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Comptroller General  
of the United States

United States General Accounting Office  
Washington, DC 20548

March 22, 2004

The Honorable George V. Voinovich  
Chairman  
The Honorable Richard Durbin  
Ranking Minority Member  
Subcommittee on Oversight of Government  
Management, the Federal Workforce, and the  
District of Columbia  
Committee on Governmental Affairs  
United States Senate

The Honorable Jo Ann Davis  
Chairwoman  
The Honorable Danny Davis  
Ranking Minority Member  
Subcommittee on Civil Service and  
Agency Organization  
Committee on Government Reform  
United States House of Representatives

Subject: *Posthearing Questions Related to Proposed Department of Homeland Security (DHS) Human Capital Regulations*

On February 25, 2004, I testified before your subcommittees at a hearing entitled “The Key to Homeland Security: The New Human Resources System.”<sup>1</sup> This letter responds to your request that I provide answers to posthearing questions. The questions and responses follow.

- 1. In your testimony, you indicated that there were safeguards recommended for the personnel system at the Department of Defense that were not included in the Homeland Security Act. What safeguards do you think should be included in the regulations for the DHS personnel system that are not included currently?**

We have proposed an initial list of safeguards based on our extensive body of work looking at the performance management practices used by leading public sector organizations both in the United States and in other countries, as well as our own

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<sup>1</sup>U.S. General Accounting Office, *Human Capital: Preliminary Observations on Proposed DHS Human Capital Regulations*, GAO-04-479T (Washington, D.C.: Feb, 25, 2004).

experiences at GAO in implementing a modern performance management system. These safeguards include:

- Assure that the agency's performance management systems (1) link to the agency's strategic plan, related goals, and desired outcomes, and (2) result in meaningful distinctions in individual employee performance. This should include consideration of critical competencies and achievement of concrete results. As I noted in my testimony, DHS plans to align individual performance management with organizational goals.
- Involve employees, their representatives, and other stakeholders in the design of the system, including having employees directly involved in validating any related competencies, as appropriate. In September 2003 we reported that DHS's personnel system design effort provided for collaboration and employee participation.<sup>2</sup> Employees were provided multiple opportunities to be included in the design process, including participation in the Core Design Team, the Town Hall meetings, the field team, the focus groups, an e-mail mailbox for employee comments, and now through the public comment period on the proposed system.
- Assure that certain predecisional internal safeguards exist to help achieve the consistency, equity, nondiscrimination, and nonpoliticization of the performance management process (e.g., independent reasonableness reviews by Human Capital Offices and/or Offices of Opportunity and Inclusiveness or their equivalent in connection with the establishment and implementation of a performance appraisal system, as well as reviews of performance rating decisions, pay determinations, and promotion actions before they are finalized to ensure that they are merit-based; internal grievance processes to address employee complaints; and pay panels whose membership is predominately made up of career officials who would consider the results of the performance appraisal process and other information in connection with final pay decisions). DHS is proposing Performance Review Boards (PRBs) to review ratings in order to promote consistency and provide general oversight of the performance management system to ensure it is administered in a fair, credible, and transparent manner. While much remains to be determined about how the DHS PRBs will operate, we believe that the effective implementation of such a board is important to assuring that predecisional internal safeguards exist to help achieve consistency and equity, and assure nondiscrimination and nonpoliticization of the performance management process.
- Assure reasonable transparency and appropriate accountability mechanisms in connection with the results of the performance management process. This can include reporting periodically on internal assessments and employee survey results relating to the performance management system and publishing overall results of performance management and individual pay decisions while protecting individual confidentiality. Publishing the results in a manner that protects individual confidentiality can provide employees with the information they need to better understand the performance management system. As we recently

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<sup>2</sup>U.S. General Accounting Office, *Human Capital: DHS Personnel System Design Effort Provides for Collaboration and Employee Participation*, GAO-03-1099 (Washington, D.C.: Sept. 30, 2003).

reported, several of OPM's personnel demonstration projects publish information for employees on internal Web sites about the results of performance appraisal and pay decisions, such as the average performance rating, the average pay increase, and the average award for the organization and for each individual unit.<sup>3</sup>

There are also important safeguards in areas other than performance management. For example, I noted in my testimony that, as an additional safeguard, DHS should consider identifying mandatory removal offenses in regulations as a means to ensure appropriate due process. I also believe that the independence of the panel to hear appeals of violations of the mandatory removal offenses could be strengthened. As we note in the response to question 4 below, the independence of the DHS labor relations board deserves serious consideration.

**2. The regulations don't allow collective bargaining on matters that do not "significantly affect a substantial portion of the bargaining unit." What do you think would be a reasonable percentage or number to be considered a "substantial portion?"**

As I noted in my testimony, leading organizations involve employees and unions in major changes such as redesigning work processes, changing work rules, or developing new job descriptions. Such involvement can avoid misunderstandings, speed implementation, and more expeditiously resolve problems that occur. I also noted that DHS employees suggested having informal mechanisms in place to resolve issues before escalating them to the formal process. However we do not have a specific percentage to recommend for this provision.

**3. In your testimony you stated concern for the Department of Defense's intention to implement a personnel system by the Fall of 2004. What do you believe would be an appropriate implementation timetable for the Department of Homeland Security?**

We have found that a key practice for successful transformations is to set implementation goals and establish a timeline to build momentum and show progress from day one.<sup>4</sup> A transformation, such as the one being undertaken by DHS, is a substantial commitment that could take years before it is completed, and therefore must be carefully and closely managed. As a result, it is essential to establish and track implementation goals and establish a timeline to pinpoint performance shortfalls and gaps so that midcourse corrections can be made.

According to DHS's proposed regulations, the labor relations, adverse actions, and appeals provisions will be effective 30 days after issuance of the interim final regulations later this year. DHS plans to implement the job evaluation, pay, and

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<sup>3</sup>U.S. General Accounting Office, *Human Capital: Implementing Pay for Performance at Selected Personnel Demonstration Projects*, GAO-04-83 (Washington, D.C.: Jan. 23, 2004).

<sup>4</sup>U.S. General Accounting Office, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003).

performance management system in phases to allow time for final design, training, and careful implementation. Although we do not recommend a specific implementation timetable for DHS, we strongly support a phased approach to implementing major management reforms. A phased implementation approach recognizes that different organizations will have different levels of readiness and different capabilities to implement new authorities. Moreover, a phased approach allows for learning so that appropriate adjustments and midcourse corrections can be made before the regulations are fully implemented organizationwide. However, it is important to note that the proposed regulations do not apply to nearly half of all DHS civilian employees, including more than 50,000 screeners in the Transportation Security Administration (TSA). Based on the department's progress in implementing the system and any appropriate modifications made based on their experience, DHS should consider moving all of its employees under the new human capital system.

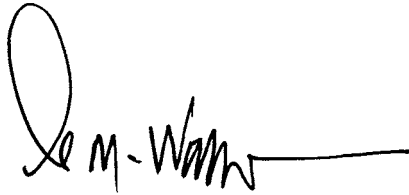
**4. Would you characterize the proposed Labor Relations Board in these regulations as “independent”?**

I did not directly comment on this matter in my statement. However, in my statement I did raise independence concerns about a separate panel to be created to hear appeals for mandatory removal offenses. Members of that panel are appointed by the DHS Secretary for three-year terms and may be removed by the Secretary “only for inefficiency, neglect of duty, or malfeasance.” These appointment and removal procedures are identical to the appointment and removal provisions for the members of the proposed DHS Labor Relations Board. As I noted in my statement with regard to the mandatory removal offense panel, removal of the panel members by the Secretary may potentially compromise the real or perceived independence of the panel's decisions. We suggested, as an alternative, that the Department should consider having members of the panel removed only by a majority decision of the panel. We also said that DHS might wish to consider staggering the terms of the members to ensure a degree of continuity on the board. Such changes might also strengthen the independence of the Labor Relations Board.

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We are sending copies of this report to the Chair and Ranking Minority Member, Senate Committee on Governmental Affairs; the Chairman and Ranking Minority Member, House Committee on Government Reform; the Chairman and Ranking Minority Member, House Select Committee on Homeland Security; and other interested congressional parties. We will also send copies to the Secretary of the Department of Homeland Security and the Director of the Office of Personnel Management. Copies will be made available at no charge on the GAO Web site at <http://www.gao.gov>. For additional information on our work on federal agency transformation efforts and strategic human capital management, please contact me on (202) 512-5500 or J. Christopher Mihm, Managing Director, Strategic Issues, on (202) 512-6806 or at [mihmj@gao.gov](mailto:mihmj@gao.gov).

Sincerely,

A handwritten signature in black ink that reads "D M Walker" followed by a horizontal line extending to the right.

David M. Walker  
Comptroller General  
of the United States

(450312)

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