and successful models from the private sector, state and local government, and other Federal agencies. We worked closely and collaboratively with the presidents of the Department's major unions and their key staff members, literally providing OPM office space for the latter so that they could be an integral part of the design process. Our joint DHS/OPM design team also included supervisors and front-line employees from the Department's major components, as well as a number of local union officials, to provide a reality check as the process unfolded.

With that input and involvement, our joint design team developed and presented an impressive array of options to top DHS, OPM, and Federal employee union officials (including the presidents of the Department's three largest unions) for intensive examination and discussion. That discussion took place during proceedings that were

open to employees and the public. Those officials, along with a number of highly regarded experts in the field of public administration, provided Secretary Ridge and me with a thoughtful review on the options – a review which, in turn, informed the development of the proposed regulations we published publicly last week. Again, none of this was required by the law...it was just the right thing to do to identify the best thinking and make employees inside DHS equipped to succeed.

The outstanding work done during the design phase of this project is behind us, but there is much more to be done. Last week's publication of proposed regulations officially began that process, with an opportunity for *formal* public comment and more collaboration with employee unions and other stakeholders. Some might say "enough already," but Secretary Ridge and I strongly encourage and welcome more input; we view it as yet another chance to hear from those who have something to offer. Such openness and inclusion are absolutely essential to any large organizational transformation, and we believe DHS, with 180,000 employees, is among the largest ever undertaken. We want employees and unions to have a voice in this process, and while we may not be able to alleviate all of their anxieties nor satisfy their every request, their honest involvement has contributed significantly to its high quality and will help shape the final outcome.

Secretary Ridge and I are both committed to continuing this open, inclusive and transparent collaboration as we begin to finalize the regulations and then start the implementation process. In so doing, we will realize the promise (and the historic opportunity) of the Homeland Security Act: a modern, contemporary HR system that helps the Department and its dedicated managers and employees achieve its most critical

mission without compromising the core ideals and the oversight institutions that have made the American civil service system the envy of the world.

Thank you again for the opportunity to testify before you today.