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NOMINATIONS OF JOHN L. HOWARD AND DAN G. BLAIR

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF JOHN L. HOWARD TO BE CHAIRMAN, SPECIAL PANEL ON APPEALS AND DAN G. BLAIR TO BE DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

FEBRUARY 8, 2002

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NOMINATIONS OF JOHN L. HOWARD AND DAN G. BLAIR

FRIDAY, FEBRUARY 8, 2002

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:30 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel J. Akaka presiding.

Present: Senators Akaka, Carnahan, Stevens, and Cochran.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. The Committee will come to order. I want to thank all witnesses and their families and our guests for being with us today.

This morning we are considering the nominations of John L. Howard to serve a 6-year term as Chairman of the Special Panel on Appeals, and Dan G. Blair to serve as Deputy Director of the Office of Personnel Management.

Before we call upon our witnesses, I would like to welcome our colleague from Missouri. I know she is busy and she has another thing to do, so I asked her to introduce Mr. Blair. The Hon. Jane Carnahan.

OPENING STATEMENT OF SENATOR CARNAHAN

Senator CARNAHAN. Thank you very much, Mr. Chairman.

Since September 11, our country has been reawakened to what public service really means. Once again, we understand that public service is a noble profession. We have a new sense of appreciation for all those who engage in service to our Nation. Public servants are on the front lines, working to keep our Nation safe and our government running, even in times of crisis.

The Office of Personnel Management oversees the staffing needs of the Federal Government. This is a huge responsibility. Its importance has only been reinforced in the last 6 months.

Today I have the honor of introducing a Missouri native, Dan Blair, to be the Deputy Director of the Office of Personnel Management.

Mr. Blair brings a wealth of experience to this important position. In fact, this very Committee has firsthand knowledge of his expertise and abilities. Prior to moving over to OPM, Mr. Blair served as Senior Counsel to Senator Thompson for the Senate Governmental Affairs Committee. During his tenure with the Committee, Mr. Blair was responsible for review of legislation and pol-

icy affecting the Federal Civil Service, the U.S. Postal Service, the Federal budget process, and government ethics.

I am confident of Mr. Blair's ability to meet the challenges facing OPM. Already he is reaching out to young people and working to inspire them to get involved in public service. I am proud to support such an outstanding Missourian to this position.

Mr. Blair, incidentally, was born and raised in Joplin, Missouri and he attended two of our fine Missouri institutions, the University of Missouri Columbia School of Journalism and the University of Missouri Columbia Law School. In fact, I originally met Mr. Blair as a first-year law student. He went to law school with one of my sons and they were in the same class.

To celebrate the first year being completed, the two of them, along with a group of about 15 friends, went on a 2-day float trip on one of our very fine rivers, the Current River. My husband and I invited the whole group to our family farm in Rolla after that 2-day excursion. I still have fond memories of meeting Mr. Blair that afternoon. I am glad that I will now have the opportunity to work with you in your new position.

Thank you again, Mr. Chairman, for allowing me to introduce Mr. Blair, and I encourage the Committee to support his nomination. Thank you very much.

Senator AKAKA. I appreciate your warm comments, Senator Carnahan. Thank you very much.

The rules of the Committee on Governmental Affairs require an inquiry to be conducted into the experience, qualification, suitability, and integrity of a nominee to serve in the position for which he or she has been nominated.

The Committee has received all of the required information we need. The nominees have provided written responses to pre-hearing questions submitted by the Committee concerning issues relevant to the positions for which they have been nominated. Committee staff have reviewed all of the information and have examined the financial disclosure reports submitted by the Office of Government Ethics.

Copies of the nominees biographical information and their pre-hearing responses will be placed in the record as part of this hearing, and are available upon request.

The financial statements are available for inspection by the public in the Committee office, and Senator Cochran and I have reviewed the FBI background investigation reports.

The Committee asks that all nominees be under oath while testifying on matters relating to their suitability for office, including the policies and programs which the nominee will pursue if confirmed.

Our first witness will be Mr. Howard. Would you please come to the witness table and remain standing? Please raise your right hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HOWARD. I do.

Senator AKAKA. Thank you very much. You may be seated.

At this time, I will ask for any statement from Senator Cochran.

Senator COCHRAN. Mr. Chairman, I have no opening statement. I welcome the witness and congratulate him on his nomination and

look forward to our hearing today, which I think will be very brief because he is so well qualified for this position.

Mr. HOWARD. Thank you, Senator.

Senator AKAKA. Thank you very much, Senator Cochran.

The Special Panel on Appeals was established under the Civil Service Reform Act of 1978. The Panel resolves certain disagreements between the Merit Systems Protection Board and the Equal Employment Opportunity Commission in so-called mixed cases where an employee appeals a personnel action to the MSBP and also petitions the EEOC alleging that the action was based on discrimination.

We are committed to protecting Federal employees from discrimination and retaliation for disclosing fraud and waste and commend you for agreeing to serve as chairman of this panel.

Mr. Howard, I would like to thank you for being with us today and congratulate you on your nomination. Do you have any relatives or friends that you want to introduce to the Committee? If not, we look forward to your statement.

TESTIMONY OF JOHN L. HOWARD[1] TO BE CHAIRMAN, SPECIAL PANEL ON APPEALS

Mr. HOWARD. Thank you, Senator. As I told you, because I have triplet boys who are 9 years old, respecting the decorum of the Senate, it seemed the better part of valor to leave them in Illinois.

I thank you for the opportunity to appear before you today and to be considered to be Chairman of the Special Panel on Appeals. I am honored by the confidence of the President, as indicated by this nomination, and I pledge that if confirmed I will do my best to ensure that the Special Panel on Appeals fulfills its statutory mandate.

As you noted, the Special Panel of Appeals plays an important role to help ensure fairness in the administration of our Federal workforce. Because mixed cases involve issues spanning the unique expertise of two independent agencies, the Equal Employment Opportunity Commission with responsibility for discrimination law, and the Merit Systems Protection Board with responsibility for Civil Service law, there is sometimes a dispute on questions of law between these two agencies.

The Special Panel of Appeals has the statutory responsibility to resolve these disputes. If, when reviewing a mixed case, the Merit Systems Protection Board determines that the EEOC misinterpreted a Civil Service law rule, regulation or policy, it must certify the case to the Special Panel of Appeals. The Special Panel of Appeals' statutory responsibility is to decide the issue in dispute on the basis of the record and issue a final decision.

In doing so, the Special Panel of Appeals must pay due deference to the respective expertise of both the Board and the Commission. To ensure there is parity between the EEOC and the MSPB, the Special Panel of Appeals consists of a member from each of those

[1] The prepared statement of Mr. Howard appears in the Appendix on page 15.
The biographical information appears in the Appendix on page 17.
Responses to prehearing questions appear in the Appendix on page 32.

agencies and a chairman. Once convened, the Special Panel has 45 days to issue a decision, which is then judicially reviewable.

While the role of the Special Panel, as defined by statute, is quite narrow, it sits atop of an administrative procedure that is very important to the administration of the Civil Service laws and to ensuring that the Federal workplace is free from prohibited discrimination.

The statutory framework that preserves this expertise in both the EEOC and the MSPB has led to lengthy and highly complicated procedures for adjudication. Wending the way through this complex process involves employees making many choices and the appeals can take years. This complexity and this delay makes it imperative that the Special Panel fulfill its statutory mandate to issue decisions within the 45 days of certification.

Given the important adjudicatory role of the Special Panel, it is essential that the chairman take all appropriate measures to ensure that any case certified is decided in a timely, careful, and fair manner. The chairman must faithfully and independently adjudicate matters appropriately before the board, making certain that its deliberations are fair and result in an expeditious decision.

If confirmed, I will faithfully fulfill these mandates.

Mr. Chairman, this concludes my statement. I thank you for your time. I thank you for your consideration, and I would be pleased to answer any questions you or the Committee may have.

Senator AKAKA. Thank you, Mr. Howard, for your statement. I have a couple of questions for you, but before I proceed, the Committee has three questions we ask all of the nominees for the record.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. HOWARD. No, sir.

Senator AKAKA. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. HOWARD. No, sir.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. HOWARD. Yes, sir, I will.

Senator AKAKA. Thank you very much.

Here is my first question. Since 1978 the Special Panel on Appeals has met fewer than a dozen times. Given the infrequency of this panel being convened, what role do you see for yourself as chairman of the panel? And what role do you see the panel playing in a contemporary appeals system?

Mr. HOWARD. Sir, the role of the chairman of the Special Panel, as set out in the statute is quite clear, that once convened you have to issue a decision within 45 days. Following this time frame and making sure that there is careful, fair, consistent decision both with the statute and with the precedent is essential to the role of the Special Panel.

The fact that I think there has been four or five cases would not, in any way, say that this Special Panel is not important to the process. As long as you split the functions of adjudicating issues of discipline and management of the Federal workforce from adjudicating issues of discrimination, you need some mechanism so that the expertise of those two adjudicators can mesh and that disputes can be resolved with coherent workplace rules.

I think the fact that there is a Special Panel encourages both the Board and the EEOC to be careful in adjudicating their issues and to follow each other's precedents where it is possible.

Senator AKAKA. Thank you. You have a strong background in government, having served with the MSPB, the Department of Justice, and on the staff of Vice President Quayle. Given your understanding of the government's Civil Service system, are there changes you would make to the Federal appeals process?

Mr. HOWARD. Senator, I also started my career as a Federal employee at the Office of Personnel Management.

The Civil Service has, since its inception, been one that has been carefully reviewed and criticized, sometimes fairly, often unfairly. Moving forward, as the Civil Service has gone through the various iterations to ensure that the Federal workers can do their job and have appropriate protections and a fair workplace, the system has become very complicated.

It seems to me that as long as we do have a split in adjudication functions that we will have a period where we have justice denied because there are delays. As you know from your work on the Committee, it is a very complex problem. There is a lot of balances involved. I do not think that there is any single fix that would solve the problem.

But I do think that careful adherence to the statutory time frames is required, not just by the Special Panel, because by the time a case gets to the panel it is between 3 and 5 years old. But as the process moves through, that there are certain times when the EEOC has to issue decisions. They have to be within the time frame. The other agency, the MSPB has 120 days. They have to issue a decision within the time frame.

So without getting into major Civil Service overhaul, I think it is imperative that people meet the statutory obligations that have been imposed.

Senator AKAKA. Thank you very much for your responses. Senator Cochran.

Senator COCHRAN. Mr. Chairman, thank you.

I noticed that you said there were only four or five cases that have been handled by this panel, and I assume that is from the date 1978 when it was created?

Mr. HOWARD. Yes, sir.

Senator COCHRAN. It seems like a long period of time within which only four or five cases have been before the panel. Does this mean that we should take a look at whether or not there should even be a panel? So few cases over such a long period of time, is there an argument that can logically be made to dissolve this panel and just let the other appellate panels handle so few cases?

Mr. HOWARD. Writing on a clean slate you might not end up where we are. But as long as you have split, the MSPB looking at

the performance issues or misconduct issues, as long as you have the EEOC looking in the Federal workplace, then you need some way to resolve inconsistent results.

So I think that resolving the Special Panel issue by eliminating it would not take the problem away.

Senator COCHRAN. Were there any cases decided by the panel, in these four or five instances, that would not have come out the same way without the panel?

Mr. HOWARD. There would be a disagreement between the Board and the EEOC on the rehab act, the within grade increases, and frankly I do not remember the subject matter of the other two cases. But I think that looking at the role of the panel just in those four cases may not be a broad enough scope, because I do think that the panel serves the effect of having the hearing officers at the EEOC, the administrative judges at the MSPB pay more attention and give due deference to each other's jurisprudence and to follow the panel's jurisprudence as well.

Senator COCHRAN. Thank you very much for your response to our questions. I wish you good luck and I know that you will carry out these responsibilities in a fine professional way. Congratulations on your selection.

Mr. HOWARD. Thank you, sir.

Senator AKAKA. Thank you very much, Senator Cochran.

We have no further questions at this time, Mr. Howard. However, Members of the Committee may submit questions in writing. The Committee would appreciate your timely response to those questions.

Mr. HOWARD. Sir, I would be remiss if I did not compliment both of you on your outstanding staff for their patience, and also their direction in working through the process. You have truly professional staffs.

Senator AKAKA. Thank you very much for that.

The record will remain open a week for any questions or further statements from my colleagues. Mr. Howard, thank you again for being here this morning, for your cooperation with this process, and for accepting this nomination to public service.

Mr. HOWARD. Thank you, sir.

Senator AKAKA. Given your strong professional experience, both in and out of Federal Government, I believe you are well suited for this position.

Mr. HOWARD. Thank you.

Senator AKAKA. We wish you well. You may be excused.

Mr. HOWARD. Thank you, sir.

Senator AKAKA. Thank you very much.

We will proceed now to the nomination of Dan G. Blair. Mr. Blair, I invite you to come to the witness stand. Please stand and remain standing. Please raise your right hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BLAIR. I do.

Senator AKAKA. Thank you very much. You may be seated.

Thank you again, and I thank Senator Carnahan for her warm introduction. I wish to welcome you to the Committee this morning and congratulate you on your nomination. After having staffed so

many Congressional hearings, you now have the opportunity to see the view from the other side of the dais.

Before we begin, I want to acknowledge that Senator Thompson is unable to be with us today. I know he shares the pride we all feel when a member of the Senate family is chosen for a position of such high honor.

As someone who has spent his professional career advising Members of Congress on issues relating to Civil Service, you are aware of the challenges and opportunities that await you if confirmed as the Deputy Director of the Office of Personnel Management.

I would like to state for the record that OPM is the central management agency of the Federal Government. It administers and enforces Federal Civil Service laws, regulations and rules while aiding the Executive Branch in managing the Federal workforce. OPM supports the Federal Government in recruiting, retaining, training and motivating the best and the most effective workforce possible.

As Chairman of the Senate International Security, Proliferation and Federal Services Subcommittee, I look forward to working with you and Director James on the critical issues facing our Federal workforce.

At this time, I would like to ask Senator Cochran whether he has any statement to make?

OPENING STATEMENT OF SENATOR COCHRAN

Senator COCHRAN. Mr. Chairman, first let me congratulate Dan Blair on his selection for this important position. He has served this Committee very capably over a long period of time and he has also had experience in other jobs as well. But as senior counsel to Senator Thompson, as Chairman of the Committee and Ranking Member, he has proven to be a very valuable resource because of his experience and expertise in matters dealing with the Federal personnel system and the U.S. Postal Service.

So I am confident that he has the qualifications to do an exceptionally fine job as Deputy Director, is that the official title? Deputy Director.

We appreciate his presence this morning and his cooperation with the Committee during the confirmation process, as well.

Senator AKAKA. Thank you very much, Senator Cochran.

Mr. Blair, we are happy to have you here this morning.

Mr. BLAIR. I am happy to be here, sir.

Senator AKAKA. Although your parents, David and Conness were unable to travel from Missouri to Washington, I know their thoughts are with you today, and I am sure many others. I want to extend my aloha to them.

I understand that you have family and friends here?

Mr. BLAIR. I do, sir.

Senator AKAKA. I am going to give you the opportunity to introduce them.

Mr. BLAIR. I do have family and friends here and I would like to introduce, in the front row, my wife, Michele; my good friend, Karen Howard; and the patriarch of the Blair family, my uncle, Newell Blair. I would also like to acknowledge Helen and Jim Cauthen in the second row and their two children, Will and Sarah. Helen and I grew up together in Joplin, Missouri and was respon-

sible for introducing Michele and me, so I would like to take that opportunity.

Senator AKAKA. I want to welcome all of you to this hearing, I know with their sitting back there gives you a lot of strength. Thank you very much and welcome to all of you.

Will you proceed then and I will put your statement in the record. Please proceed with your statement.

TESTIMONY OF DAN G. BLAIR[1] TO BE DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT

Mr. BLAIR. Thank you, Mr. Chairman, Senator Cochran, those were very kind remarks.

I want to thank you for holding the hearing today and for the many courtesies that you and your staff have extended to me during this confirmation process.

I want to thank Senator Carnahan for that introduction, as well. I am very proud of my Missouri roots and I appreciated those kind words.

I want to begin today by expressing my gratitude to President George W. Bush and to Director Kay James. It is indeed a high honor and privilege to be nominated for Deputy Director of the U.S. Office of Personnel Management. I very much look forward to this opportunity to serve.

The Federal Government faces serious challenges in the management of its human resources, but these challenges in turn create opportunities. And I cannot imagine a more exciting time to be a part of the Bush Administration or at OPM.

Federal human capital management has taken on a new significance and its prominence on the President's management agenda underscores the importance that Federal HR issues have in this administration. The groundwork for this increased attention was laid by the work of this Committee and by the work of GAO. And Federal HR management is indeed an issue upon which common solutions can be forged.

Given this high level of interest, Director James has moved forward vigorously in leading OPM as it guides and helps agencies to more strategically address the human resources management. We are working hand-in-hand with the Office of Management and Budget in a government-wide effort to help agencies and departments assess and respond to their current and future HR needs.

We are also assisting them in making progress in managing and improving their marks on the President's Executive Branch management scorecard.

Further, OPM has been asked to manage four e–Government initiatives that will improve efficiency and effectiveness throughout government. And we were recently tasked with leading the effort to consolidate and modernize the government's payroll systems.

With this Committee's consent and the Senate's approval, I will have the opportunity to serve as the deputy in an agency that is quickly moving away from the traditional role of passive rules en-

[1] The prepared statement of Mr. Blair appears in the Appendix on page 40.
The biographical information appears in the Appendix on page 43.
Responses to prehearing questions appear in the Appendix on page 48.

forcer to that of a nimble and proactive policy consulting organization.

Yet we have barely begun to scratch the surface. Director James have laid out a comprehensive and ambitious vision to make OPM a world class model for HR management. As you may have heard, we are coordinating efforts across government to streamline the hiring process, harness technology, and do all we can to position the Federal Government to recruit, hire, and retain a highly skilled and qualified workforce. This includes a thorough review of the Federal Government's current pay structure and our ongoing legislative efforts with this Committee, the Senate, and the House to achieve enactment of the President's Managerial Flexibility Act.

I am very honored to be nominated by the President for a position where there is so much opportunity to make a real difference. My career includes 17 years on the staffs on the House and Senate Congressional Committees charged with Civil Service oversight. During this time, I had the high honor of serving as senior counsel on this Committee for Senator Thompson. I want to acknowledge my debt of gratitude for that opportunity.

I also want to express my deepest sympathies to Senator Thompson and his family for their recent loss.

I have to admit that I appear before the Committee today from a distinctly different vantage point than the one I was accustomed to only a few short months ago. Yet, I feel as if today is a homecoming of sorts for me. I have the greatest respect and deep affection for the Members and staff of this Committee. I consider it a true honor to have been a part of this staff and it was a privilege to have worked so closely with such outstanding colleagues.

Mr. Chairman, I have a written statement that I would ask be entered into the hearing record, and look forward to your questions.

Senator AKAKA. Without objection, that will be placed in the record.

I want to thank you, Mr. Blair, for your statement which clearly reflects the dedication and enthusiasm you bring to this position and the experience you have had in this body.

Mr. Blair, at this point may I ask the three questions of our witnesses? Is there anything you are aware of in your background that might present a conflict of interest with the duties of this office to which you have been nominated?

Mr. BLAIR. No, sir.

Senator AKAKA. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. BLAIR. No, sir.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Mr. BLAIR. Yes, sir.

Senator AKAKA. As you noted, this Committee has examined a wide range of management issues within the context of hearings and GAO reviews. Next month, I plan to hold a hearing on the legislative proposals offered by Senator Thompson and Senator

Voinovich, as well as a hearing on S. 1800, the Homeland Security Federal Workforce Act that I introduced with Senator Durbin and Senator Thompson.

I believe the events of September 11 underscored the strengths and weaknesses of our Federal Government, and our bill would provide recruitment and retention incentives for Federal employees with national security skills.

Today's agencies are taking on broadened homeland security missions with limited funding and personnel. I was pleased to learn from your written statement how seriously OPM is taking the responsibilities in working with the frontline agencies. However while the focus is on agencies with obvious national security roles such as the military, law enforcement, and intelligence community, most other agencies play less obvious but equally important roles in homeland security.

I support a cohesive and coordinated Federal Government and feel that a strong workforce is key to our success in protecting our country and operating in an effective and efficient manner.

My first question to you is what is OPM's strategy to ensure that agencies across the Federal Government are adequately staffed with the right people and the right skills to carry out these new and expanded homeland security missions?

Mr. BLAIR. At OPM, since the events of September 11, we have been focusing on what ways we can help agencies staff homeland security positions. We have done a number of things. Immediately following September 11, we issued a special temporary hiring authority for any agency that would need to quickly fill any of these positions. We have delegated authority to waive what we call those dual compensation requirements, thereby allowing retirees to return to work without having their retirement checks or their new paycheck affected by that. We have done that for 15 agencies and nine others have the authority to waive the repayment of the voluntary separation incentive or the buyouts that employees may have received during the downsizing that took place over the last 8 years.

Others have requested and received waivers on a specific case-by-case basis and OPM has had a turnaround time of approximately 24 hours for those individual waivers.

We have further established what we call the Patriot Readiness Center that includes a toll-free number, an E-mail address and a website. We have had almost 12,000 Federal retirees access this in an effort to return to work. And 25 agencies have utilized that already.

We have worked with the Customs Department, and the Department of Transportation in helping them recruit and retain top people for these areas. We have also shared blueprints and made recommendations for other agencies for testing and hiring large numbers of Federal employees in this area.

Senator AKAKA. Thank you for that response.

I also want to mention that Senator Cochran is a cosponsor of S. 1800, and I hope that OPM will work with us to enact this legislation.

Many studies point to the government's inability to compete with the private sector as one reason why we are unable to attract and

retain qualified employees. In 17 of the past 20 years, military and Federal personnel have received equal pay increases, yet the President's budget proposes an across-the-board adjustment of only 2.6 percent while the military would receive 4.1 percent in increase.

This 2.6 percent increase is less than the FEPCA formula and fails to close the pay gap between Federal and private sector workers. How do you justify the lack of parity in pay? And how would you address the competitive pay gap that exists in government?

Mr. BLAIR. I want to first begin by saying I fully support the proposals contained in the President's budget. The way that we would justify this is that we are on a war footing right now and a war footing requires us to engage in the allocation of scarce resources.

It is important to consider the 2.6 percent proposed increase in a broader context however. The 2.6 percent is an increase across-the-board adjustment that will be given to all employees. Employees will also be able to avail themselves of their longevity increases or otherwise known as within-grade increases. Employees will also be eligible for other performance-based increases as well, such as quality step increases, career ladder and merit promotions, incentive awards, and retention bonuses.

But you raise a very good question of how we will look at this in terms of comparability. And that is one of the areas that Director Kay James is beginning to look at and has been talking about and instructed staff to look at quite carefully.

We have a pay system that really is in need of careful review and study. This past pay period, in January, we awarded an across-the-board increase of 4.6 percent. Looking at that, that was more than $5 billion if you calculate in the benefit component on that. And we awarded that across the board.

However, many people have looked at that and said "(i)s that the right way of spending the money?" It is not a question of whether it was too much or too little, but these across-the-board increases reward poor performers and good performers in the same way and in the same amounts. And Director James has asked why not look at this and see if our compensation systems are designed in such a manner, or how we can design our compensation systems in such a manner as to enhance good performance.

Our compensation system, now that we have it, is grounded in the 1949 Classification Act. That was at a time when over half of the Federal Government were GS–2s and GS–3s. Now I believe the mean average grade is GS–11. So we really need to have an updated compensation system. I think you will see Director James coming out soon with ideas to stimulate this debate and conversation.

Senator AKAKA. Another area of concern is the continuing rise in the cost of FEHBP premiums. Senator Cochran and I have initiated a GAO review of the administration of the program. Director James is aware of my interest in keeping down costs, and I understand that OPM is working to keep costs under control.

Would you explain what steps are being taken? And do you believe the government should increase its share of the premiums?

Mr. BLAIR. We do not have an opinion at this time on increasing the government's share. I would point out that the government's share is set in statute. In comparison to the private sector, which

has the ability to raise or lower their contribution toward the overall premium, government's contribution remains stable.

We also have some differences between FEHBP and the private sector that are worth noting. We cover our retirees fully and everyone pays the same level premium. It is not differentiated according to age. But increases in the FEHBP premium are of concern to me and to this director and the administration.

Sadly, it reflects increasing costs, I think, in health care nationwide. We have been working hard to maintain a comprehensive system that is current and contemporary, but at the same time we want to be able to keep costs in line and make sure it is affordable.

Most of the increase in the past year was due to several components. One was increasing drug costs. Others were utilization of medical facilities, technology and just general medical inflation.

In this year's FEHBP program you will see a number of programs starting to offer three tiers of drug benefits in an effort to help rein in these costs. I think you will see us working more and more in helping plans strive to find ways to cut their costs while maintaining a comprehensive set of benefits.

Senator AKAKA. Thank you. I would like to go back to the issue of homeland security for a moment. As the Federal Government continues to expand the role of Federal agencies to defend our borders and people, additional personnel will be needed. However, there is a hybrid Federal employee evolving, such as the airline baggage screeners who at this time lack Title V protections; the right to unionize and protection from retaliation for reporting waste, fraud or abuse under the Whistleblower Protection Act.

Given the difficulties agencies face in recruiting or retaining workers, the question is how will the government convince people to take these positions if they do not have the same rights as other employees?

Mr. BLAIR. I think that is a tough question and it was thoroughly debated both inside and outside of Congress when Congress considered the Airline Security Bill this past fall. It was decided, for a number of reasons, that the protections and the appeal right we grant to rank and file Federal employees would not go to the new screeners.

I understand that a decision regarding their rights to unionize has not been decided at this point. However, I would be happy to work with the Committee as you review further legislative issues involving this area.

Senator AKAKA. Thank you very much, Mr. Blair, for your responses. Senator Cochran.

Senator COCHRAN. Mr. Chairman, thank you.

I was glad you mentioned in your statement, Mr. Blair, the efforts being made by OPM to respond to this challenge of dealing with the war on terrorism from a personnel standpoint in the way that it is, assisting, as you pointed out in your statement, frontline agencies in recruiting and retaining critical personnel, assembling strike force teams of human resource experts, to address special needs in specific agencies.

Do you have any knowledge of how this is going? I know the plan is to be aggressive in the way we go about meeting responsibilities government-wide in this war on terrorism, but is your assessment

so far of your review of OPM policies and procedures that they are on track? Are they fulfilling these goals that they have set for themselves?

Mr. BLAIR. Since Director James has come on board, she has aggressively made herself and the agency proactive in addressing these specific concerns. We have had what we call our agency strike force teams go over to the Department of Energy, and the Department of Transportation. We have been helping the new Office of Homeland Security meet its staffing requirements.

And so while there is a tremendous amount of work to be done in this, we have been aggressively pursuing it and proactive in making OPM available to help be a solution for these agencies in their hiring and staffing, rather than be a problem.

Senator COCHRAN. I also noticed that you mention the legislative efforts that the Office of Personnel Management was undertaking to support the enactment of the President's Managerial Flexibility Act. What changes in that act do you see as the most important that we should ensure are included in that final legislative enactment?

Mr. BLAIR. While I would like to see the whole package, I think that there are some key components in there. We look at recruitment, retention, and staffing needs in terms of timing of bonuses and the timing of incentives and rewards.

We also have, I think, a prudent proposal for streamlining the demonstration project authority that we currently have. Right now, to establish a demonstration authority can take up to, I believe, 2 years. We would like to be able to streamline that.

We also have a provision that would allow agencies to access those flexibilities that have been awarded other agencies systemwide, because if it works for one agency why cannot it work for another?

So I think those are some key components just off the top of my head that I would like to see OPM be able to administer.

What I believe is especially important is the ability for OPM to work to see that these agencies get these flexibilities. As you know, this Committee has addressed over the period of the past few years, a number of agencies seeking their own independent personnel system. This is an attempt to keep agencies within the rubric and framework of Title V while recognizing that each agency has its own distinct and unique personnel needs.

Senator COCHRAN. I appreciate your willingness to serve in this capacity. I think it is an important responsibility and you are obviously bringing to the job a lot of experience and ability. I am confident you are going to make your presence felt in a very positive way. And I congratulate you again.

Mr. BLAIR. Thank you, Senator.

Senator COCHRAN. Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Cochran.

Let me pose the last question. Over the past 10 years, OPM has been subject to significant downsizing. It has only 43 percent of the workforce it had in 1993. A key priority of the President's management agenda is human capital. Agencies will now be evaluated according to their performance as measured by OMB's management scorecards.

Does OPM have the resources needed to meet the goals identified by the scorecards? And how are you and the Director planning to play a role in the oversight and improvement in these scorecards?

Mr. BLAIR. Right now we are building capacity to be able to respond to the agency needs. But OPM's leading role in the scorecard shows that it will be a chief proponent in the whole HR debate and administering of the whole human resource management issue in this administration.

In the President's budget we received approximately a 15 percent increase. I think that is recognition of the role that the new OPM will be playing in this administration. We will be managing four e–Government initiatives plus payroll modernization. And we own the human capital component on the scorecard. I think that is terribly important because it raises OPM's visibility throughout government. And we will be working hand-in-hand with agencies to ensure that human capital management is indeed a high priority for each agency, and that will be reflected on their marks on the scorecard.

Senator AKAKA. Thank you very much. Senator Cochran, do you have any further questions?

Senator COCHRAN. I have nothing further, Mr. Chairman.

Senator AKAKA. Mr. Blair, we have no further questions for you at this time. I wish to insert into the record two letters of support from you, one from Representative Connie Morella and one from Representative John McHugh.[1]

Furthermore, the record will remain open for any questions or statements and I would appreciate your timely response to any of these questions.

Judging from the number of your former colleagues and well wishers, including the Chairman of the Postal Rate Commission, George Omas, in our audience today, I believe Director James is gaining a deputy of high quality.

We look forward to working with you on the challenges and opportunities ahead and I thank you again for being here this morning, for your cooperation with this process, and for accepting the nomination to public service.

Any further business? If there is no further business to come before the Committee, the Committee will stand adjourned.

Mr. BLAIR. Thank you, Senators.

[Whereupon, at 11:18 a.m., the Committee was adjourned.]

[1] The letters from Congressman McHugh and Congresswoman Morella appear in the Appendix on page 38 and 39 respectively.

APPENDIX

Mr. Chairman and members of the Committee, thank you for this opportunity to appear before you today to be considered for the position of Chairman of the Special Panel on Appeals. I am honored by the confidence of the President indicated by this nomination. I pledge that, if confirmed, I will do my best to insure that the Special Panel fulfills its statutory mandate.

The Special Panel plays a very important role to help ensure fairness in the administration of our Federal workforce. It is the final administrative panel that can decide the so-called "mixed case," where a Federal employee or applicant for employment alleges that a personnel action otherwise appealable to the Merit Systems Protection Board is based, in whole or in part, on prohibited discrimination.

Because "mixed cases" involve issues spanning the unique expertise of two independent agencies – the Equal Employment Opportunity Commission with responsibility for discrimination law and the Merit Systems Protection Board with responsibility for civil service law, there is sometimes a dispute on questions of law between the two agencies.

The Special Panel has the statutory responsibility to resolve these disputes. If, when reviewing a mixed case, the MSPB determines that the EEOC misinterpreted a civil service law, rule, regulation or policy, it must certify the case to the Special Panel. The Special Panel's statutory responsibility is to decide the issues dispute on the basis of the record and issue a final decision. In doing so, the Special Panel must give due deference to the respective expertise of both the Board and the Commission.

To insure that there is parity between the EEOC and the MSPB, the Special Panel consists of a member from each of those agencies and a Chairman. Once convened, the Special Panel has forty-five days to issue its decision, which is then judicially appealable.

While the role of the Special Panel as defined by statute is quite narrow, it sits at the top of an administrative procedure that is very important to the administration of the civil service laws and to ensuring that the Federal workplace is free from prohibited discrimination.

The statutory framework that preserves the administrative expertise of the EEOC and the MSPB has lead to a lengthy and highly detailed procedure for adjudication. Wending through the complex process involves the employee making choices among various channels for appeal and can take years. This complexity and delay makes it imperative that the Special Panel fulfills its statutory mandate to issue its decisions within forty-five days of certification.

Given the important adjudicatory role of the Special Panel, it is essential that the Chairman take all appropriate measures to insure that any case certified is decided in a timely, careful, and fair manner. The Chairman must faithfully and independently adjudicate matters appropriately before the Special Panel, making certain that its deliberations result in fair and expeditious decisions.

If confirmed, I will faithfully fulfill these mandates.

Mr. Chairman, this concludes my statement. I thank you for your time and consideration, and I would be pleased to answer any questions that you or other members of the Committee may have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   John Lawrence Howard

2. **Position to which nominated:**

   Chairman, Special Panel on Appeals

3. **Date of nomination:**

   August 3, 2001

4. **Address:** (List current place of residence and office addresses.)

   Residence: ----------

   Office: W.W. Grainger, Inc.
   100 Grainger Parkway
   Lake Forest, Illinois 60045

5. **Date and place of birth:**

   May 16, 1957
   Danville, Illinois

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married on October 13, 1984 to Julia Louise Steinfirst

7. **Names and ages of children:**

   ----

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   Fountain Central High School
   Veedersburg, Indiana
   Diploma – 1975

   Indiana University School of Business
   Bloomington, Indiana
   1975-1979
   B.S. Business Finance 1979

Indiana University School of Law
Bloomington, Indiana
1979-1982
J.D. 1982

The George Washington University
National Law Center
Washington, DC
1986-1989
LLM (Labor and Employment) 1989

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Please see Attachment A

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

Presidential Rank Review Board (U.S. Officer of Personnel Management) – March 20, 2001
Administrative Conference of the United States – Liaison Member - 1991-1992

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None, other than listed in response to Question 9, above.

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Gilda's Club of Chicago	Director	2000-present
Woodrow Wilson Center	Wilson Council	1996-present
National Legal Center	Legal Council	1996-present
Hudson Institute	Adjunct Scholar	1993-present
YMCA of Greenwich	Director	1996-1999
Federalist Society	Member	1984-present
American Bar Association	Member	1995-present
ABA Seeking Common Ground Planning Group	Member	1995-1998
ABA Ad Hoc Committee on Civil Justice Improvements	Member	1993-1994
Metropolitan Club of Washington	Member	1996-present
Army & Navy Club of Washington	Member	1985-present

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

I was an unsuccessful candidate for election as a delegate to the Indiana Republican State Convention in 1982 or 1983. I ran from DeMotte, Indiana (Jasper County).

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I am a member of the Republican National Lawyers Association. I previously served on the Connecticut Republican State Finance Committee.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

Tenneco Employees Good Government Fund
(Political Action Committee of former employer)

1996 $1,008
1997 $1,008
1998 $1,008

Friends of John Rowland
1998 $500

Bush for President, Inc.
June 24, 1999 $1,000

Peter Rusthoven for U.S. Senate
October 29, 1999 $500

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Blue Key National Honor Society
Mortar Board National Honor Society

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Valuation of a Business in an Acquisition Context (with Theodore R. Tetzlaff, J. Ericson Heyke, and Dean L. Overman) in Successful Partnering Between Inside and Outside Counsel, sec. 51 (Robert L. Haig ed.) (West Group and ACCA 2000)

An Overview of Director and Officer Responsibilities (with Timothy Donovan), ACCA Docket, Vol. 18, No. 9, October 2000 (The Journal of the American Corporate Counsel Association)

A Confidentiality Agreement Primer (with Charles E. Levin), ACCA Docket, Vol. 17, No. 2, March/April 1999 (The Journal of the American Corporate Counsel Association)

The Foreign Corrupt Practices Act - A Compliance Approach (with Judah Best), National Legal Center for the Public Interest, August 1997

The English Rule Can Work Here, Too, Civil Litigation Reporter, January 1995

Basics of Alternative Dispute Resolution, National Legal Center for the Public Interest, September 1994

The Move Toward Reform: Implementing the Civil Justice Reform Proposals, (with J. M. Gidley), National Legal Center for the Public Interest, November 1992

Current Developments in Whistleblower Protection, 39 Labor Law Journal 67 (February 1988)

Retaliation, Reinstatement and Friends of the Court: Amicus Participation in Brock v. Roadway Express, Inc., 31 Howard Law Journal (1987)

16. Speeches: Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

The View from the Other Side, Federal Ethics Reports, October 1996

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I was chosen for this nomination because of my background in public service and my interest in personnel and civil service law.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have a broad mix of experience relating to human resources law and regulations in both the public and private sectors.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

No. The Special Panel is a part-time position and is treated as a Special Government Employee.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

Yes, I plan to continue my current employment with W.W. Grainger, Inc.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Please see response to Question 2, above.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   I do not believe that I have any relationships, have engaged in any transactions or have taken any other actions that could constitute or result in a possible conflict of interest with service as the Chairman, Special Panel on Appeals.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

   In 1997-1998, I assisted the Business Roundtable in its review of civil justice reform issues.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

   No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   Yes.

   I was named as one of several defendants in a lawsuit brought by a former Department of Justice employee who alleged that her termination violated Title VII. Thompson v. Reno, No 95-1219-WEB (D.C. Kan.) As an Associate Deputy Attorney General, I was in the employee's reporting chain to the Deputy Attorney General (and others who were also named). The case was dismissed.

   My employer, W.W. Grainger, Inc. and my former employers, Tenneco Inc and Tenneco Automotive Inc, have from time-to-time been parties to various administrative proceedings and litigation.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   None.

E. FINANCIAL DATA

The Answers to the Financial portion of the Questionnaire are available for review in SD-340.

Attachment A

9. Employment Record:

2000 to present	Senior Vice President and General Counsel W.W. Grainger, Inc. 100 Grainger Parkway Lake Forest, Illinois 60045
1998-1999	Vice President and General Counsel Tenneco Automotive 500 North Field Court Lake Forest, Illinois 60045
1993-1998	Vice President – Law (and previously Senior Corporate Cousnel) Tenneco Inc 1275 King Street Greenwich, Connecticut 06830
1993	Director Vice President's Transition Office 1750 M Street, NW Washington, DC 20005
1990 – 1993	Counsel to the Vice President The White House Washington, DC 20005
1988-1990	Associate Deputy Attorney General U.S. Department of Justice Washington, DC 20530
1986-1988	Legal Counsel to the Chairman U.S. Merit Systems Protection Board Washington, DC 20419
1985-1986	Special Assistant to the General Counsel U.S. Consumer Product Safety Commission Washington, DC 20207
1984-1985	Attorney-Advisor U.S. Office of Personnel Management Washington, DC 20415
1982-1984	Deputy Prosecuting Attorney 30th Judicial Circuit Jasper County, Indiana and Associate Nesbit, Fisher and Nesbit Rensselaer, Indiana

Attachment B

Response to Part A, Question 16

FEDERAL ETHICS REPORT

October 1996

The View from the Other Side

A Former Federal Ethics Official Experiences the World of Business Ethics

VOLUME 3, ISSUE 10

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By John Howard

Assistant General Counsel
Tenneco, Inc.

[This article is based on a speech presented at the Office of Government Ethics 1996 Conference]

My first career was public service—initially at the state level and then for nine years in the federal government, working at OPM, CPSC, MSPB, DOJ and the White House. Now I practice law within a Fortune 200 company with revenues of over $9 billion. In each of my government jobs, I worked closely with the Office of Government Ethics. In fact, a large part of my job was keeping people out of trouble and in compliance with the Ethics in Government Act.

My transition to what I used to call "the real world" has required some retooling—both in my legal skills and in my thinking about how the real world works.

I had to let go of a paradigm—that in the private sector, every day would bring a free lunch or lavish gifts from other businesses. After years of buying my own lunch, saying no to Kennedy Center tickets and weighing the value of Christmas fruit baskets, I was ready for the private sector cornucopia and to break free of 5 C.F.R. Instead, and not without some chagrin, I found that corporate America had discovered "ethics."

And so as a traveler from the other side, I am going to discuss business ethics and more specifically the experience of implementing an ethics program at my company. You may be thinking that "Business Ethics" is a world class oxymoron. But just as in the government, business takes ethics seriously.

Government vs. Business

In my experience, I found that big business and government are not altogether different. First is organizational size. My company currently

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Business Ethics

View from the Other Side . . . from page 1

employs about 60,000 people. We rival some of the cabinet agencies in organizational structure—our company is made up of over 250 separate corporations. We sell products in every state. And, like the federal government, we have increased demands, shrinking budgets and reduced headcounts.

Successful companies will make certain that they conduct their business with integrity, honesty and in compliance with the law.

Second, both business and government are affected by economic conditions, by changes in society and attitude, by emerging technology and by politics. In many respects, we are in this together.

But there are at least two fundamental differences between business and government. The first one is competition. Consumers have their choice of products and providers. The marketplace is defined by choice. Not surprisingly, each manufacturer wants a greater share of the market. It may not literally be dog-eat-dog and business may not truly be war, but it is clear that there are winners and losers in the marketplace. Which brings me to the second difference between business and government—the "bottom line." There is no more fundamental concept. We keep tally in dollars and cents and if we don't make a profit, we don't stay in business.

Does this mean that all that matters is the bottom line? No. Profits matter, but what matters more is the long-term viability of the company. Ethics is important to making certain that the company is there not just today but also tomorrow. Successful companies will make certain that they conduct their business with integrity, honesty and in compliance with the law.

This has not always been the case. Think about the legal structure that arose as capitalism developed. We take for granted the complex legal and regulatory system that governs business. Many of us have had the good fortune to have avoided negotiable instruments and secured transactions since the bar exam. Those

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long-forgotten courses are evidence that business is conducted within a framework of hundreds of years of custom and precedent. Of course, a highly developed legal system does not prevent business disputes. (In fact, some cynics would argue that the reason we have so many disputes is that we have so many laws.)

But think back to feudal times. The growth of business required conditions that permitted trade. For orderly and consistent trade, there had to be a system that guaranteed physical security and made possible credit, insurance and the transmission of funds. Without doubt, the rules about contracts, property and procedure provided an environment where trade could grow. But business would not be able to flourish without some common code—some general agreement or ethic—that would ensure basic fairness. An individual or organization that characteristically lied, cheated, stole or broke its promises was not going to find many long-term trading partners. Continuous viability required a reputation for fairness. Bad ethics was bad business.

Goal of Business Ethics

Today we tend to speak in the corollary, that good ethics is good business—but what does that mean? A tough question—one that American business must answer and *now*.

There are three forces driving business toward ethics: 1) public opinion; 2) government regulation, including criminal laws, and 3) shareholder pressure. Consider first public opinion. A few years ago almost no one talked about business ethics. You remember the eighties, those "Go Go" years when "greed was good"? Well the eighties are gone. We are in the nineties now—a decade that many have said will be the decade of ethics. They may be right. Look at some of the indicators: Not long ago, *Newsweek* devoted its cover story to ethics. Another sure sign is the proliferation of consultants, accountants and lawyers who offer "ethics counseling." But I think the clearest indication of a change in focus in the phenomenal success of Bill Bennet's *Book of Virtues*, with over a year on the *New York Times* bestsellers list. This could have only happened in the nineties.

We know that much has changed in over the past four or five years. There is a greater sense of hostility toward wealth and some related excesses. Corporate America is seen as cold, heartless and intent on cutting jobs at any cost. Earlier this year, we saw several candidates use corporate America as the bogeyman for all social ills. There has been a mood shift from the eighties to the nineties, and while the nineties may be remembered as the decade of ethics, it has been said that the nineties may also be known as the decade of retribution.

This leads to the second factor—the increase in government enforcement. Today, more and more conduct is subject to criminal sanctions. Every session, Congress defines more crimes, and if they do not prescribe a new crime, they increase penalties on existing ones. This approach is fairly new. Consider this: There are only three crimes enumerated in the Constitution—treason, piracy and counterfeiting. Now there are more than 3,000 federal crimes, running the gamut from offenses against the person, offenses involving property, public officials, drugs, criminal enterprises, fraud, mail fraud, perjury, tax . . . the list goes on.

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View from the Other Side . . . from page 3

Traditionally, these crimes applied only to individuals, the folklore being that corporations do not go to jail, people do. And that is still true today. But while you still can not put a company in jail, prosecutors now have an increasing array of sanctions they can use against business. It is important to note that an employee's motivation for committing the crime is largely irrelevant.

An employee may be cutting corners to make himself look good, or because of a personal judgment that certain requirements—be they environmental reporting or bookkeeping—are unimportant. An employee just may be sloppy. But the employee's motivation is not determinative. Unless the corporation is itself the "victim" of the wrongdoing, it normally will be subject to indictment.

The Sentencing Guidelines give corporate America a list of recommendations for compliance programs that may minimize criminal penalties.

To be fair, in the form of the U.S. Sentencing Commission Guidelines, the government has given business a roadmap to help avoid problems. The Guidelines give corporate America a list of recommendations for compliance programs that, if effectively implemented, may minimize—and perhaps eliminate—criminal penalties.

The Guidelines are related to the third force driving companies to address business ethics—corporate governance issues. Corporate governance involves how shareholders and other groups influence the company's Board of Directors and management.

At the turn of the century, corporate ownership and corporate control were generally vested in the same person. The entrepreneur not only ran his business, he was likely to own it as well. As the need for capital expanded, ownership became more and more dispersed. Literally millions of individual investors entered the stock market. As a result, it was impractical—virtually impossible—for all the owners to agree on corporate strategy. Control of the corporation was almost always left with the managers.

In practical terms, this meant that when faced with a disagreement about a management practice, the shareholder's only remedy was to sell the stock. In effect, if the shareholder did not like it, he could vote only with his feet. Over the past few years, the relationship between corporate ownership and control has come full circle. With the advent of pension funds and mutual funds, ownership is again concentrated. In today's new corporate order, the shareholder reigns supreme, or at least those shareholders who are large, institutional investors. Corporate executives now spend a tremendous amount of their time trying to keep the institutional investors happy.

One way that CEOs keep institutional investors happy is by holding managers accountable. Management must be accountable to the Board in order for the Board to be accountable to the shareholders. To be effective, corporate governance measures should be adopted before, not after, trouble hits. Forward-facing organizations do not expect failure, but they prepare for it.

Advent of the Sentencing Guidelines

Far and away the most popular approach to gain accountability and to pre-

pare for adversity is for a company to adopt a Compliance Program under the U.S. Sentencing Commission's Guidelines.

The Sentencing Guidelines were designed to promote uniformity in punishment. In 1991, the Sentencing Guidelines were expanded to deal with organizational defendants. The Guidelines take into account the nature of the offense and the circumstance of the offending party.

The manner in which companies are treated under the guidelines depends upon the steps they take prior to an offense: Have they set up an effective compliance program and what steps have they taken afterwards? Did they self-report and did they cooperate? The opportunity for mitigation credit has been an incentive for most corporations to develop a compliance program.

The Sentencing Guidelines provide no definitive formula or blueprint as to what is an "effective" compliance program. Instead, the Guidelines offer seven minimum principles: 1) establishing compliance standards; 2) assigning responsibility to a high-level individual; 3) refraining from delegating authority to miscreant employees; 4) communicating the company's compliance standards; 5) implementing monitoring and auditing standards; 6) enforcing compliance standards consistently, and 7) responding appropriately when offenses are detected.

None of these requirements seem shocking to people who have dealt with the Ethics in Government Act. In fact, this process bears great similarity to the ethics programs run in federal agencies. But to most business people, the Guidelines were a strange new world. Since mitigation credit is on the line, almost every business has started a compliance program.

Unfortunately, many companies have spent their time and their money implementing compliance programs only to get the Guidelines credit. This approach is short sighted. A compliance program in a nice binder that sits on the shelf will not produce any benefits. It will not prevent wrongdoing, and it will not help protect the company.

Tenneco's Approach to Business Ethics

Not all organizations approach compliance in the same way, nor should they. The best approach will vary according to the company's size, industry, previous problems and workforce.

At Tenneco, we have answered the question what is "business ethics" in a straight-forward and practical way. Business ethics means protecting our good reputation. We have used our compliance program to drive ethics through the organization and have adopted a "cultural" approach to business ethics and compliance. In establishing our program, we have two primary goals: Go beyond compliance and get organizational buy-in. A starting point, of course, is that we must never violate a law. That in itself requires constant vigilance.

As you know, when you work in a big organization, there is always the possibility that someone is not following the rules. The compliance program must make certain that every employee knows the rules that apply to his job. This does not mean that a welder at our Newport News shipbuilding division needs to know about international boycott restrictions, but he still needs to know safety regulations, how to comply with applicable environmental laws and that sexual harassment is

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View from the Other Side . . . from page 5

illegal. Only after a company has the fundamental building blocks of legal compliance can it begin to strive for an ethical environment.

The second goal was that the program had to be embraced by the organization. This meant that the lawyers had to give up ownership of the program. Too many lawyers view compliance as purely a legal function and part of the "legal turf" that must be protected. However, this ignores the real benefits of a compliance program.

Companies that care about compliance create a culture that encourages and rewards appropriate behavior.

A culture of good ethics and lawful conduct is good business. A well thought-out and properly implemented compliance program can be a real asset. The very least of these savings has to do with reducing criminal penalties. The more important results are:

- providing a formal system to evaluate risks—legal and otherwise;
- providing an early warning mechanism about misconduct; and
- alerting management to areas of potential weakness.

Each company will have a different approach to implementing its compliance program. This is to be expected, because there are as many ways to approach compliance as there are organizational charts. But there are two basic principles that cannot be ignored.

First, the exercise is pointless unless you have a firm understanding of your organization. You must know its business, you must know how it works, its strengths and its weaknesses. Of course, this means much more than just knowing the formal organizational structure. You need to know how sales get made, how orders are processed, how goods are delivered and how bills are paid. There are risks—both legal and ethical—at each of these junctures. You should know that procurement integrity is not just a Government issue. Business owes a duty to its shareholders to make sure it is getting value for its dollar. It is not unheard of for purchasing agents to be offered gifts in exchange for an order or to be asked to make a "gift" to ensure a customer's business. We say no. We owe it to our shareholders to compete on the basis of product and price alone.

The second principle for success is related—it is vital that you understand the corporate culture because the compliance program must fit within the corporate culture. The culture will tell you a lot about how the company really operates. The single most powerful influence on any organization is the behavior of its leaders. Simply put, if the leaders do not embrace ethical conduct, no one else will. In corporate America as well as in the federal government, this requires much more than talking a good game. If senior management ignores or just gives lip service to compliance, you will never have an ethical corporation.

Companies that care about compliance create a culture that encourages and rewards appropriate behavior. They demand that leaders and managers foster ethical and lawful conduct. They demand that each manager make compliance his or her individual responsibility.

I am fortunate to have a leadership that takes ethics seriously. They are emphatically on record that compliance and ethics

is as much a part of world class leadership as financial and operational performance. Our CEO, Dana Mead, has made it clear: "No business reason can ever justify an illegal, unethical, unprofessional or immoral act." So at Tenneco, it is not enough that the right things happen, they have to happen in the right way. There is no question whether compliance is a priority—it is.

Conveying the Message

A big part of the reason that compliance has this priority is not that it is a legal issue—it is a business issue. It is about how the company conducts its business. Is the company well managed or not? Is the company ethical or not? Unless the managers are involved with compliance, the answer will be no. You must get managers involved and they must take ownership of the program for it to be successful.

How does this happen? It takes a lot of work. You must constantly get your message out in a variety of ways, including top management speeches, orientation sessions, seminars, newsletters and computer-based training. Here is another place where corporate America can learn from government, specifically from the good work of the Office of Government Ethics.

When Tenneco started to kick off its ethics program, we decided that we would make each of our 60,000 employees watch a videotape on compliance and ethical conduct. We turned to the Office of Government Ethics to see what agency-produced material existed. These agency products are good, and we also patterned some of our training tools on the "Dangerous Dilemma" game.

After an ethics program is kicked off, it will not remain a part of the corporate culture unless it is responsive. If an employee has a concern, or reports a troubling situation, there must be a timely and accurate response. Many companies have a compliance hotline—Tenneco does too. But the hotline is best seen as a safety valve. It should not be the first or the only resort. It is important that there be more than one way for employees to communicate their concerns. We encourage employees first to seek guidance or explanations from their supervisors. In addition to the supervisor or others in the reporting chain, employees are encouraged to seek out the Law Department, Human Resources or the General Auditor.

A compliance program is effective when it screens out the risk, not once, but every time.

When a report is received, it has to take priority. Complaints must be promptly and thoroughly investigated. There is no substitute for a professional and impartial investigation and appropriate management follow-up. The program must show results. We all learn best from example, and publicizing examples of poor conduct, as well as the consequences, is a good teaching tool.

Let me conclude. Corporate compliance is good business. The process is dynamic. You can draft the perfect code, but it will not matter unless it is implemented. And it has to be implemented every day. A compliance program is effective when it screens out the risk, not once, but every time. Good managers will adopt compliance programs and worry about ethics not because the government tells them to, but because ethics gives a company a com-

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petitive edge. Just as with government, business depends upon its reputation and the trust of the people.

There will be disagreement in some areas. This is not surprising—theologians, ethicists, and government ethics officers have debated some issues for ages without reaching a consensus. If these folks, who make ethics their professional focus, can not agree on an issue, it is impractical and, frankly, unfair to expect that businesses will always reach the right result. But ethics is and always will be fundamental, not only to government but to business as well. ■

About the Author

John Howard has worked for Tenneco, Inc. since 1993, serving first as senior corporate counsel until his promotion in January 1995 to the position of assistant general counsel. His accomplishments at Tenneco include designing and implementing the corporate ethics and compliance program.

Before joining Tenneco, Howard held a variety of positions within the federal government. From 1990 to 1993, he was counsel to Vice President Dan Quayle. During that time he was also general counsel and ethics advisor for the Office of the Vice President and for the President's Council on Competitiveness. Among his prior positions, Howard was an associate deputy attorney general at DOJ from 1988 to 1990.

Sun-Diamond. . . from page 8

Agriculture Secretary's brother, who unsuccessfully sought his brother's congressional seat when Mike Espy vacated it to join the Clinton cabinet.

Smaltz noted that a 1994 *Los Angeles Times* news article on the Espy and Douglas's relationship should have put Sun-Diamond on notice that criminal conduct may have occurred. Instead, "Sun-Diamond management's response was to ignore the article; not make any investigation; and then deny . . . that it had done anything wrong."

Smaltz further criticized Sun-Diamond for claiming "that it was framed by its chief outside lobbyist, James Lake . . . and that it never knowingly gave $5,000 in 1994 to retire the campaign debt of Henry Espy."

Lake, upon whose testimony Smaltz relied in the prosecution, last year pleaded guilty to three counts of wire fraud and making illegal campaign contributions. Lake has not yet been sentenced. *United States v. Lake*, Cr. No. 95–0267 (D.D.C. 1996).

Smaltz has filed four additional cases related to the Espy-gratuity matter that are awaiting trial, including charges against Five M Farming Enterprises, Municipal Healthcare Cooperative, Inc., Crop Growers Corp. and Ferrouillet & Ferrouillet as well as against individual officials from these firms. Smaltz's jurisdiction is limited to matters related to Espy's acceptance of illegal gratuities; however, the courts have construed this limitation broadly. ■

EGR CITATIONS

EGR citations within the text of articles in *Federal Ethics Report*, such as [EGR 1–004.43–.44], refer to documents in *Ethics in Government Reporter*, a looseleaf service published by CCH Washington Service Bureau. In the example above, the "1" represents tab divider 1: Statutes and Executive Orders. The "004" represents the 4th document behind tab divider 1: 18 U.S.C. §§201–219, Bribery, Graft, and Conflicts of Interest. The ".43–.44" is the precise location within document 004 relevant to the subject of the article.

AFFIDAVIT

John Lawrence Howard being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 1st day of November, 2001 at Lake Forest, Lake County, Illinois.

Dawn Rothermel
Notary Public

My Commission expires January 15, 2003

OFFICIAL SEAL
DAWN ROTHERMEL
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:01/15/03

Pre-hearing Questionnaire for the Nomination of John Howard to be Chairman, Special Panel on Appeals

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Chairman of the Special Panel on Appeals ?

   I believe that I was nominated to serve as Chairman of the Special Panel on Appeals because of my commitment to public service and my background in Federal personnel.

2. Were any conditions, express or implied, attached to your nomination? If so, please explain.

   There were no conditions, express or implied, attached to my nomination.

3. What specific background and experience affirmatively qualifies you to be Chairman of the Special Panel on Appeals?

   I have a long-standing interest in public administration and the laws and regulations that govern the Federal workplace.

   Shortly after graduating from law school, I served as an attorney-advisor at the U.S. Office of Personnel Management. In that role, I gained an understanding of the complexity of Civil Service Reform Act of 1978 by preparing appellate briefs on a variety of retirement eligibility issues. In addition, I represented the agency in hearings before the Merit Systems Protection Board.

   Later, I served as Legal Counsel to the Chairman of the Merit Systems Protection Board where I assisted in both the day-to-day management of the agency and reviewed proposed Board decisions and orders for the Chairman's action. There I developed a unique perspective not only on the Board's jurisprudence but also on its role in Federal personnel management.

   Subsequently, I joined the Department of Justice as the Associate Deputy Attorney General who had supervisory responsibility for attorney personnel. I also taught Federal Personnel at its Legal Education Institute. While at Justice, I completed my Master of Laws degree in Labor and Employment at the National Law Center of The George Washington University.

   Since leaving public service, my responsibilities have included advising the human resources functions within corporations. My efforts in this regard have focused on ways to foster

compliance with the legal requirements that govern private sector employment relationships.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Chairman? If so, what are they and to whom have the commitments been made?

   I have made no commitments with respect to any policy or principle that may relate to the Special Panel.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? What procedures would you use to determine whether a recusal or disqualification is necessary if an issue before the Special Panel might create a real or apparent conflict of interest because of your responsibilities with W.W. Grainger, Inc.? Please explain what procedures would you use to carry out a recusal or disqualification.

   I know of no issues that would cause me recuse or disqualify myself because of a conflict or interest or the appearance of a conflict of interest. Given the nature and duties of the Special Panel, it is very unlikely that a personal or financial conflict could arise. Further, my duties at W.W. Grainger, Inc. do not relate to the administration of Federal personnel law, nor is it reasonably foreseeable that the outcome of any particular matter would have a financial impact on that company or me. However, to help ensure that there are no conflict issues, I will consult with the Office of Government Ethics and the Designated Agency Ethics Official of the Merit Systems Protection Board prior to hearing any case.

6. The Special Panel is a part time position and the Chairman is treated as a Special Government Employee. As such, the Chairman is able to maintain full time outside employment. If a case came before the Special Panel while you were still employed full time (with W.W. Grainger, Inc. or otherwise), how would you be able to immediately fulfill your duties as Chairman? What steps will you take to expeditiously assume your responsibilities, and what potential impediments might slow your ability to preside over a case before the Panel?

   My employment with W.W. Grainger, Inc. provides sufficient flexibility to permit me to perform all the necessary functions as the Chairman of the Special Panel on Appeals. I see no impediments to my ability to be available to participate in the adjudication of an appeal within the 45-day time frame prescribed by statute.

II. Role and Responsibilities of the Chairman

1 What do you consider to be the mission, role and responsibility of the Special Panel on Appeal and the Chairman?

The Special Panel has the statutory responsibility to issue a final, judicially reviewable, decision in a case in which an employee or applicant for employment alleges that a personnel action appealable to the Merit Systems Protection Board (MSPB) was based, in whole or in part, on prohibited discrimination. I believe the role of the Special Panel is to adjudicate these cases impartially, thoroughly, fairly and in a timely manner.

The Chairman, similar to the other members of the Panel designated by their respective agencies, has the responsibility to ensure that the Special Panel fulfills its statutory mandate. To this end, I believe that the Chairman must faithfully and independently adjudicate matters appropriately before the Special Panel. In addition, the Chairman must take steps to ensure that the practices and procedures for advocacy before the Special Panel result in a fair and expeditious decision.

III. Policy Issues

1 The Special Panel is to resolve certain disagreements between the MSPB and the EEOC in so-called "mixed cases," where an employee appeals a personnel action to the MSPB and also petitions the EEOC alleging that the action was based on discrimination. The very first case a special panel decided, *Ignacio v. the U.S. Postal Service* (30 M.S.R.P. 471), laid out a framework describing how the panel would decide the cases it received. Is this framework still valid? Do you see any reason to alter this framework? Do you intend to follow it?

The framework suggested by the Special Panel in *Ignacio v. the U.S. Postal Service* appears to follow the statutory requirements of 5 U.S.C. 7702. In terms of triggering Special Panel review, Ignacio correctly points out that under the statute, once the MSPB certifies the matter to the Special Panel, the Panel has no choice but to accept jurisdiction. Once the Special Panel assumes jurisdiction, it must, within 45 days, "decide the issues in dispute" while "giving due deference to the respective expertise" of the MSPB and the Equal Employment Opportunity Commission. While the statute requires the Special Panel to decide the matter on the administrative record that has been transmitted to it, the statute also provides the flexibility for the Panel to permit parties to file briefs and to present oral argument.

I would intend to follow this framework, as I would other controlling precedent. I do not believe that the existing framework could be significantly altered without statutory revision.

2. The Special Panel is to issue a final decision within 45 days of a case being certified to it. Previous panel decisions have substantially missed this mark. Is the 45-day mandate a realistic requirement and one that should be adhered to? How would you exercise your role as chairman to help ensure that the statutory timeframe is met?

   The 45-day mandate is a statutory requirement and as such, should be followed. Notwithstanding the statutory proscription, once a case is certified to the Special Panel it has been through a complex and lengthy process. Therefore, it is particularly important that while the Special Panel should not neglect impartiality, thoroughness and fairness, it must also act as expeditiously as possible. Accordingly, it is imperative that the Chairman require strict adherence to the rules of Practice and Procedure of the Special Panel as set forth in 5 C.F.R. 1201.173.

3. In addition to the chairman, the Special Panel is composed of a MSPB Board member and an EEOC commissioner. Because MSPB and EEOC have already taken opposing views in cases certified to the panel, the chairman may find himself in the role of an arbitrator with the tie-breaking vote. How do you plan to exercise this role if a Special Panel is convened? How does your background and experience relate to dispute resolution such as this?

   I believe that the Chairman's primary responsibility is to adjudicate matters impartially in accordance with controlling precedent. However, the ability of the 3-member Special Panel to fulfill its statutory requirement will be greatly enhanced if the members treat each other with civility and respect. They must be able to have a full and candid discussion of the administrative record and the application of controlling precedent. My experience working with senior officials in both government and industry will help foster effective Panel participation.

4. The Special Panel is to give due deference to the expertise of MSPB and EEOC in making its decision. How does your prior experience relate to areas of expertise of MSPB and EEOC.

   As set forth in my response to question I.3, I have an interest and background in Federal personnel law. I have worked at the Office of Personnel Management and the Merit Systems Protection Board. I currently am responsible for advising human resources professionals in the private sector to ensure that they are complying with employment rules and regulations, including laws administered by the Equal Employment Opportunity Commission.

5. What is your opinion of the statutory provisions establishing the appeals process for "mixed cases," which culminates occasionally in the convening of the Special Panel? What is your opinion of the statutory provisions that require the convening of a Special Panel, considering that such a panel has been convened only three times, most recently in 1987? Are the existing appeals provisions necessary and appropriate? Is the appeals process unduly long and complicated? If so, how do you think it could be made quicker and simpler?

It is clear that the mixed case process, when followed in its entirety, can be cumbersome and time consuming. The complexity, however, appears to be a result of the separation of functions among the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission set forth in the Civil Service Reform Act of 1978.

While underscoring that the Chairman of the Special Pane is an adjudicatory, rather than policy-making, position, my general observation is that there are a variety of alternative structures that might reduce the length of a mixed case adjudication. For example, responsibility for resolving mixed cases could be vested in a single agency. Another alternative would be for the cases to be deemed final and appealable at an earlier stage of the current process. It is important to note, however, that these alternatives may not provide adequate opportunities for the Equal Employment Opportunity Commission and the Merit Systems Protection Board to apply fully their unique institutional expertise. The current system, while somewhat cumbersome, appears to provide this expertise for the benefit of the Federal employee and agency alike. Therefore, any change to the mixed case procedure would require careful study.

IV. Relations with Congress

1 Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Yes, I agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if I am confirmed.

2 Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes, I agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if I am confirmed.

V. Assistance

1. Are these answers your own? Have you consulted any interested parties? If so, please indicate which entities.

   These answers are my own. I have not consulted with any interested parties.

AFFIDAVIT

I, John Lawrence Howard, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

_____

Subscribed and sworn before me this 10th day of December, 2001.

_____
Notary Public

OFFICIAL SEAL
DAWN ROTHERMEL
NOTARY PUBLIC,
MY COMMISSION

Statement of Dan G. Blair

Before the Committee on Governmental Affairs

On the Nomination to be Deputy Director

of the Office of Personnel Management

February 8, 2002

Mr. Chairman. I want to thank you and the Committee for holding this hearing today and I am most appreciative of the courtesies that you and your staff have extended to me during this confirmation process.

I want to begin today by expressing my gratitude to President George W. Bush and to Director Kay James. It is a privilege and a high honor to be nominated for Deputy Director of the U.S. Office of Personnel Management and I appreciate this opportunity to serve. OPM has taken on a new and invigorated role in this Administration and I am excited to be part of the team that Director James has assembled and charged with carrying out the President's human capital initiatives.

The federal government faces serious challenges in the management of its human resources. But these challenges, in turn, create opportunities and I cannot imagine a more exciting time to be a part of the Bush Administration or at OPM. Federal human capital management has taken on new significance and its prominence on the President's Management Agenda underscores the importance that federal HR issues have in this Administration. The groundwork for this increased attention was laid by the work of this Committee and GAO and federal HR management is indeed an issue upon which common solutions can be forged.

Given this high level of interest, Director James has moved forward vigorously in leading OPM as it guides and helps agencies to more strategically address their human resources management. We are working hand in hand with OMB in a government-wide effort intended to help agencies and departments assess and respond to their current and future HR needs, as well as assisting them in making progress in managing and improving their marks on the President's Executive Branch Management Scorecard. With this Committee's consent and the Senate's approval, I will have the opportunity to serve as the deputy in an agency that is quickly moving away from the traditional role of passive rules enforcer to that of a nimble and proactive policy-consulting organization.

Improving the way we manage our federal workforce is critical if our government is going to respond effectively to the war on terrorism. In addition to helping agencies meet their performance goals, OPM is assisting front-line agencies recruit and retain critical personnel by assembling agency strike force teams of HR experts to address special needs in specific agencies such as the Office of Homeland Security and the new Transportation Security Administration. Further, OPM has extended hiring flexibilities by establishing new options like the Patriot Readiness Center for retirees and a special weblink for Homeland Readiness and Security Jobs. OPM's investigative service anticipates processing more than a million fingerprint checks for airport-based personnel this year alone.

All of this occurs at a time when the federal government faces an aging workforce, one-half of whom will be eligible for regular or early retirement over the next five years. But the flip side to these challenges is the opportunities they present to redevelop and strengthen the federal workforce to meet current and future challenges.

The events of September 11th have changed the way the American people view their government. We see trust in government at the highest levels since the 1960s. There is a new spirit of community and desire to serve our country that is being manifest in a number of ways, including a surge of interest in federal service – our civil service. This renewed interest in public service creates opportunities that I hope we can seize in order to make a positive difference in the lives of all Americans.

In the short time that Director James has been at OPM, she has taken decisive steps in assembling her team in meeting our goals. Under Director James, OPM has assumed a clear leadership role in addressing and developing solutions for the human capital issues facing the Executive Branch. Further, OPM has been asked to manage four e-Government initiatives that will improve efficiency and effectiveness governmentwide and recently was tasked with leading the effort to consolidate and modernize the government's payroll systems.

Yet we have barely begun to scratch the surface. Director James has laid out a comprehensive and ambitious vision to make OPM a world-class model for HR management. As you may have heard, we are coordinating efforts across government to streamline the hiring processes, harness technology, and do all we can to position the federal government to recruit, hire and retain a highly skilled and qualified workforce. This includes a thorough review of the federal government's current pay structure, and our ongoing legislative efforts with this

Committee, the Senate, and the House to achieve enactment of the President's Managerial Flexibility Act.

I am very honored to be nominated by the President for a position where there is so much opportunity to make a real difference. My career includes 17 years on the staff of the House and Senate congressional committees charged with civil service oversight. During this time, I had the high honor of serving as Senior Counsel on this Committee for Senator Thompson and I want to acknowledge my debt of gratitude for that opportunity. I also want to express my deepest sympathies to Senator Thompson and his family for their recent loss.

I have to admit that I appear before the Committee today from a distinctly different vantage point than the one I was accustomed to only a few short months ago. Yet, I feel as if today is a homecoming of sorts for me. I have the greatest respect and deep affection for the Members and staff of this Committee. I consider it a true honor to have worked on this staff and it was a privilege to have worked so closely with such outstanding colleagues.

Mr. Chairman, I look forward to any questions you or other Members of the Committee may have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)
   Dan Gregory Blair

2. **Position to which nominated:**
   Deputy Director, Office of Personnel Management

3. **Date of nomination:**
   December 20, 2001.

4. **Address:** (List current place of residence and office addresses.)
   Residence: **----------**

   Office: **Office of Personnel Management**
   1900 E Street, NW, 5th Floor
   Washington, DC 20415

5. **Date and place of birth:**
   Date of Birth: **February 23, 1959**
   Place of Birth: **Joplin, Missouri**

6. **Marital status:** (Include maiden name of wife or husband's name.)
   Married; Michele Watts Blair

7. **Names and ages of children:**
   N/A

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.
   University of Missouri-Columbia; 8/81 to 5/84 JD received 5/84
   University of Missouri-Columbia; 8/77 to 5/81; BJ received 5/81
   Parkwood High School; Joplin, Missouri; 8/73 to 5/77; Diploma received 5/77

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)
   Minority General Counsel
   Committee on Post Office and Civil Service
   U.S. House of Representatives
   304 Cannon House Office Building
   Washington, DC 20515
   1/85 to 1/95

   Staff Director
   Subcommittee on the Postal Service
   Committee on Government Reform and Oversight
   U.S. House of Representatives
   B-349C Rayburn House Office Building
   Washington, DC 20515
   1/95 to 1/97

9. (Cont.) **Senior Counsel**
Committee on Governmental Affairs
United States Senate
605 Senate Hart Office Building
Washington, DC 20510
1/97 to 10/01

Senior Advisor to the Director
U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC
10/01 to Present

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.
N/A

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
The Tuscany Homeowners Association - Member of the Board; Vice President

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.
Historic Mount Pleasant
Missouri Bar Association
District of Columbia Bar Association
Capitol Hill Club
Federal Bar Association
Taste of the South - General Counsel

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.
N/A

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
N/A

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.
McHugh for Congress Committee - $100

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.
Recognition Award - Office of Inspector General, U.S. Postal Service.

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.
N/A

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

See Attachment #1.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?
I am honored and privileged to have been nominated by President George W. Bush for this position. I believe I was chosen for nomination due the breadth of my knowledge and experience in federal civil service matters gained from addressing these issues for almost 17 years as a senior staff member for the congressional committees exercising jurisdiction over civil service issues.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?
I believe I am affirmatively qualified for this appointment due to my background and employment experience as a senior staff member for almost 17 years for the respective congressional committees charged with civil service oversight

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.
No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?
No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?
No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?
Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated

   N/A

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

   N/A.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes. Further, I entered into a written agreement with the OPM Designated Agency Ethics Official not to participate personally and substantially in any particular matter that would have a direct and predictable effect on Compaq Computer Corporation, my spouse's current employer, unless I first obtain a written waiver or qualify for a regulatory exemption.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   No.

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

   No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   No.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   Throughout my professional career, I have worked to improve the environment for public service. I consider it an honor to have performed service as a staff member in the legislative branch and am privileged that President Bush would nominate me for this position. If confirmed, I pledge to serve to the best of my ability and with the highest integrity to perform the duties of the office to which I have been nominated.

E. FINANCIAL DATA

The Answers to the Financial portion of the Questionnaire are available for review in SD-340.

AFFIDAVIT

Alan Gregory Blair being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Alan Gregory Blair

Subscribed and sworn before me this 9th day of January, 20 02

Bobbie Ann Williams
Notary Public
BOBBIE ANN WILLIAMS
NOTARY PUBLIC OF DISTRICT OF COLUMBIA
My Commission Expires October 31, 2006

Pre-hearing Questionnaire for the
Nomination of Dan Gregory Blair to be
Deputy Director, Office of Personnel Management

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Deputy Director of the Office of Personnel Management (OPM)?

I believe I was chosen by President Bush because he has confidence in my knowledge of the federal civil service, my commitment to excellence in the public service, and my willingness to accomplish his goals.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualifies you to be Deputy Director of OPM? Please describe your background and experience in relation to OPM's role.

I believe I affirmatively am qualified to serve as OPM Deputy Director based on almost 17 years of service in senior staff positions for both House and Senate Committees charged with federal civil service oversight.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Deputy Director of OPM? If so, what are they and to whom have the commitments been made?

In accepting this nomination, I have demonstrated my commitment to support the policies and programs of the Administration of President Bush. As Senior Policy Advisor to the OPM Director, I have advised the Director on policy issues on a broad range of federal civil service issues. I am committed to helping the Director achieve her goals and objectives in order to enhance OPM's ability to meet the challenges facing the federal human resources community.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

Prior to my nomination, I entered into a written agreement with the OPM Designated Ethics Official not to participate personally and substantially in any

particular matter that would have a direct and predictable effect on my spouse's current employer, Compaq Computer Corporation, unless I first obtain a written waiver or qualify for a regulatory exemption.

II. Role and Responsibilities of the Deputy Director of OPM

6. How do you view the role of Deputy Director of OPM?

I view the role of OPM Deputy Director as one of supporting the President's and OPM Director's agenda. Title 5, United States Code, broadly defines the role of Deputy as performing "such functions as the Director may from time to time prescribe." I look forward to serving the Director in any role as she may prescribe for me and assisting her as OPM undertakes its leadership role in addressing federal civil service issues.

7. What challenges currently face OPM? How will you, as Deputy Director, address these challenges, and what will be your top priorities?

OPM has been awarded the honor and responsibility of taking the leading role in implementing the Human Capital Initiative which is contained in the President's Management Agenda. Federal Human Capital Management stands as the number one priority on the President's Management Agenda and this issue occupies the attention of key Members of Congress and the General Accounting Office, as well. My top priorities as Deputy Director will include assisting the Director in improving the federal hiring process, promoting pay reforms, and helping the Director create a world-class organization at OPM.

8. How do you plan to communicate to Congress on your efforts to address OPM issues?

I plan to communicate to Congress through the variety of mechanisms available, including hearings, reports, and correspondence. I pledge to work closely with this Committee, Members of the Senate and House of Representatives, and staff to communicate my efforts to address interests of concern affecting OPM and federal workforce issues.

9. How do you plan to communicate to OPM staff on efforts to address OPM issues?

I plan to communicate to OPM staff through the variety of means available, including agency-wide meetings, the OPM website, and various written communications. During the past few months, I have had the opportunity to work closely with OPM staff of all grades and have been impressed with the caliber and commitment to public service the employees have shown. These have been very stressful times for many employees in the months after the September 11th attacks and I believe it is very important that an open

line of communication be maintained between employees and management in order to allay such stress and any workplace anxieties they might have.

III. Government-Wide Human Capital Issues

1. Management of agency personnel resources has emerged as a high profile issue in recent years. Concerns have been raised that changes in agencies' human-resource needs, combined with a history of downsizing through attrition and voluntary separations, have left some agencies with gaps in necessary skills and with many workers who are eligible to retire in the next few years. It has also been asserted that what some perceive to be the burdensome hiring process within the federal government, coupled with what some perceive to be a difficulty in removing poor performers, may exacerbate the government's human capital challenges. In fact, human capital management was added last year to GAO's "high risk" list as a major challenge facing the government.

   a. What philosophy and perspective would you bring to OPM regarding human capital management in the federal government, and its importance?

      The philosophy and perspective I bring to OPM regarding federal human capital management stresses the importance of public service and recognizing and rewarding excellence. Far too often, excellence in public service has gone unrecognized and our personnel systems do not do enough to reward outstanding performance. I believe we should focus our efforts and attention to improving the ways we reward good performance and recognize excellence in the workforce. Turning our attention to the majority of good performers among our dedicated workforce in no way lessens the importance of making expectations clear to employees and holding them personally accountable.

   b. To what do you attribute the difficulties agencies experience in the area of managing human capital?

      Until recently, little attention was paid by agencies to their human capital needs. Most federal civil service issues were budget driven and agencies were instructed to downsize their workforces, with little regard to strategic planning and the consequences such downsizing would have on the ability of the agencies to perform their goals. This has resulted in well-documented instances of agencies lacking employees with the necessary knowledge and skills to carry out the agency missions.

   c. What actions do you think OPM should take to help agencies improve their management of human capital?

      OPM has already begun assisting agencies with their human capital management planning on a case-by-case basis. For instance, OPM has sent

teams of specialists to several agencies, at their request, to address specific human management capital challenges. Also, OPM has taken a leadership role in implementing the President's Management Agenda. This initiative is focused on enabling the federal workforce to deliver the services our citizens expect and deserve.

To help agencies manage and deploy their human resources more effectively, in December OPM issued a "Human Capital Scorecard." Borrowing from the private sector, the scorecard focuses on five dimensions of human capital that require critical monitoring and management: Strategic Alignment, Strategic Competencies, Leadership, Performance Culture, and Learning. For each dimension, specific performance goals and measures are given, as well as operational guidance. Scorecard results will establish baselines for showing progress over time and provide comparisons against government-wide averages and private sector benchmarks. I share Director James' enthusiasm that this Scorecard will prove to be a powerful tool in support of implementing the President's Management Agenda.

2. Do you believe agencies can and should address human capital management through Government Performance and Results Act (GPRA) goals and reporting? Have agencies done an adequate job of incorporating human capital planning into their strategic and annual performance plans? What do you believe OPM should do to assist agencies in this area? What, if any, statutory changes do you believe are needed to make human capital management in the federal government more performance- and results-oriented?

Agencies must and should address human capital management through Results Act goals and reporting. Unfortunately, agencies have only begun to focus on this strategic element, which is a critical basis for success in attaining their overall missions and goals. The Human Capital initiative has used the framework of the Results Act to require that agencies link integrally agency human capital strategies to organizational performance, a concept which is also inherent in Results Act compliance.

OPM can and does provide assistance to agencies to improve all elements of their human capital management, and this includes a better integration of their action plans into their budget requests. For example, the OPM Human Capital Scorecard gives agencies a specific set of human capital measures tied to model performance goals to incorporate into their strategic and annual plans. OPM's offer of assistance is communicated through the Director's participation on the President's Management Council and the inter-agency Human Resources Management Council. OPM recently gave agencies a set of human capital measures, tied to model performance goals, to incorporate into their strategic and annual plans.

Unfortunately, many of our personnel systems continue to lag behind the shift to results that is transforming so much of government today through implementation of the

Results Act. I believe too many of the human capital management tools available to agencies today remain rooted in a view of government organizations and functions that focuses inwardly on process efficiencies and fails to support the President's goal of a citizen-centered, results-driven government. This is particularly true for our classification and compensation systems.

3. At the moment, we seem to be at a crossroad regarding compensation policy for federal employees. For example, many have been critical of the failure to implement fully the current law regarding locality pay adjustments, and others have questioned the reliability of surveys on which the calculation of locality pay is based. What familiarity do you have with the studies that have been ongoing regarding compensation policy? If you were given the opportunity of a blank slate, provide a general outline of what the federal pay scale would look like. How would both white collar and blue collar pay be determined? To what extent do you feel an agency or department should have the authority to determine its own pay system? With regard to such an agency/department prerogative, how much oversight do you believe OPM should maintain?

We have a tremendous opportunity to change our compensation policy for the federal government. OPM staff, at the request of Director James, has been working on development of a "White Paper" examining the federal government's compensation systems affecting the General Schedule. A significant point of reference when considering this issue is to understand that our current system is grounded in the Classification Act of 1949, which created the General Schedule system. At that time, more than half of the workforce was classified at levels GS-2 or GS-3 as clerks, with the median grade of all workers at level GS-3. Today, federal white-collar work has become highly skilled and increasingly specialized "knowledge work." The median grade today is GS-11.

If I were to start out with a blank sheet of paper, I would suggest that policy makers consider devising a system whereby pay was integrally linked to performance. Further, systems would be nimble enough to recognize occupational and geographic differences. An ideal system would allow agencies flexibility to tailor their practices to their strategic human capital management needs and orient their rewards systems to support strategic objectives. Creating the administrative flexibility to accommodate different requirements across agencies and occupational groups could well result in there no longer being a single "federal pay scale." In fact, some observers would argue that this has already occurred since a substantial number of federal agencies and employees have already left "the federal pay scale." Concerns about unwieldy inequities and dysfunctional internal competition could be addressed effectively through the establishment of an overarching compensation system. This system would operate within a framework overseen by OPM to ensure compliance with Merit System Principles, the Equal Pay Act, and other statutes that affect employment throughout the nation.

Federal blue-collar pay is less problematical. Currently, only 250,000 employees

are covered by the Federal Wage System. The number of blue-collar federal workers has declined dramatically in recent years as a result of downsizing activities and efforts to contract out blue-collar work. The Department of Defense (DOD) employs about 75 percent of all blue-collar federal workers. Blue-collar federal pay rates for appropriated fund employees generally reflect the local cost of labor for private sector blue-collar workers in each of 132 local wage areas throughout the U.S. and overseas. DOD conducts local wage surveys in cooperation with employee unions to determine local prevailing rates. For budgetary reasons, blue-collar federal pay increases have been limited by statute each year since 1979 so as not to exceed the average pay increase received by General Schedule (GS) employees. Even so, the average gap between federal and private sector blue-collar pay rates now is less than 3 percent. In relation to their position in the local labor market with respect to non-federal employees performing similar work, most observers believe blue-collar federal employees generally are better off than most white-collar federal employees.

4. Congress enacted the Federal Employee Pay Comparability Act of 1990 (FEPCA) to close the gap between federal and non-federal salaries for white-collar workers. However, the pay adjustments under FEPCA have not been fully implemented, and as a result, the federal salaries have fallen farther and farther behind. Some argue that the discrepancy between federal and private-sector pay scales harms agencies' ability to recruit and retain the necessary personnel and is unfair to federal employees. What is your view about this, and what would be your goal as to comparability between Federal and non-Federal pay scales?

The Federal Employee Pay Comparability Act of 1990 (FEPCA) was well intentioned, but contained an inarticulate and incomplete view of comparability. "Comparability," as measured by FEPCA, is two dimensional focusing only on the employee's grade level and locality. This conception bears little resemblance to reality. For example, labor market shortages and excesses are described and analyzed in terms of occupations, skills, specialities and locations, not grade level. Private sector employers tend to respond to labor markets in terms of occupations or specialized skill sets. The federal government lacks this nimbleness, because the General Schedule does not recognize occupational differences. Further, FEPCA comparability adjustments rely on studies of changes in the Employment Cost Index and localities in which significant lag times occur between data gathering and pay-setting and implementation. This results in a tenuous relationship between pay adjustments and current market conditions.

Comparability adjustments under FEPCA also lack credibility because the statutory language requires the calculation of a single average pay gap in each locality. This single adjustment ignores substantial differences in the degree to which federal and non-federal salaries for particular occupations or grades differ.

Ideally, comparability should reflect both timeliness and a more complete picture of similarly situated jobs and occupations. I realize that addressing these issues

effectively will always be a challenge given the timing of budget and appropriations cycles. Nonetheless, I believe we should develop a broader conception of comparability that applies the lessons we have learned from the first years of implementing FEPCA. New approaches to comparability should be explored which better reflect specific labor markets and which can accommodate both the need to plan budgets on a fairly long time cycle and the need to make timely adjustments in response to rapidly developing labor markets.

5. Currently, the Senior Executive Service is experiencing pay compression, with levels 3 through 6 being paid substantially similar salaries, although their levels of responsibilities and duties differ. What are your thoughts on addressing SES pay compression? How will addressing SES pay compression affect pay for other levels of the workforce?

The pay compression affecting the Senior Executive Service is very serious and I share Director James' view that it could jeopardize the federal government's ability to recruit and retain a high-quality workforce. In addressing the problems posed by pay compression, we need to reinforce the link between executive pay and performance. We must make sure our compensation system is used to foster excellence and accountability. The proposed Managerial Flexibility Act is a step in the right direction. By raising the aggregate annual compensation limit from the rate for Executive Level I to the Vice President's salary, this proposal would allow high performing executives to immediately realize the awards they earn. OPM is currently developing options for modernizing the government's compensation system, and we are keenly aware that SES pay compression problems will affect our ability to develop a market-sensitive pay system for the vast majority of our white-collar workers.

At this point, pay compression has not affected lower level pay systems. However, smaller pay increases for executives could eventually create a situation in which the pay rates for General Schedule managers and technical experts, as well as for SES members, are artificially limited to a level that makes it even more difficult to recruit and retain a qualified workforce. This process would be accelerated if Congress decides not to give Executive Schedule officials the annual pay increases authorized by current law.

6. Over the last few years, several federal agencies have been granted statutory personnel flexibilities that depart from the "standard" requirements of title 5 of the U.S. Code. Furthermore, some people have proposed granting personnel flexibilities government-wide, such as pay-for-performance or pay banding, performance bonuses, special recruitment, retention, or relocation bonuses, along with other flexible authority in such areas as early-out and buy-out authority, and hiring, training and deploying employees.

   a. What are your views on the trend of granting human capital management flexibilities on an agency-by-agency basis?

Granting agencies flexibilities on a piece meal basis stands to undermine

what has been the accepted approach of exercising a comprehensive and system-wide approach to federal human capital management. To address the often-times conflicting needs of agencies to tailor their personnel systems to meet their goals and missions while still ensuring adherence to core merit system principles, the President has proposed in his Managerial Flexibility Act (S. 1612, as introduced by Senator Thompson, and S. 1639, as introduced by Senator Voinovich) the adoption of permanent alternative personnel systems. Under the APS proposal, OPM would be vested with authority to approve the creation of an agency-specific APS. I believe OPM can add value to this process by working with federal agencies to develop, refine, and evaluate the effectiveness of HR innovations. Through careful exercise of this authority, we can help agencies maintain a focus on achieving results and ensure that each APS includes provisions that treat workers fairly both within a new personnel system and in movements back and forth between positions covered by an APS and those not covered. In addition, OPM involvement helps to ensure that all agencies adhere to the core values of the government-wide merit system.

Both proposals include important provisions to allow all agencies to use hiring flexibilities such as category ranking that are now available only to select agencies through individual legislative language. We must move to a system which allows all agencies, not just a select few, to access proven human resource processes.

b. What conditions do you believe are necessary for these flexibilities (whether granted agency-by-agency or government-wide) to be successful? For example, how important are factors such as union involvement and employee buy-in? Is agency planning capability adequate to assure the management flexibilities are effectively used?

Stakeholder involvement is always important when introducing change. That is true here as well. Perhaps more important is creating an environment where the human resource community, managers and agency leaders work collaboratively with unions and employee organizations in support of the mission. OPM has an important role in producing the guidance, training and education that is critical to effective HR management.

c. Concerns have been raised that some of these flexibility proposals could diminish the effectiveness of the merit-based civil service system and could enhance prerogatives of management relative to labor. What is your reaction to such concerns?

I do not agree that flexibility proposals would diminish the merit-based civil service, provided that OPM continues to provide oversight and ensure accountability. Further, I do not see the flexibility proposals as a zero sum game

where management wins and labor loses. Director James is committed to ensuring that employee organizations are given a "seat at the table" in planning and implementing agency flexibilities and I wholeheartedly share that view.

Sound human capital management recognizes that employee unions must be engaged in the effort to improve organizational performance and deliver better results. It also recognizes that barriers to good management must be removed and managers must be given the right tools and enough discretion to get the job done. Much of what we know about successful labor-management relations reinforces the notion that success for each is best achieved through a shared commitment to agency goals and mission. When that happens, both parties win and so do the taxpayers.

With respect to management prerogatives, these flexibility proposals are put forward in the context of providing agencies the tools they need to support their strategies and tactics for achieving the results that taxpayers expect. The President's emphasis on strategic management of human capital and its very inclusion in his Management Agenda is indicative of the reality that such strategic tools, by their nature, benefit management needs. This need not evolve into an adversarial "winners and losers" scenario, however. Successful use of such tools need not erode labor's legitimate interests and authority. Rather, a joint commitment by management and labor to excellence and a mutual interest in results can and should drive through any disagreement and hold both sides accountable to work together.

d. What role do you see OPM playing in ensuring that civil service laws and policies are complied with by agencies that, in many cases, are seeking more exemptions from those laws and policies, and what mechanisms do you envision for holding agencies accountable?

The statutory merit systems principles provide the core values of the federal civil service and OPM uses these principles to evaluate agency and department Human Resource Management systems. OPM is committed to performing its well-established oversight role in ensuring compliance with these values, although the diversity of agency personnel systems does present new oversight challenges. The "one-size-fits-all" personnel system as administered in the past has given way to an array of personnel systems, with varying degrees of autonomy and independence from traditional practices envisioned by Title 5.

Adherence to Merit Systems Principles can be ensured through regular oversight and OPM has authority to review HRM systems in any agency, including those exempt from traditional civil service laws (excluding intelligence agencies and government corporations.) In addition, OPM can provide valuable assistance to agencies by providing them with technical assistance as they develop their own accountability systems. OPM is committed to transforming its

role from that of traditional enforcement to one of "consultant" in an effort to build constructive relationships with agencies by helping them effectively apply the civil service laws and policies. I believe OPM's use of this approach will diminish previous agency frustration and resistance and cultivate the strategic management of human capital the President expects.

7. The President's Management Agenda for FY2000, issued in August of 2001, states that each agency will include a restructuring plan in its FY2003 budget to reduce the number of managers and organizational layers. What can OPM or others do to ensure that each agency's workforce restructuring efforts are strategic and will enhance the alignment of resources with specific needs, and will not actually exacerbate the kinds of imbalances that sometimes arose from past downsizing and buyouts?

Agency restructuring plans are being carried out in the context of the President's primary objective: to provide a more "citizen-focused" government. OPM has worked closely with the Office of Management and Budget to ensure that agency restructuring plans begin with a thorough workforce analysis, to identify the key skills needed in each agency, and to identify where skills imbalances exist. Restructuring plans are then developed to address those imbalances and to take other structural actions to improve direct service. Guidance to agencies emphasizes that a "one-size-fits-all" approach is not the appropriate approach. Rather, each agency plan should be designed to capture the unique actions required to address skills needs and improve direct service to the public for that agency. In some agencies it may mean moving some supervisors to front line positions. In other agencies, it may mean combining work units to bring better collaboration into the process.

At OPM, the agency is engaged in an internal restructuring effort aimed at making the agency more responsive to its key customers - other federal agencies and departments. This effort is intended to enhance cross integration of agency functions with the intended outcome of making OPM more responsive in efforts to improve the federal government's ability to manage workforce strategically.

8. Discussion on the issue of political appointees occurs on three levels. One point of view is that to effectively pursue policy goals the President must fill a large number of key policy positions with political appointees who share the same vision, in order to promote and accomplish the president's agenda. Another point of view is that the high number of political appointees creates a glass ceiling within the bureaucracy that discourages many well-qualified candidates from entering or staying in the civil service. Additionally, the point is raised that appointees tend to be more mobile than career employees, diminishing the time they have to learn one job well before switching to another one. What philosophy would you bring to the balance of political appointees? Regarding the numbers of appointees, what do you envision is necessary to achieve this balance?

The key issue in addressing this question is the maintenance of a balance between

career employees and political appointees. I have always recognized the important contribution career employees make to the operation of their respective agency. By the nature of the appointment, a career employee imparts important perspectives of time, wisdom and experience when carrying out the duties of their jobs. Political appointees bring a different perspective into the workplace - one which is just as fundamentally important. Political appointees, by the nature of their job, are intended to serve relatively brief periods. They bring to the workplace the enthusiasm and commitment to carry forth the President's political agenda and direct the operations of government to that end. There are approximately 920 Schedule C political appointees and 350 non-career members of the Senior Executive Service within the current Administration. However, these appointees are relatively few when compared to the almost 1.8 million federal workforce. It is vitally important that the President, regardless of political party, have the means to effectuate his or her agenda and carry out the mandate given by the voters.

Current law restricts the overall number of political appointees in the Senior Executive Service to no more than ten percent system wide and no more than 25 percent at any individual agency. This cap serves to allow for a balanced mix of career and political appointees in the executive ranks. Reducing the number of Schedule C appointees in the General Schedule would hamper the ability of the President to carry out his agenda.

9. Premiums under the Federal Employee Health Benefit Program (FEHBP) have risen significantly, and the Office of Personnel Management attributed much of this rise to prescription drug prices. As Deputy Director of OPM, what would you propose in response to this situation? Please give your views on the following examples, proffered by various advocates:

   a. Increasing the proportion of employee premiums paid by agencies, so that it is comparable to the practices of many large private-sector employers.

   Federal law establishes the basic Program structure, including the premium contribution formula. This formula was changed in 1999 so now the Government's contribution for non-Postal employees and retirees is set at 72% of the average weighted premium for the entire Program, with a maximum of 75% of the premium of the plan chosen by the enrollee. Altogether, the total annual premium for 2001 for the Program will be over $21 billion.

   Proposals to increase the federal government's contribution must be evaluated in light of the comprehensive coverage provided to Program enrollees and their families. For instance, the average employer share of health insurance for private sector employees is only slightly higher than that for FEHB. According to the U.S. Chamber of Commerce's "2000 Employee Benefits Study," the average employer share is 78% of the premium cost. The average employer

contribution as a percentage of premiums is generally highest among the smallest and largest participating companies while employees pay a larger percentage of the health care premium at mid-size companies. It is important to note that while some companies provide a higher employer contribution to the premium cost for employees, their contribution for family members is significantly less.

The Program also provides coverage for retired employees at the same level as employees. Only 27 percent of companies provide retiree health insurance, but it varies based on the size of the company. For instance, only five percent of companies with under 100 employees offer retiree health insurance, but 70 percent of companies with over 5000 employees generally provide it.

b. Having FEHBP use the combined purchasing power of its nine million participants to negotiate lower prescription drug prices.

Of the 13 percent average premium increase for the FEHB in 2002, about 4.9 percentage points are attributed to increased drug costs. This translates into a dollar increase under $3.00 per biweekly pay period. When she appeared before the Committee during her confirmation, Director James expressed concern regarding the recent significant increases in FEHBP premiums and I share those concerns. To address this, OPM is continuing to explore ways to constrain premium increases without reducing benefits significantly or asking enrollees to pay substantially more out-of-pocket when they need health care.

OPM recently consulted several large fee-for-service plans regarding current drug trends. It was found that their drug trends are driven by three major components: increased utilization, switching to more expensive drugs as they become available, and increases in the price of specific drugs. Of the drug trends OPM is seeing, approximately half is due to increased utilization, one-quarter is due to switching to more costly drugs, and one-quarter is due to increased price.

In addressing this issue, I pledge to work closely with the Committee to review any proposal to grant OPM broader contracting authority in light of its significant structural implications for the Program and participating plans.

c. Including Medical Savings Accounts in the FEHBP.

OPM currently offers over 180 choices of health plan coverages. While this is still a significant number, there has been increasing concern about maintaining competition in the FEHB Program given the consolidation of the HMO industry. In responding to this trend, many believe that Medical Savings Accounts (MSAs) have the potential to provide a competitive alternative to regular fee-for-service plans and HMOs.

Certainly MSAs are one type of product that could help enhance competition in

the FEHB Program and their inclusion in the Program would best be evaluated in the context of opening the Program to new product lines.

10. The Health Insurance Portability and Accountability Act of 1996 (HIPPA) did not include the Federal Employees Health Benefits Program in its definition of "Federal Health Care Programs," and FEHBP therefore cannot use Social Security Act provisions that establish criminal sanctions for fraud and abuse, new grounds for mandatory exclusion from the program, and civil monetary penalties for routinely committed offenses. Do you believe a statutory change granting the FEHBP the ability to utilize these sanctions and penalties for fraud and abuse is warranted?

I understand that the Office of Inspector General at the Office of Personnel Management no longer advocates repeal of this section. The Office believes that with enactment of the "Federal Employees Health Care Protection Act of 1998," and promulgation of implementing regulations, amendment of HIPAA is no longer necessary. In addition to enabling OPM to initiate its own administrative sanctions procedures against health care providers who have defrauded the FEHBP, the 1998 Act authorizes OPM to impose civil monetary penalties and double damages to recover funds lost to the program trust funds and discourage further misconduct.

Since the definition of "Federal Health Care Programs" did not apply to the criminal provisions of HIPAA, except for anti-kickback authority, persons committing the specific health care related crimes included in HIPAA could have been prosecuted if they involved FEHBP providers or patients.

11. OPM in October 2000 adopted new regulations that senior executive performance be rated on the basis of customer satisfaction, employee feedback, and business results. Do you agree with this approach?

OPM's regulations on SES performance management were developed to promote executive excellence and accountability. The regulations change the focus of SES performance management from process to results; they specifically require executive appraisals to take into account results achieved in accordance with the Government Performance and Results Act. Further, the regulations institutionalized what many successful executives already know and do - leading and motivating people, and building customer coalitions and partnerships are the foundation of successful organizations.

Pursuant to the regulations, agencies are required to balance organizational results, customer satisfaction, and employee perspectives in evaluating executive performance. Many high performing organizations in both the public and private sectors have used balanced measures to drive executive excellence, and I believe the federal government can learn from their success.

How a senior executive manages the organization and its employees has always

been a critical part of his/her performance evaluation, but it became even more important with passage of the Government Performance and Results Act, which focused attention on achieving organizational results and considering customer needs and expectations. This is absolutely essential to achieving the President's goals for a citizen-centered, results-based Government.

12. To what extent, if any, do you believe that federal employees' pay should be more closely tied to their agencies' strategic and annual performance goals, and why?

The pay of senior executives and managers should definitely be linked to achievement of their agencies' goals. This is somewhat easier to do currently for the SES, where a significant variable pay component, the performance bonus, can be driven by appraisals of performance that take goal achievement into account. In fact, that desirable linkage lies behind the President's proposal in his Managerial Flexibility Act to lift the aggregate compensation limit for senior executives so that they can actually receive the rewards their accomplishments have earned when they've been earned. Agencies are working hard on their efforts to align their senior employees' performance measures more with their Results Act plans and goals so that performance in the form of results achieved is realized.

For less senior employees, where the linkage between agency goals and work unit and individual results still deserves reinforcement through the pay system, the key lies in replacing more performance measures currently used to assess employee performance with measures of results rather than activities or process. OPM recently reissued its popular handbook that shows agencies and managers how to link their employees' performance plans to organizational goals. It can and should be done. Without results-oriented measures of achievable goals, the desirable prospect of more closely linking pay to strategic achievements will not be met.

13. The Administration has proposed changes to improve the efficiency of the Internal Revenue Service. Some of these proposals deal with discipline issues for IRS employees, which fall under the jurisdiction of the Governmental Affairs Committee. Specifically, the proposal includes suggested changes to section 1203 of the IRS Restructuring and Reform Act of 1998 (RRA) (26 U.S.C. § 7804 note), which instituted mandatory termination rules for IRS employees that do not apply to any other federal employees in the executive, legislative or judicial branches of the government. The IRS has said that section 1203 has had a chilling effect on its workforce, including deterring actions against law-breaking taxpayers, and has dampened its ability to attract new employees. Do you agree with IRS' assessment and do you agree that such legislative changes would be desirable? Please explain.

Section 1203 was a product of the series of investigative hearings conducted by the Senate Finance Committee in the 105th Congress in laying the groundwork for the Internal Revenue Service Restructuring and Reform Act. At that time, certain employee

actions were deemed to be of such a serious nature that such actions would result in mandatory termination with only the Commissioner granted the authority to intervene in such actions.

Critics of this provision argue that mandatory termination denies the IRS needed flexibility when determining the appropriate level of discipline for violations of the proscribed actions. One of the hallmarks of our merit system is the due process awarded to employees in facing disciplinary actions. I am aware that Treasury Secretary O'Neill has written Congress proposing to modify this provision. Please be assured that I will work with the Committee to assist it in its favorable review and consideration of this proposal.

14. Last year President Bush issued an executive order dissolving the labor-management partnership council created by President Clinton in 1993. What do you see as OPM's role in achieving the goal of improved labor-management relations in the government following President Bush's order dissolving the partnerships? What will you do to foster good labor-management relations in the Federal Government, especially in agencies that do not currently have good relationships between labor and management?

It is generally recognized that good labor-management relations cannot be mandated. In issuing Executive Order 13203, President Bush placed responsibility for labor-management relations exactly where it belongs - with the respective agency management and labor organizations. Good relations are the product of time and commitment on both the part of labor and management to work together to accomplish the goals and mission of the agency. During my tenure as a member of the staffs of the congressional committees charged with civil service oversight, I worked hard to foster a good relationship with all employee groups. If confirmed as Deputy Director, I pledge to continue this effort to establish an environment of openness, inclusiveness and fairness in dealing with employee organizations.

I will follow the lead established by Director James in establishing good working relationships with employee organizations and making OPM available as an important resource for agencies on the rights and responsibilities of agencies, employees and labor organizations under the federal labor relations statute. Labor and management have a shared stake in achieving the President's goal of making the government more citizen-centered, results-oriented and market based. Maintaining good working relationships with federal-sector employee unions is one of the many goals I share with Director James. This government can be successful when management and union leaders work together on principles that unite them.

15. Federal agencies, like other employers, are faced with balancing demands for mission accomplishment and the fair treatment of their workforce. Federal employees are protected from inappropriate, arbitrary, and prohibited personnel practices, but some observers have criticized the government's administrative redress system as being

complex, time consuming, costly, and adversarial. Do you agree with these criticisms? What role can OPM play in improving this system and in helping agencies develop conflict management systems that work to prevent, as well as resolve, workplace disputes? What are your views concerning the use of alternative dispute resolution methods?

I agree that the current administrative redress system is very complex and not always as efficient as it could be in resolving disputes. While OPM is ready to work with Congress to explore potential legislative solutions, it is important to point out that much can be done right now to prevent and effectively resolve workplace disputes through the use of alternative dispute resolution, or ADR. While OPM has no statutory authority to mandate alternative dispute resolution, since 1999 OPM and its Office of Workforce Relations has taken the government-wide lead on promoting it as a means of efficiently, economically and equitably addressing federal employee general grievances, and situations where they have been specifically exposed to alleged inappropriate, arbitrary, and prohibited personnel practices. Once a year (usually in the autumn) OPM sponsors a ceremony at which the Director's Award for Outstanding Alternative Dispute Resolution Programs is handed out. This is an opportunity to highlight and honor the best practices of participating federal departments and agencies that utilize ADR. Award recipients for 2001 included: the Department of the Air Force for its general ADR program, the Charleston Air Force Base ADR program, and the Oklahoma City Air Logistics Center ADR program; the Department of Energy's Energy H.Q. mediation program; the Federal Aviation Administration's Northwest ADR program; and the Department of Health and Human Service's Agency for Healthcare Research and Quality Ombuds program.

OPM is currently discussing a joint education effort with the Equal Employment Opportunity Commission to promote ADR programs for discrimination claims brought by federal employees.

16. Numerous GAO reports have highlighted the need for agencies to expend more resources on effective training and professional development programs to better equip federal employees for the workplaces of the future. Based on your experience, what priority would you place on workplace development, and how would you emphasize continuous learning in both your agency and the federal government? Some have suggested that agencies request a line item in their appropriations to cover the costs of training and development. What are your views on this proposal?

I believe an organization's employees are that entity's most important asset. The President's Management Agenda recognizes the importance of the workforce and the development of our human resources as integral to successful governing. Workforce development is a high priority for OPM because of its strategic use as a recruiting and retention tool in helping to attract and retain high quality candidates. Employees are attracted to organizations where they can grow and learn. Agencies that do not invest in their people see their best and brightest move on to organizations that do place a priority

on continued education, training and learning. As Deputy Director I would emphasize this message within OPM and to the federal community.

I would encourage agencies to build the costs of training and learning into their budgets. However, I do not believe that requiring a specific line item in their respective budget submissions would bring about the desired result of increasing the opportunities for continued training and learning for their employees. Rather, a specific line item could act as a target for efforts to produce budget savings, thereby having the opposite effect as originally intended. Unfortunately budget planning and cost cutting exercises often consider training a discretionary expense that is one of the first things to be cut when budgets are tight. Rather than focusing on the process of requiring a specific line item, I suggest that policy makers place an emphasis on obtaining agencies' commitment to programs which provide development and opportunities for their employees. The federal government cannot afford to neglect employee development if we are committed to achieving improved results and performance. The private sector has learned this lesson. For instance, it has been brought to my attention that Motorola has used the return on investment calculation that one dollar invested in training translates into thirty dollars in productivity gains. A study conducted by OPM's Office of Executive and Management Development for one DOD client found that one dollar spent on training resulted in over six dollars in quantifiable benefits in the first year following training. A sound budget investment in training can reap positive and cost-effective results.

17. OPM carries out a number of activities for the agencies on a reimbursable basis. Often subject matter areas that are reimbursable overlap with areas where assistance is available for free. For example, agencies can receive free assistance on workforce planning, but they must pay for assistance on succession planning. Thus, the effect on PM's budget differs depending on which kind of assistance OPM provides. Some officials have questioned whether this creates a conflict of interest. What are your views on this issue?

OPM, by virtue of its Human Resources (HR) expertise, can add value as a consultant to agencies as they implement HR policies and this can properly be reimbursable. I am not presently aware of a situation where identical OPM services are offered both for free and under a reimbursable program. In many situations it is a question of the degree of OPM involvement. We stand ready to offer advice and counsel to all federal agencies on human resources issues. It is when OPM is asked to actually construct and/or administer a program that we would seek reimbursement.

It should be noted that the Office of Management and Budget is promoting cost-accounting budget measures that, if fully adopted, would require each federal department and agency, and most sub-agencies and related bureaus, to fully account for their budget, including assuming a fair share of all capital costs, and charging fees for services rendered to other government agencies. As such, I would not be surprised to see a rise in the level of reimbursable work by all federal departments and agencies, and not just OPM.

18. Political appointees who create and maintain constructive working relationships with civil servants at all levels, and with their representatives and organizations, can improve employee morale, increase performance, and improve cost-efficiency. Please describe your specific experience involving "front line" employees and how you intend to create and maintain a constructive work environment with the career civil servants.

While I have had only limited experience with "front line" employees during my limited time at OPM, I believe it is important for the success of any political appointee to maintain, value, and foster a constructive work environment with career civil servants. Successful completion of agency goals and mission require the active participation by all facets of the workforce including career employees, political appointees, and union and management alike. It is the goal of agency management to develop an environment in which the knowledge and skills of the front line worker are valued and recognized.

19. Concerns have been raised that the events of September 11th highlighted weaknesses in the government's management of its national security workforce. For instance, Federal agencies found themselves without sufficient numbers of employees with needed language skills. And with the increasing rate of retirements in the Federal government, agencies will be hard pressed to meet the personnel requirements of the government's national security responsibilities. In December, Senators Durbin, Thompson, Akaka, Collins and Cochran introduced S.1800, legislation to provide recruitment and retention incentives for Federal employees with national security skills (The Homeland Security Federal Workforce Act). Also in December, Senators Durbin, Thompson, Akaka and Cochran introduced S. 1799, legislation to promote national security skills among the general population (the Homeland Security Education Act). What are your views on these bills?

The events of September 11th, and our response to them, have highlighted many of the weaknesses in the government's workforce management practices that were known before and that the Administration and the Committee have been so diligently trying to solve. Both the Homeland Security Federal Workforce Act and the Homeland Security Education Act attempt to address some of these weaknesses. Because I support what the bills are trying to do -- bring to government the skills it needs to accomplish its mission, especially as it relates to homeland security -- I expect to work closely with this Committee to ensure that legislation in this area garners the active support of the House of Representatives and the President, as well as the full Senate.

20. As you know, the Committee has been studying the slow pace of the Presidential appointments process. It now takes far too long for the President to put his team in place throughout the Executive Branch. In December, Senators Thompson, Lieberman, Voinovich, Lugar, Durbin and Akaka introduced S. 1811, legislation to streamline the Presidential appointments process for Executive Branch nominees. The bill includes provisions to, among other things, require a comprehensive review of and report on criminal conflict of interest statutes by the Office of Government Ethics and the

Department of Justice; require the Executive Clerk of the White House to keep an electronic database of Executive Branch-appointed positions and to deliver a copy of that database to the Presidential candidates following the nominating conventions; and to streamline the financial disclosure forms required of nominees. What are your views on this bill?

While I am not aware that the Administration has taken an official position on this legislation, my own views parallel those of the sponsors of the legislation. Having worked on this legislation as Senior Counsel for the Governmental Affairs Committee, I know that the sponsors of the bill carefully developed the provisions of the legislation with the intent to help this and future Administrations staff its most important and responsible positions. It is imperative that any President have the ability to assemble quickly his top appointments in the agencies and departments. During hearings on this issue, it was pointed out that the current appointment process hampers the President's ability to appoint good people to key positions in government on a timely basis. Further, nominees face burdensome, duplicative, perhaps unnecessary paperwork, and confusing ethics laws which may have lost sight of their initial purpose. In fact, the entire appointment process has become so complex that some of the best-qualified people are reportedly turning down the opportunity to serve the public. The legislation reflects the hard work and commitment of the bill sponsors to craft a bipartisan measure to improve this process, while ensuring that conflicts of interest concerns and disclosure are met.

IV. Internal OPM Management Issues

1. During the 1990s, OPM was downsized, its budget was reduced, and — through delegation and deregulation — its role and mission changed. With today's continued emphasis on human capital flexibilities, OPM's role is likely to continue to evolve. What do you see as OPM's role in the future? What do you foresee regarding restructuring of the OPM workforce?

During my short time at OPM, I have witnessed an agency imbued with a renewed sense of energy, direction and vigor. Director James has taken a government-wide leadership role in leading agencies in implementing the President's Human Capital Initiative. These leadership efforts include OPM working closely with agencies to ensure that they strategically use the broad range of existing human resources management tools to recruit, retain, manage and develop a high-performing workforce. In addition, OPM will work both to enhance those tools, focusing particularly on modernizing compensation, and to help agencies improve the links between human capital strategies and organizational mission, goals, and performance. To support this customer-focus, OPM will engage in a significant agency restructuring designed to increase strategic integration of its functions while aligning agency organization along more customer-friendly lines.

OPM has also been tasked with the lead role in information technology projects aimed at increasing efficiency and maximizing citizen service. These e-Gov initiatives will streamline and automate the exchange of federal personnel information, integrate HR and payroll processes, cut the cost and time to complete security clearances, deliver training service electronically, simplify federal job applications while reducing hiring times, and make retirement claims processing faster, cheaper, and more accurate.

To address agency-specific needs, Director James has assembled targeted "strike force" teams designed to help agencies address specific human resources needs. This is part of an overall effort to reinvigorate the role of OPM within the Executive branch and re-enforce management practices designed to utilize human capital resources in the most effective and efficient ways.

2. OPM has major initiatives underway to shift the orientations of its efforts — focusing less on ensuring compliance with procedures and more on assisting agencies achieve results. What are your thoughts on how OPM can strike the best balance between "rules and tools"? What attributes and competencies of the OPM workforce do you believe can be helpful in enhancing a results-oriented culture? What challenges does OPM face in attracting, hiring, and retaining staff with those competencies and what mix of strategies could be used to address those challenges?

On January 4 Director James issued ***HRM Accountability System Standards*** *to heads of all agencies. This document outlines a system for Human Resource Management accountability that all agencies are now being required to put in place – one that provides a balanced framework for strategic, effective, efficient and legally compliant HRM. Reflecting this development, OPM is revamping its oversight program to emphasize that each agency must have an HRM accountability system. From this perspective rules are certainly still important. But we will always look at them within the context of agency mission requirements and the HR function's support of them.*

To accomplish this reorientation we are building on skills and competencies that are present, to at least some degree, at OPM. OPM has shifted from a confrontational to a collaborative mode in dealings with agencies – approaching such interaction with other agencies as a way to help them enhance their HR programs and processes. This reflects a greater "customer orientation" throughout OPM, which is monitored and encouraged through the annual agency customer satisfaction survey. These developmental activities have also begun to reflect this shift, emphasizing strategic thinking and consultative skills, and not just technical expertise.

But I believe OPM needs to step up its developmental activities in this direction. Recent research indicates that current members of the HR profession at OPM and elsewhere do not yet possess the needed skills. HR competency models developed by OPM and others in recent years will provide a blueprint for identifying what is needed to remedy this. OPM intends to work with other agencies, public interest and professional

organizations, and universities to make sure that there are opportunities for employees to develop along these lines. Assistance of some of these organizations to recruit individuals who possess the vital "new" HR competencies will also be sought.

3. What can OPM do to ensure that human capital considerations are systematically integrated into its program decisions and goal-setting? What efforts can OPM take to ensure that it has identified its critical strategic human capital management challenges and has strategies in place to address those challenges—for example, in addressing demographic and succession planning issues?

OPM conducted a complete workforce analysis last summer – as directed by the Office of Management and Budget to all agencies – and used those results to develop specific human capital management strategies to address the challenges identified. Many of these strategies are included in the budget justification and annual performance plan for FY 2004 that will be submitted to Congress following the President's budget announcement. Others are already underway; for example, the analyses were a key driver of the OPM restructuring effort. A key finding from OPM's workforce analysis is that 28% of its workforce will be eligible for immediate retirement in the next five years; potential retirements in key occupations (e.g., HR Specialists and Retirement Benefit Specialists) will be particularly high. Our skills assessment revealed that our long-term skills gaps are greater than our short-term needs. As a result of these findings, we are stepping up our efforts to recruit and hire, and enhancing our training programs to develop our current employees to handle higher level responsibilities.

4. What can OPM do to ensure that the focus of its employees' performance expectations are centered on contributions to the achievement of organizational results? Specifically, how can OPM use the new regulations for assessing the performance of members of the SES as it seeks to transform the culture of the agency and become more results-oriented?

With respect to SES members' performance plans, Director James is already looking at ways to incorporate balanced measures more strongly and to emphasize the kinds of cultural changes she envisions. To meet this goal, OPM's regulations on SES performance management are intended to formalize the balanced measures that drive executive excellence. Leading and motivating people, and attending to customers' needs are cornerstones of most successful organizations. Changing the focus of SES performance management from process to results, and balancing organizational results, customer satisfaction, and employee perspectives are critical to promoting a high performing organization.

Careful attention must be paid to articulating clear performance goals and objectives and establish definitive measures and performance indicators in executives' work plans. Then executives must be held accountable for achieving those results, provide realistic performance evaluations, reward high performance and address low performance. Together, these actions will not only help ensure that we are achieving our

organizational results, but they will also carry us far in promoting a high performance culture that can be cascaded to all levels throughout the agency.

There is little doubt that OPM's senior executives are very mindful of how seriously Director James takes the commitment to continual measurement of where executives are in meeting their goals and taking the opportunities they have to make a difference. Beyond that, OPM can and will certainly apply the techniques we share with other agencies, such as the approach taken in the handbook on linking employee performance plans to organizational goals.

5. The role of technology in delivery of human capital services is key to greater organizational effectiveness, economy and efficiency. What challenges do you see to OPM's success in using technology in these areas?

We see our challenge not so much related to the use of technology, but rather focused on the management of development and deployment of the technology that we use. We believe that we have clearly identified technology as a significant enabler for human capital services. In fact, we are currently the Managing Partner for five recently designated high priority e-Government initiatives: the Human Resources Data Network project, e-Clearance, e-Training, Recruitment One Stop and Payroll Modernization. In addition, we are managing the Retirement Systems Modernization (RSM) project, a major internal re-engineering of our retirement processing. Each of these six IT-related efforts is a major undertaking and will provide government-wide benefits to improve efficiency and effectiveness. The benefits from the use of technology in these areas are clear.

Our challenge will be to successfully develop, deploy and manage such a diverse portfolio of major systems and to deliver those benefits. We need to ensure that we manage the projects by using a robust systems development methodology, adopting an IT architecture, and putting in place quality assurance mechanisms such as configuration management and change control. To address these issues, we already have a project office in place for the RSM effort and are establishing a project office to focus exclusively on managing the five new e-Government efforts.

6. Reviews by OPM's Office of Inspector General, including its recent Government Information Security Reform Act Review for Fiscal Year 2001, identify weaknesses and opportunities for improvement in OPM's information security, such as the need to perform formal risk assessments and to implement an agency-wide security program. What steps should OPM take to strengthen its information security program? How will you help foster a strong management commitment to information security in OPM?

OPM is fully committed to protecting our IT systems and assets. Because of the sensitivity of the data that we process, we take very seriously our IT security and we believe that we are doing many of the right things to protect our critical IT assets. As a

result, we have been minimally impacted by the many viruses, hacker threats and intrusions that have plagued the IT community. As noted, however, there are areas where we must improve.

Progress is being made toward fully implementing all of the security practices of the GISRA. Our Chief Information Officer (CIO) is the executive responsible for ensuring our IT security. Progress made on our plan of action is reported to OMB on a quarterly basis. For example, we recently issued a contract through the GSA Safeguard program for assistance in conducting formal risk assessments of our key IT infrastructure components (i.e., our local area and wide area networks, and our mainframe processing center). The contractor will also assist in developing security plans for these critical assets that are fully compliant with National Institutes of Standards and Technology guidance.

Last June, a new security policy for OPM, which is the basis for implementing our agency-wide security program, was developed. Further, implementation guides for this policy are being developed and will be coordinated through our IT Security Working Group. We are also working on enhancing the computer security training for our staff.

Many challenges exist in our efforts to meet today's IT security requirements and to ensure that we are able to protect our critical assets against the expanding list of security threats. To ensure we remain focused on this area, I intend to work closely with the CIO in monitoring our progress.

V. Relations with Congress

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

   I do.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

   I do.

VI. Assistance

1. Are these answers your own? Have you consulted with OPM or any interested parties? If so, please indicate which entities.

   These answers are my own. I did consult with staff at OPM in preparing my answers to these questions.

AFFIDAVIT

I, Nan G. Blair, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Nan G. Blair

Subscribed and sworn before me this 25th day of Jan., 2002.

Bobbie Jean Williams
Notary Public
BOBBIE JEAN WILLIAMS
NOTARY PUBLIC OF DISTRICT OF COLUMBIA
My Commission Expires October 31, 2006

Congresswoman Constance A. Morella
Eighth District, Maryland

February 5, 2002

Senator Joseph I. Lieberman
Chairman
Committee on Government Affairs
601 Senate Hart Building
Washington, DC 20510

Dear Chairman Lieberman:

I am writing to you in strong support of Dan G. Blair who will appear before your Committee on Friday, February 8, as President Bush's nominee for Deputy Director of the Office of Personnel Management.

I have known Dan since 1987 when he served as Counsel to the Committee on Post Office and Civil Service and I was Ranking Minority Member on its various subcommittees. I knew him to be fair, conscientious, a facilitator, and good-natured when dealing with members, peers and lobbyists. He had a thorough, genuine and caring grasp of Title 5 and the issues that affect federal employees, including postal employees, and retirees.

As Dan moved up to become Staff Director of the Subcommittee on the Postal Service he was known for his diligence and innovative ideas to keep the Postal Service viable. He then was selected to serve on the Senate Committee on Government Affairs as Senior Counsel to the Committee.

Dan has a track record of leadership and dedication and I wish him all success in all his future endeavors.

With best personal regards,

Sincerely yours,

Connie Morella

Constance A. Morella
Member of Congress

Not paid for with taxpayer funds.

JOHN M. McHUGH
24TH DISTRICT, NEW YORK

COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON MILITARY PERSONNEL
CHAIRMAN

SUBCOMMITTEE ON MILITARY INSTALLATIONS AND FACILITIES

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SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES, AND REGULATORY AFFAIRS

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February 8, 2002

Honorable Joseph I. Lieberman
Chairman
Committee On Governmental Affairs
Room 340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

It is my pleasure to address this letter to you regarding Dan G. Blair and his nomination as Deputy Director of the U.S. Office of Personnel Management. I am pleased to wholeheartedly endorse Dan's nomination as you consider his appointment to the Office of Personnel Management.

From 1995 to 2001, I served as Chairman of the House Subcommittee on the Postal Service, and from January, 1995 to January, 1998, Dan served as the Subcommittee's Staff Director. During that period, Dan was responsible for directing the Subcommittee's efforts and agenda in conducting oversight of the U.S. Postal Service. Dan did a fantastic job in directing the development of comprehensive postal reform legislation. Under his management and coordination, we successfully enacted legislation establishing an independent Office of Inspector General for the Postal Service. Previous to that assignment, he served as Minority General Counsel for the former House Committee on Post Office and Civil Service, and until late last year, he held the position as Senior Counsel for the Senate Governmental Affairs Committee, working under the direction of the Ranking Member.

During his many years of experience in Congress, Dan's responsibilities have included oversight and legislation involving the civil service and federal personnel policy, and, as a result, he is very knowledgeable of the issues involving federal employees and retirees. I know that the Office of Personnel Management will benefit greatly from Dan's wealth of knowledge and experience and that he would be a valued and welcome addition to the Administration.

I appreciate and thank you for your consideration.

Sincerely yours,

John M. McHugh
Member of Congress

JMM/dmb
cc Honorable Fred Thompson