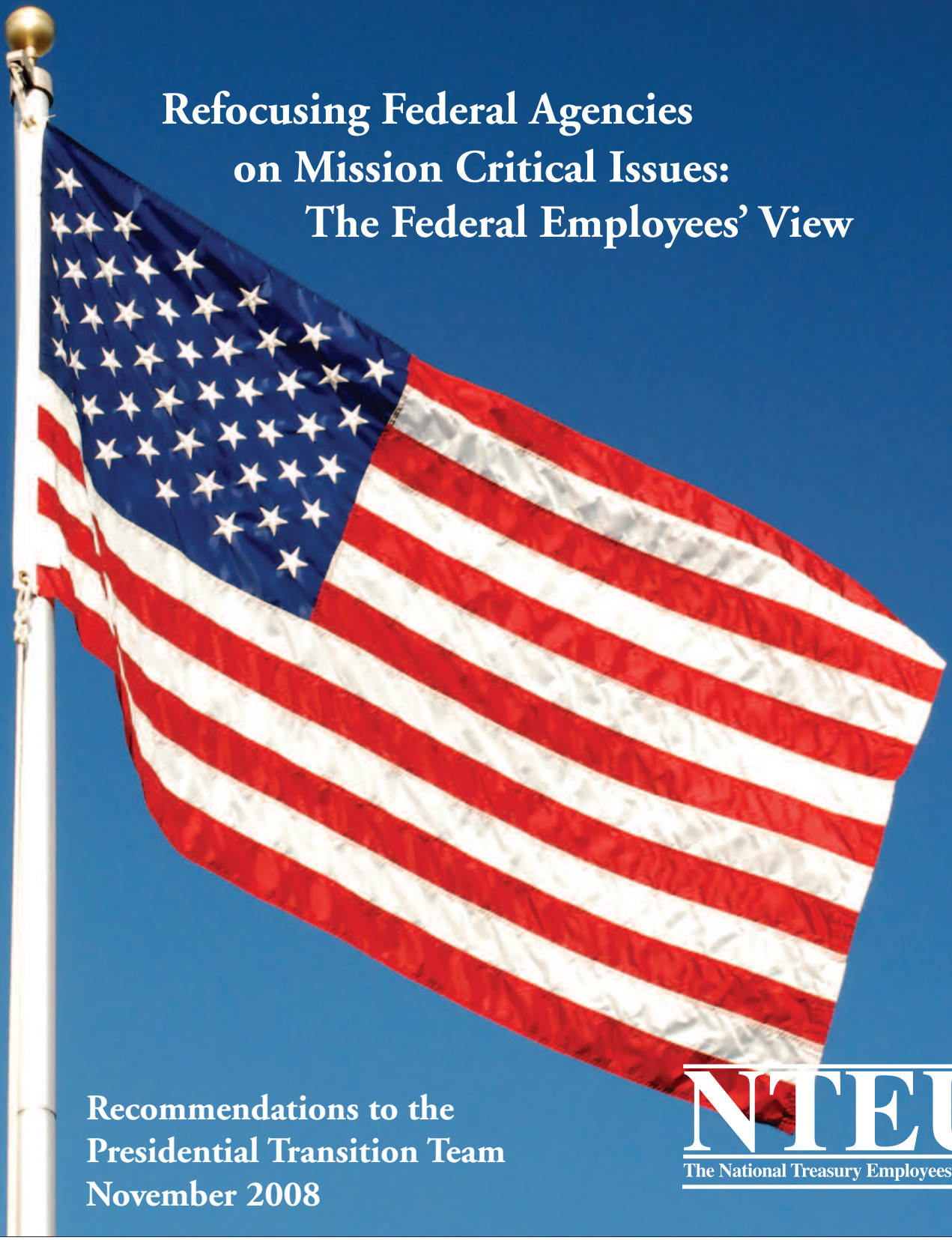
Delivering Change for America

Refocusing Federal Agencies on Mission Critical Issues: The Federal Employees' View



Recommendations to the
Presidential Transition Team
November 2008

NTEU
The National Treasury Employees Union

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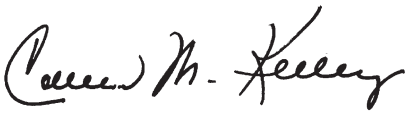
In the final analysis, a great country is the sum of the actions of its people—and in few, if any, endeavors, does that hold more truth than in the work of the employees of its government.

For the public and its many varied interests to be served effectively and efficiently, there must be a federal workforce made up of dedicated and skilled women and men for whom such service truly is a calling.

A change in administrations clearly provides a window not only for improvements in the way government conducts itself—and thus serves the public—but in the ways it attracts and retains those who perform the people's work.

This document, from the nation's largest independent union of federal employees, offers suggestions for such improvements from the front-line federal workers the National Treasury Employees Union (NTEU) is privileged to represent.



Colleen M. Kelley
National President
National Treasury Employees Union
Washington, D.C.

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Introduction

November 2008

THE CHALLENGES FACING THE NEW ADMINISTRATION are myriad and broad-ranging—reviving our economy, strengthening the security of our homeland, moving our country on the path to energy independence, resolving our federal budget crisis, and restoring the faith of the American people in our government.

The extent to which our government will be successful rests in large measure with the federal employees charged with carrying out agency missions. In the past administration, too often federal agencies were hamstrung, understaffed, underfunded and led by political appointees who were ambivalent about their missions.

"Part of my job, I think, as president, is to make government cool again, and to say to young people . . . even as we're transforming Washington, come on, 'We want you.'"

President-elect Obama during a Sept. 11 Columbia University public service forum

By engaging the federal workforce and refocusing on agency missions, the new administration can right the wrongs of the past eight years, tackle our nation's problems and restore vitality to our federal government.

America's skilled and experienced federal employees, like all Americans, want effective, efficient delivery of government services every single day and they have the expertise to deliver on that goal.

As we welcome a new administration, we can also welcome a new atmosphere and spirit of partnership and cooperation in which leaders work with employees and their representatives to strengthen federal agencies and improve service to the American public.

As the nation's largest independent union of federal employees, the National Treasury Employees Union (NTEU) represents 150,000 frontline federal workers. NTEU members proudly serve at agencies as diverse as the Internal Revenue Service, U.S. Customs and Border Protection and the Transportation Security Administration within the Department of Homeland Security, the Food and Drug Administration, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission. NTEU now represents a total of 31 agencies and departments across the federal government.

It is with that broad perspective, and in the hope that these ideas will allow and assist this dedicated workforce to perform even better for the public that NTEU offers specific recommendations based on these guiding principles:

1. **Increases in productivity are best achieved when managers and employees work in partnership and collaboration to achieve agency missions.**

2. **Contracting out is costing American taxpayers far too much. Inefficient contracts should be ended and the work returned to federal agencies saving taxpayer dollars and increasing accountability.**

3. **Adequate resources and authority are needed to achieve agency missions.**

4. **Efficiency in federal agencies can be increased by driving resources to the front line.**

5. **Collective bargaining is in the public interest.**

6. **Civil service changes, particularly in performance management and pay, should be tied to evidence of increasing the potential for achieving agency missions, not just vague concepts like flexibility and modernity.**

Federal employees have a critical role to play to get our economy back on track, to restore faith in government, to make our homeland more secure and to deliver the essential services that the American people rely on. Applying these principles to the specific administrative and legislative recommendations contained in this document will result in federal workplaces where employees are better able to deliver the change President-elect Obama promised and the American people desperately need and deserve.

About NTEU

Founded in 1938, NTEU is the largest independent union for federal employees and represents 150,000 workers in 31 agencies and departments across the federal government. NTEU has always been driven by the principle that every federal employee should be treated with dignity and respect and that federal workers should have a strong, effective and persistent advocate speaking in every forum where decisions are being made about the work of our country. NTEU has built a reputation in federal circles as a highly-focused, smart, tough organization that is well-respected for its knowledge of federal employee issues.

NTEU is led by National President Colleen M. Kelley. Kelley is a former Revenue Agent for the Internal Revenue Service and was first elected to the union's top post in August of 1999. She was overwhelmingly re-elected to her third four-year term in August of 2007.

For more information on NTEU visit www.nteu.org.

Recommendations for Immediate Administrative Action

NTEU stands ready to work with President-elect Barack Obama and the congressional leadership on ways to strengthen federal agencies to help them better meet their critical missions and serve the American public. The president has the power to determine whether federal agencies will be focused on delivering services to the public or distracted by non-essential pursuits. NTEU believes that many of President George W. Bush's federal personnel policies made it more difficult for employees to achieve their critical agency missions. Many of these policies were set and implemented solely by administrative action. President-elect Obama will have the authority, through the use of Executive Orders and other administrative actions, to implement new policies quickly and begin delivering the change that is needed. We pledge to work with the Obama administration on a number of measures that will help federal agencies increase productivity and efficiency, restore the public's faith in government and restore respect for public service. These include finding savings and increasing accountability by ending inefficient contracts and bringing work back into federal agencies; increasing productivity through the use of partnership and other collaborative efforts; attracting and retaining the best employees by ensuring their rights are respected and their compensation system is transparent and competitive.

Following are recommendations for immediate administrative action.

1. Provide collective bargaining and civil service rights to Transportation Security Officers.

Congress passed the Aviation and Transportation Security Act (Pub. L. 107-71) shortly after Sept. 11, 2001. Section 111(d) of that Act provided the Under Secretary of Transportation for Security with unfettered authority in setting up a personnel system for Transportation Security Administration (TSA) screeners. *(See Administrative Action 1-1.)*

TSOs at Atlanta's Hartsfield-Jackson International Airport with Rep. Hank Johnson (D-Ga.) Johnson has long supported collective bargaining rights for these employees.

Once the agency was formed, one of Under Secretary James Loy's first directives implemented a determination that the screeners (now called Transportation Security Officers [TSOs]) would not be permitted to engage in collective bargaining. *(See Administrative Action 1-2.)*

NTEU urges the Obama administration to issue a new directive placing TSOs under Title 5 of the U.S. Code, along with the majority of other federal employees. We have attached a draft directive. *(See Administrative Action 1-3)* This directive will provide TSOs with a personnel system that safeguards their rights under the civil service merit system, and provides even-handed enforcement of federal laws.

NTEU also urges legislative action to ensure permanent rights for TSA employees. *(See page 15 for NTEU's legislative recommendations on TSA.)*

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2. Issue a new partnership Executive Order.

On Oct. 1, 1993, President Clinton signed Executive Order 12871 establishing labor-management partnerships in the federal government. The partnerships worked successfully until the executive order was revoked in early 2001 by President Bush (EO 13203). In its December 2000 report to the President, the Office of Personnel Management (OPM) found that the partnerships between labor and management in federal agencies "helped cut costs, enhance productivity, and improve customer service at agencies across Government."

Increases in productivity are best achieved when managers and employees work in partnership and collaboration to achieve agency missions.

NTEU supports a new executive order to reinstitute labor-management partnership in the federal government. (*See Administrative Action 2-1.)* After President Bush repealed EO 12871, legislation was introduced to reinstate it in both Houses of Congress (H.R. 3892/S. 2197). While NTEU will continue to support legislation, we urge the President to issue a new executive order early in 2009. This will expeditiously reestablish a process that was successful in promoting labor-management collaboration and harnessing the ideas of frontline employees to better advance the missions of their agencies.

3. Issue an Executive Order or agency head memorandum directing all agencies to review all of their service contracts, including consulting contracts and cancel any unnecessary contracts. Additionally, agencies should be directed to bring any inefficient, wasteful or inherently governmental contracts in-house within the next two years.

Under the Bush administration, the proliferation of private companies working under federal contract has exploded in size and at great cost to taxpayers. According to a 2006 report by the House Committee on Oversight and Government Reform, between 2000 and 2005 the value of federal contracts increased by 86 percent, from $203 billion to $377.5 billion. This growth in contracting was over five times faster than the overall inflation rate and almost twice as fast as the growth in other discretionary federal spending over this period.

The value of sole-source and other noncompetitive contracts awarded by the administration has increased at an even faster rate than overall procurement spending, rising by 115 percent from $67.5 billion in 2000 to $145 billion in 2005. As a result, 38 percent of federal contract dollars were awarded in 2005 without full and open competition, a significant percentage increase from 2000.

In addition, the administration has begun contracting out core governmental responsibilities, such as the collection of federal income taxes, even though it acknowledges the work could be done at less cost in-house.

In order to combat the rising waste, fraud, and abuse in federal contracting, NTEU strongly urges the administration to direct all agencies to immediately undertake a

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comprehensive review of all service contracts currently in effect. In conducting this review, the agency should examine whether the contract is for necessary services and cancel any unnecessary contracts. If the contract is for necessary services, the agency should assess the contractor's performance, including its actual costs versus the costs projected in its offer; the quality of the service being provided to the agency; and the overall value of the contract to the taxpayers as it relates to the agency's mission. As part of this review, agencies should also consider whether functions being performed by contractors are either inherently governmental in nature or would be better performed by federal employees and implement procedures to bring any such functions in-house within two years.

In addition, NTEU urges that the administration direct the head of each agency to submit to the Office of Management and Budget (OMB) a report covering these matters within six months, with subsequent reports to follow on an annual basis. We also support requiring OMB to submit annual reports to Congress highlighting progress made by each agency to comply with this directive.

Contracting out is costing American taxpayers far too much. A comprehensive review should be mandated and inefficient contracts should be ended.

4. Allow existing contracts with the Internal Revenue Service for private tax collection work to expire in March 2009.

On March 9, 2006, the Internal Revenue Service (IRS) awarded one-year contracts to three private collection agencies (PCAs) for the collection of individual tax debts on a commission basis. The IRS renewed the contracts for two of the PCAs for an additional year in February 2007, but decided to terminate the contract with the third. On March 3, 2008, the IRS again renewed the contracts of the two remaining PCAs for one year until March 2009, at which time the IRS can extend them for an additional year or allow them to expire.

NTEU members from across the country have actively worked to defeat the ill-advised contracts with private collection agencies that are collecting individual tax debts on a commission basis.

This program has been a financial failure and even the IRS acknowledges the work could be done more cost-effectively by IRS employees. Those calling for repeal of the program include the independent National Taxpayer Advocate, numerous consumer advocacy groups and former IRS commissioners.

NTEU strongly believes that the Secretary of Treasury should not renew the two existing contracts with PCAs for the collection of federal income taxes that will expire in March 2009.

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We further urge that by Feb. 1, 2009, the Secretary direct IRS to begin implementing any necessary administrative steps to end the private tax collection program by March 2009.

5. Rescind the Office of Management and Budget (OMB) memorandum to agency heads requiring that the agent of directly affected employees in an A-76 contracting out competition must be one of the employees.

OMB issued a revised Circular A-76 on May 29, 2003, governing public-private competitions conducted by federal agencies. That circular provides that "an individual appointed by a majority of directly affected employees as their agent" is a "directly interested party" who may contest certain procurement decisions made by the contracting agency, including a final decision to contract out a federal function. Pursuant to this provision, NTEU National President Colleen M. Kelley has previously served as the agent of directly affected employees. On March 25, 2005, however, the Administrator of the Office of Federal Procurement Policy (OFPP) issued a Memorandum for Agency Competitive Sourcing Officials requiring that the agent of the directly affected employees be one of the employees, thereby disqualifying employee representatives, such as NTEU's National President, from serving as the employee's agent.

NTEU urges the Director of the Office of Management and Budget or the OFPP Administrator to rescind the March 25, 2005, memorandum and issue a new memorandum *(see Administrative Action 5-1)* advising Agency Competitive Sourcing Officials that the head of a labor organization representing a majority of the directly affected employees is to be considered their agent, unless he or she declines or another individual produces evidence establishing that he or she has been chosen by a majority of the directly affected employees as their agent.

6. Order the Office of Management and Budget (OMB) to institute transparency in the awarding and oversight of all government contracts.

The proliferation of government contracts, and in particular, the number of no-bid or sole-source contracts, as well as absence of a comprehensive source of detailed, accurate, complete and timely information on federal contract spending, has prevented greater transparency in how these contracts are awarded as well as the oversight necessary to ensure contractors are being held accountable.

In addition, changes to OMB Circular A-76, which governs public-private competitions for federal work have tilted the playing field substantially in favor of the private sector, depriving taxpayers of the benefits of fair competition and resulting in contractor services at higher costs and lower value to the taxpayers.

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NTEU believes there are important steps we can take now to improve financial transparency and accountability in federal contracting while strengthening fairness in public-private competitions.

First, consistent with applicable law, the Director of OMB should be directed to implement the provisions of S. 3077, the "Strengthening Transparency and Accountability in Federal Spending Act of 2008," as introduced by Sen. Obama. Implementation of these provisions will help bring much needed transparency to the federal contracting process by building upon the "Federal Funding Accountability and Transparency Act of 2006," which makes public information about nearly all federal grants, contracts, loans and other financial assistance available in a regularly updated, user-friendly, and searchable format. These provisions will make it easier to hold agencies, contractors and others who receive federal funding accountable for their activities and their performance.

Second, OMB should be directed to implement Sections 4 (a), 5 & 8 of H.R. 3426, the "Truthfulness, Responsibility, and Accountability in Contracting Act of 2003" as introduced by Rep. Albert Wynn during the 108th Congress, or Sections 3 (a), 4 and 6 of S. 1152, the "Truthfulness, Responsibility, and Accountability in Contracting Act of 2001" as introduced by Sen. Richard Durbin during the 107th Congress. These bills would ensure fairness and accountability from contractors and improve the delivery of government services to the public by requiring federal agencies to implement reliable systems to track whether contracting efforts are saving money, and whether contractors are delivering services on-time and efficiently. *(See Administrative Action 6-1.)*

"The benefits of privatization are often outweighed by the devastation caused to communities by a loss of jobs or health care benefits. And often, services that are contracted out were being done well and efficiently by public servants."

President-elect Obama
NTEU candidate questionnaire

7. Revise Office of Management and Budget (OMB) Circular A-76 to adopt the Federal Activities Inventory Reform (FAIR) Act definition of inherently governmental functions and to specify a process for in-sourcing.

The Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note) adopts a statutory definition of the term "inherently governmental functions." Inherently governmental functions must be performed by federal employees and may not be subjected to public-private competitions. When OMB issued revised Circular A-76 on May 29, 2003, it adopted its own definition of inherently governmental functions that, though similar to the FAIR Act definition, is significantly narrower. This had the effect of authorizing agencies to contract out functions that would be considered inherently governmental under the FAIR Act, but not under Circular A-76.

OMB should revise Circular A-76 to adopt the FAIR Act definition of inherently governmental functions. *(See Administrative Action 7-1.)*

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8. Require a review of all alternative personnel systems, particularly pay-for-performance systems, and end systems that are not achieving goals.

The Bush administration has promoted alternative pay and personnel systems that have largely failed. The goals of recruiting and retaining high quality employees and better accomplishing the agency mission have not been met. Instead, many of these systems have produced widespread employee dissatisfaction, inequitable distribution of resources, abuse in rating systems, and rampant employee confusion leading to low morale. The Transportation Security Administration is constantly updating its Performance and Accountability Standards System (PASS), which has left airport screening officers with virtually no understanding of how their pay is determined. Congress halted FY 2009 funds for the Department of Homeland Security's alternative personnel and pay system. The Securities and Exchange Commission's merit pay system was found in violation of Title VII of the Civil Rights Act and the Age Discrimination in Employment Act of 1967. The Federal Deposit Insurance Corporation suspended its pay-for-performance system in 2007 and the Treasury Inspector General found that the Internal Revenue Service's paybanding system for managers "risks reducing the ability to provide quality service for taxpayers because [it] potentially hinders the IRS's ability to recruit, retain, and motivate highly skilled leaders." (TIGTA, 2007-10-106 July 3, 2007, p. 1)

Civil service changes, particularly in performance management and pay, should be tied to evidence of increasing the potential for achieving agency missions, not just vague concepts like flexibility and modernity.

Due to overwhelming evidence demonstrated in federal agencies that these alternative pay and personnel systems are failing, NTEU supports an immediate review of all such systems, particularly pay-for-performance systems, with termination of systems that are not achieving goals.

9. Dismiss all current Federal Service Impasses Panel members and chair.

Six of the current seven members of the Federal Service Impasses Panel (FSIP) were appointed by President Bush in February 2002 after his summary dismissal of all then-current members. The six have since been reappointed to various, staggered five-year terms. The seventh member was appointed in 2007 to a term expiring in 2009. Although Section 7119(c)(2) of Title 5 requires that Panel members be appointed from "among individuals who are familiar with Government operations and knowledgeable in labor-management relations," only one of the seven current members has a background in labor-management relations. Collectively, the current Panel has brought with them a decidedly hostile attitude toward the role unions play in federal government operations, which is reflected in the fact that the vast majority of their rulings favor agency management.

Under 5 U.S.C. 7119(c), the Panel is appointed by the president without any confirmation requirement. Accordingly, Panel members serve at the president's

pleasure. NTEU urges the new president to immediately terminate the appointments of all current Panel members and replace them with well-qualified, objective members. Federal sector unions would be better served with all Panel positions vacant until labor relations professionals, who meet the Section 7119(c)(2) qualifications requirements and who will fairly resolve bargaining impasses, are appointed.

10. Take action to ensure that the Federal Labor Relations Authority can quickly and fairly carry out its mission, particularly with regard to clearing its huge backlog of cases.

On Oct. 2, 2008, the U.S. Senate unanimously confirmed Carol Waller Pope, a Democrat, to a second term as a Member of the Federal Labor Relations Authority (FLRA) and Thomas M. Beck, a Republican, to his first term as a Member. Under 5 U.S.C. 7104(b) the president is authorized to designate one member of the Authority to serve as Chair. On Oct. 16, 2008, President Bush named Thomas M. Beck Chair of the FLRA. NTEU suggests that President Obama use his authority under 5 U.S.C. 7104(b) to designate Carol Waller Pope as Chair.

There is a huge backlog of undecided cases pending with the Authority. NTEU urges the new administration to quickly nominate a qualified individual to fill the one vacant seat on the FLRA and to direct the Authority to make clearing the backlog of cases its number one priority.

"... the statutory protection of the right of employees to organize, bargain collectively and participate through labor organizations ... safeguards the public interest and contributes to the effective conduct of public business."

5 U.S.C. Sec. 7101

11. Review all Executive Orders taking groups of employees out of bargaining unit eligibility and rescind where appropriate.

A number of Executive Orders have been issued since 1979 pursuant to 5 U.S.C. 7103(b)(1) to remove an agency or subdivision from coverage under Chapter 75. In some of those instances, there is not a sufficient basis for concluding that the statutory criteria have been met. While there may be, for example, a determination that the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, there is insufficient basis to conclude that the collective bargaining provisions of Chapter 75 cannot still be applied to that agency or subdivision, consistent with national security.

NTEU requests the administration to review these orders, particularly those attached, and rescind those that do not meet the criteria for exclusion. *(See Administrative Action 11-1.)*

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12. Rescind the Executive Order establishing the Federal Career Intern Program (FCIP).

On July 6, 2000, President Clinton issued Executive Order 13162, directing the Office of Personnel Management (OPM) to issue regulations to establish a Federal Career Intern Program (FCIP). According to the Order, this new excepted service hiring authority would be "complementary" to other special hiring programs, and designed "to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, and competencies."

Over the last seven years, the use of the FCIP has steadily increased from 423 hires for entry-level positions in FY 2001 to 6,783 in 2004, 10,369 in 2005, 12,068 in 2006, and 16,755 in 2007. In 2005, the Merit System Protection Board's (MSPB) Office of Policy and Evaluation found that the FCIP "has the potential to supplant the competitive examining process." The lawfulness of the regulations creating the FCIP is currently being challenged in two courts. In both cases the parties are arguing that the FCIP undermines veterans' preference and is inconsistent with statutory requirements that make competitive procedures the norm in federal hiring, and permit exceptions to those procedures only when "necessary."

NTEU requests that Executive Order 13162 and the OPM regulations establishing the FCIP hiring authority be rescinded and that employees who have been hired under the program be converted immediately to competitive status.

13. Require the Office of Personnel Management (OPM) to apply for the prescription drug subsidy available to all employers that provide health care benefits.

NTEU recommends that the Office of Personnel Management (OPM) be required to immediately apply to the Centers for Medicare and Medicaid Services for the prescription drug subsidy available under the Medicare Prescription Drug Improvement and Modernization Act of 2003 (P.L. 108-173), now being used by private sector companies, and require that savings be used to offset Federal Employee Health Benefit Program enrollee premiums. The Government Accountability Office (GAO) estimated in December 2006 that premiums could have been lowered by up to 4 percent in some plans and more than 2 percent on average had OPM taken advantage of the subsidy. (GAO, 07-141)

Recommendations for Legislative Action

In recent sessions of Congress, many legislative initiatives that would have increased fairness and efficiency in the federal government were thwarted by members supportive of the Bush administration's policies: TSA employees were denied important rights and treated as second-class federal employees; the inherently governmental work of the Internal Revenue Service was outsourced to private tax collectors; and changes that would make the federal workplace more competitive with the private sector were stalled.

The following legislative recommendations would bring fairness to the federal workplace and significantly enhance the federal government's ability to attract and retain the best and brightest workers.

"Collective bargaining plays a vital role in giving workers a voice in the work they do. When workers have a voice, they are able to increase productivity and reduce costs."

President-elect Obama
NTEU candidate questionnaire

1. Amend the Aviation and Transportation Security Act of 2001 (ATSA) to require the Transportation Security Administration (TSA) to follow Title 5, including Chapter 71.

Congress passed ATSA (Pub. L. 107-71) shortly after Sept. 11, 2001. Section 111(d) of that Act provided the Under Secretary of Transportation for Security with unfettered authority in setting up a personnel system for TSA security screeners. *(See Administrative Action 1-1.)*

The present personnel system for TSA screeners (now called Transportation Security Officers [TSOs]) has none of the merit system safeguards usually afforded federal employees. The system fails to provide collective bargaining rights, and it has no objective rules for selection and placement of workers. The pay rates and systems of pay are complicated and subject to favoritism. Occupational Safety and Health Administration laws, Family and Medical Leave Act laws, and Equal Employment Opportunity laws are haphazardly enforced. The agency rates dead last in morale, but first in on-the-job injuries. We need to bring these workers under the protection of civil service laws, so that they can spend their time focusing on the important work they are doing rather than the subjective and arbitrary actions they currently face.

Legislation must be passed amending the ATSA to bring TSOs under Title 5. NTEU suggests the attached legislative language. *(See Legislative Action 1-1.)*

2. Repeal the Department of Homeland Security's discretion to depart from Title 5 personnel systems and vacate regulations establishing a new personnel system.

The Homeland Security Act of 2002 provided the Department of Homeland Security (DHS) with authority to create personnel systems outside the existing merit system rules. Some efforts by DHS to limit collective bargaining rights were found

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to be illegal by the courts. Congress has also taken action to limit DHS's efforts to move to more subjective performance management systems.

The FY 2008 DHS Authorization bill (H.R. 1684) authored by Homeland Security Committee Chairman Bennie Thompson (D-Miss.), included language to repeal Title 5, Chapter 97, which allowed the creation of a unique DHS human resources management system. H.R. 1684 was passed by the full House in May 2007. There was no action by the Senate before Congress recessed for the election.

Customs and Border Protection Officers should be focused on the mission of the Department of Homeland Security and not on new personnel regulations.

In addition, the FY 2009 DHS Appropriations Act that was included in the 2009 Continuing Resolution includes a prohibition (P.L. 110-329, Division D, Title V, Section 522) on the use of funds to implement any personnel system created pursuant to the authority granted by Title 5, Chapter 97. On October 1, 2008, because of this appropriations prohibition, DHS rescinded application of its personnel system regulations (5 C.F.R. 9701) to all DHS employees. The repeal of Chapter 97 will not, therefore, end any ongoing efforts at DHS to implement a new personnel system.

3. Enact a one-year moratorium on new A-76 competitions.

Both the House and Senate FY 2009 Financial Services and General Government Appropriation bills as passed out of committee include a one-year moratorium on new A-76 studies in all federal agencies. The language specifically prohibits the use of funds to begin or announce new public-private competitions pursuant to OMB Circular A-76, so that the new administration has the opportunity to review and develop federal workforce policies.

NTEU urges enactment of language included in the House and Senate FY 2009 Financial Services and General Government Appropriations bills that would impose a one-year government-wide moratorium on all A-76 studies. *(See Legislative Action 3-1.)*

4. Repeal the private tax collection authority of the Internal Revenue Service.

Congress granted the Internal Revenue Service (IRS) the authority to hire private collection agencies (PCAs) to assist in the collection of individual tax debt on a commission basis through a provision in the "American Jobs Creation Act of 2004" (P.L. 108-357). The law allows PCAs to locate and contact taxpayers to request balances due and to retain up to 25 percent of amounts collected.

Opposition to the program has been voiced by a growing number of major public interest groups, tax experts, two former IRS Commissioners as well as the National

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Taxpayer Advocate, an independent official within the IRS, who has identified the program as one of the most serious problems facing taxpayers.

Since granting the IRS the authority to use PCAs in 2004, the House has twice passed legislation preventing the IRS from using appropriated funds to hire private sector tax collectors and has overwhelmingly approved three separate tax bills, including H.R. 3056, the "Tax Collection Responsibility Act of 2007," that contain language that would repeal Treasury's authority to use PCAs to pursue tax debts.

In addition, both the House and Senate Appropriations Committees approved their FY 2009 Financial Services and General Government (FSGG) Appropriations bills with language that would prohibit funding for the IRS's private debt collection program. NTEU supports inclusion of this in the final 2009 Appropriations Act.

President-elect Obama voiced his support for efforts to repeal the authority of the Department of Treasury to use private debt collectors and expressed support for passage of H.R. 3056, the "Tax Collection Responsibility Act of 2007" in response to NTEU's candidate questionnaire and in an interview with the *Washington Post*.

"I would support efforts to repeal the authority of the IRS to use private debt collectors."

President-elect Obama
NTEU candidate questionnaire

NTEU strongly believes that the Department of Treasury's authority to enter into contracts with private collection agencies for tax collection efforts should be repealed as provided in H.R. 3056 *(see Legislative Action 4-1)* and no additional funding should be provided for this misguided program per sections of FY 2009 FSGG bills. *(See Legislative Action 4-2.)*

5. Make the Federal Employees Health Benefits Program (FEHBP) more accessible and affordable.

The Federal Employee Health Benefits Program (FEHBP), the largest health care program in the country, serves an estimated 8 million federal employees, retirees and their families. Enrollees have seen their premiums increase every year since the beginning of the decade despite the large group leverage that the Office of Personnel Management (OPM) could utilize. For the 2009 enrollment period, OPM announced an average overall premium hike of 7 percent, with the most popular Blue Cross/Blue Shield standard plan going up by 13.4 percent for families. Cash reserves have been used by OPM for the third year in a row to keep premiums from rising even more. In addition, FEHBP terminates many dependents when they reach age 22. NTEU supports the following initiatives to make the FEHBP more affordable and accessible:

1) Maintain the integrity of FEHBP by keeping the existing risk pool of federal employees, retirees and their families intact. If additional groups are made eligible to buy into FEHBP, require separate risk groups for their participation.

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2) Enact H.R. 1256, the Hoyer bill, to increase the federal share of the premium cost to 80 percent, up from the current weighted average of 72 percent. Most large companies and state and local governments cover 80 percent of their employees' premiums.

3) Investigate direct negotiating for drug prices by OPM. Currently OPM negotiates with insurance carriers for the overall health care package, but the carriers negotiate with drug companies. NTEU supports a study of whether costs can be held down by following the direct negotiation route as employed by the Department of Veterans Affairs.

4) Enact legislation similar to H.R. 5550 to require FEHBP to cover dependents past age 22. Thirty states have passed, or are considering, bills on this. Illinois just passed legislation extending coverage up to age 26, or 30, for veterans.

5) Enact the Domestic Partner Benefits and Obligations Act, S. 2521/ H.R. 4838. This bipartisan legislation would extend to same-gender domestic partners many of the health benefits currently available to married couples in the federal workforce. With nearly 53 percent of Fortune 500 companies offering domestic partner benefits, this measure will bring the government in line with the private sector in recruitment and retention efforts as well as in basic fairness.

6. Enact paid parental leave legislation.

H.R. 5781, a bill supported by NTEU, was passed by the House this summer. A companion bill, S. 3140, awaits action in the Senate. This legislation provides federal workers with four weeks of full pay while they are on Family and Medical Leave Act (FMLA) leave for the birth or adoption of a child. The bill allows federal workers to use up to eight weeks of accrued paid sick time during the remainder of their FMLA leave to care for their new child. It also gives the Office of Personnel Management (OPM) authority to increase the amount of paid parental leave from four to eight weeks once further studies are conducted.

Currently, federal workers do not have any guarantee of paid leave for the birth or adoption of a new child. Some have accrued sick or vacation time that they may be able to use while on FMLA leave. However, others, especially younger workers who haven't accrued sick or vacation time, have no choice but to take unpaid leave.

Offering paid parental leave will help the federal government recruit and retain dedicated and talented workers. A paid parental leave policy will also save the government money by reducing turnover and replacement costs, which is estimated to be 25 percent of the worker's salary.

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7. Amend section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998, known as the "Ten Deadly Sins", to allow appropriate penalties other than mandatory termination.

Section 1203 of the "Internal Revenue Service Restructuring and Reform Act of 1998" (P.L. 105-206) requires the IRS Commissioner to terminate any IRS employee if there is a final administrative or judicial determination that the employee committed any of 10 acts, known as the "Ten Deadly Sins," in performance of their official duties, including filing their tax returns late even if no taxes are owed.

Without question, Section 1203 has had a negative impact on the morale of the IRS workforce and has a chilling effect on the ability of IRS employees to do their jobs. No other federal or congressional employee is subject to similar mandatory termination.

NTEU believes mandatory termination for Section 1203 violations is unduly harsh and should not be the only disciplinary action available. We advocate amending Section 1203 (b) (1) through (b) (10) so that, while termination would remain an option for violations, other appropriate penalties could also be considered. See suggested draft language. *(See Legislative Action 7-1.)*

8. Amend FIRREA (The Financial Institutions Reform Recovery and Enforcement Act of 1989) agency statutes to require bargaining for pay.

The original legislation establishing the various financial regulatory agencies predates the right of federal employees to form unions. However, with FIRREA and other legislation, Congress has directed these agencies to achieve comparability in compensation and benefits. Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS) employees lack the same pay bargaining rights as all other financial regulatory agencies. This lack of authority has not been clear cut and for both OCC and OTS adjudication was needed to determine if employees had the right to bargain. With OTS, it hinged on a single word in their authorizing legislation and with OCC, employees were denied the right to bargain over pay and benefits in a recent split decision of the Federal Labor Relations Authority. See suggested draft language for OCC. *(See Legislative Action 8-1.)*

9. Amend Title 5 section 7112(b) to clarify the standards for removal from collective bargaining, particularly with regard to national security.

The Federal Labor Relations Authority (FLRA) has interpreted sec. 7112(b)(6) too broadly, resulting in an unreasonable expansion of the bases for excluding employees from bargaining unit coverage. Under the FLRA's case law, employees now face exclusion merely because they may have access to classified information. *Dep't. of Justice and AFSCME Local 3719*, 52 F.L.R.A. 1093 (1997). The FLRA has also

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expanded the focus of sec. 7112(b)(6) beyond matters related to the national defense to activities related to the nation's economic infrastructure. *Social Security Admin., Baltimore and AFGE*, 59 F.L.R.A. 137 (2003). NTEU proposes an amendment to Sec. 7112(b)(6) that would strike a fairer balance between the government's interest in excluding employees who are truly engaged in work that affects the national defense and the employees' interest in becoming and remaining members of bargaining units. *(See Legislative Action 9-1.)*

10. Enact the pending Whistleblower Protection Act.

"Most unions are very responsible in terms of wanting to see their employers succeed."

Sen. Obama
Youngstown, Ohio
Aug. 5, 2008

In the 110th Congress, the House passed H.R. 985, a comprehensive bill to restore whistleblower rights for federal employees who face retaliation for exposing wrongdoing in their agencies. A less comprehensive bill passed the Senate last December, S. 274. A conference to reconcile the two bills became problematic when it became clear that many of the critical protections in the House bill would not be agreed to by the Senate. At the present time, there is a hold on a revised Senate bill in the Senate. We would like to see the House bill enacted.

11. Amend section 7104(f) of Title 5 to assure successorship, and thus continued issuance of complaints, when the Federal Labor Relations Authority General Counsel position is vacant.

The Federal Labor Relations Authority (FLRA) cannot issue complaints—and therefore cannot prosecute alleged unfair labor practices under 5 U.S.C. 7104(f)(2) and 7118(a) or seek injunctive relief under 5 U.S.C. 7123(d)—if the office of General Counsel is vacant and there is no acting General Counsel. That is currently the case. While the president could name an acting General Counsel (5 U.S.C. 3345(a)(2) or (3)), he has not done so. In addition, although a person serving as the General Counsel's "first assistant" (5 U.S.C. 3345(a)(1)) could perform the duties of Acting General Counsel on a temporary basis, without need for presidential action, there is currently no Deputy General Counsel or other person designated as "first assistant" by regulation who would fit this designation.

NTEU supports the enactment of legislation requiring the General Counsel to identify or establish a position within the FLRA whose incumbent satisfies the definition of "first assistant" to the General Counsel under 5 U.S.C. 3345(a)(1). *(See Legislative Action 11-1.)*

12. Amend chapter 71 of Title 5 to allow one-stop shopping for resolution of Unfair Labor Practices, negotiability issues and impasses.

A single collective bargaining event can splinter into multiple disputes in multiple fora, all of which may be decided inconsistently and at different times. For example, if an employer asserts that it has no duty to bargain over a union proposal, the

union's recourse is to challenge that assertion through the Federal Labor Relations Authority's (FLRA) "expedited" negotiability appeal process under Section 7117(c) of the Statute and Part 2424 of the FLRA regulations. Doing so effectively removes the proposal from the bargaining table until the FLRA rules on the appeal, one to two years later. Meanwhile, if during the same event, the union believes the agency has bargained in bad faith (e.g., for implementing a proposed change before completing bargaining), the union's recourse is to challenge that action through the FLRA's unfair labor practice (ULP) process under Section 7118 of the Statute and Part 2423 of the FLRA's regulations or by filing a ULP grievance pursuant to Section 7116(d) of the Statute. Under case law, however, the union must continue bargaining while these separate challenges are pending or risk being found to have waived its bargaining rights. If continued bargaining results in impasse, the union must petition the Federal Service Impasses Panel (FSIP) for assistance under Section 7119 of the Statute. If there is a related ULP pending, the FSIP will often then dismiss the petition for assistance until the ULP charge is resolved.

Multiple disputes in multiple proceedings, all concerning a single collective bargaining situation, needlessly frustrate and often prevent an effective and efficient resolution of the underlying bargaining dispute. This system also wastes administrative resources as different FLRA/FSIP staff and neutral parties spend countless hours handling the ULP charge, negotiability appeal, and impasse, often duplicating efforts to ascertain the facts and adjudicate the disputes.

NTEU proposes that Section 7119 be amended to provide that when a bargaining impasse also involves duty to bargain disputes and allegations of unfair labor practices, a party may elect to have all of the disputes adjudicated by the Panel (or a private neutral sanctioned by the Panel), in lieu of filing a ULP charge under Section 7118 or a negotiability appeal under Section 7117.

Alternatively, Sections 7117, 7118 and 7119 should be amended to provide for a single process for resolving all disputes (ULP, negotiability, bargaining impasses) arising under the Statute. Related disputes arising from the same fact situations would be consolidated before one neutral empowered to: rule on the negotiability of any proposals; decide ULP allegations and the appropriate remedy in the context of the case; mediate the bargaining impasse; and ultimately order adoption of language to resolve the bargaining impasse. Section 7121 would also be amended to provide arbitrators with identical authority if a party elects the grievance/mediation route as an alternative to the FLRA.

"Public service is important to America's future, and Obama wants to lead an effective, efficient government where people are proud to serve. He believes . . . we can inspire a generation to serve the public."

Washington Post, Aug. 20, 2008

13. Allow sick leave credit under FERS retirement.

Under current law, federal employees who participate in the Federal Employees Retirement System (FERS) cannot receive credit for unused sick leave when they retire from government. Their colleagues who retire under the earlier program, the Civil Service Retirement System (CSRS) can count unused sick leave toward their

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retirement pension calculation. This creates an inequity in the workplace for tens of thousands of FERS-covered employees and a disincentive to save sick leave. NTEU supports correcting this inequity in the interests of maintaining morale and providing fair treatment for those who work diligently and play by the rules. Both groups of dedicated public servants deserve to have their unused sick leave counted. NTEU proposes enacting the FERS sick leave provisions (Sec. 407) of H.R. 1108, the Family Smoking Prevention and Tobacco Control Act that passed the House of Representatives on July 30, 2008.

"A secure retirement is no longer a guarantee for the middle class. It's harder to save and harder to retire. Pensions are getting crunched. The promise of Social Security may grow harder to keep for future generations. That's why my agenda for retirement security will protect Social Security, lift up savings for working people, and reform bankruptcy laws to protect working people."

Sen. Obama, at a business roundtable on retirement Business Wire, Feb. 25, 2008

14. Repeal the Windfall Elimination Provision and Government Pension Offset.

Federal employees who retire from government service can be subject to two provisions of law that reduce their income and threaten their economic well-being. The Government Pension Offset (GPO) affects tens of thousands of individuals who are entitled to receive a federal pension from their own work and who are also eligible for Social Security based on their spouse's record of work. The Windfall Elimination Provision (WEP) reduces a retiree's Social Security based on his or her own earnings by up to 55 percent simply because he or she receives a public pension.

Under GPO, the reduction in Social Security benefits is equal to two-thirds of the government pension. For example, in the case of a monthly CSRS annuity of $1,200, two-thirds of that—or $800—would be used to offset a retiree's spousal benefits. If the retiree were eligible for a $900 benefit, he or she would receive only $100 a month after the GPO. In many cases, the spousal benefit can be entirely eliminated. In a similar vein, the WEP penalizes federal employees when they retire by offsetting "substantial earnings" under their own Social Security earnings by using a different formula calculation.

NTEU supports legislation to make changes in GPO and WEP. Legislation in the 110th Congress was introduced by Rep. Howard Berman (D-Calif.) and Rep. Buck McKeon (R-Calif.) (H. R. 82), and Sen. Dianne Feinstein (D-Calif.) and Sen. Susan Collins (R-Maine) (S. 206).

15. Allow for pre-tax treatment of federal retiree health care premiums.

Since October 2000, the Office of Personnel Management has allowed active federal employees to use pre-tax dollars to pay health insurance premiums. However, legislation is needed to treat federal and military retirees the same as active workers. During the past six years, cost of living adjustments have ranged from 1.3 to this year's 5.8 percent for retirees, yet health care premiums have risen by more than 50 percent. Large increases are predicted for the future, as well. Passage of this legislation will help offset the increased costs federal retirees are forced to pay for their health care costs.

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NTEU would like to see passage of bills similar to H.R. 1110, sponsored by Rep. Tom Davis (R-Va.), and S. 773, introduced by Sen. John Warner (R-Va.). Both bills enjoy widespread bipartisan support. They would allow federal and military retirees to use pre-tax dollars to pay for their health insurance premiums, as active federal workers already do.

16. Expand availability of Law Enforcement Officer (LEO) retirement benefits.

NTEU successfully sought a prospective-only law enforcement retirement system for all Customs and Border Protection Officers (CBPOs). These enhanced LEO retirement benefits were approved by Congress and signed into law on Dec. 26, 2007, as part of the FY 2008 Consolidated Omnibus legislation (P.L. 110-161).

We believe this will be a much needed recruitment and retention tool at CBP and that several other occupations would benefit from similar coverage. NTEU supports H.R. 1073, S. 1354, and S. 3623, which would expand LEO coverage to deserving groups.

NTEU represents some 150,000 employees nationwide and in the U.S. Virgin Islands, Puerto Rico and Canada who work for:

Department of Agriculture
- Farm Service Agency
- Food and Nutrition Service

Department of Commerce
- Patent and Trademark Office

Department of Energy

Department of Health & Human Services
- Administration for Children and Families
- Administration on Aging
- Food and Drug Administration
- Health Resources and Services Administration
- National Center for Health Statistics
- Office of the Secretary
- Program Support Center
- Substance Abuse and Mental Health Services Administration

Department of Homeland Security
- U. S. Customs and Border Protection
- Transportation Security Administration

Department of the Interior
- National Park Service

Department of Justice
- Bureau of Alcohol, Tobacco, Firearms and Explosives

Department of the Treasury
- Bureau of Engraving and Printing
- Bureau of the Public Debt
- Departmental Offices
- Financial Management Service
- Internal Revenue Service
- Tax and Trade Bureau

Environmental Protection Agency

Federal Communications Commission

Federal Deposit Insurance Corporation

Federal Election Commission

National Credit Union Administration

Nuclear Regulatory Commission

Office of the Comptroller of the Currency

Securities and Exchange Commission

Social Security Administration
- Office of Disability Adjudication and Review

Administrative Action 1-1: Collective Bargaining Rights for TSOs

Section 111(d) of the Aviation and Transportation Security Act of 2001:

(d) SCREENER PERSONNEL.—Notwithstanding any other provision of law, the Under Secretary of Transportation for Security may employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment of Federal service for such a number of individuals as the Under Secretary determines to be necessary to carry out the screening functions of the Under Secretary under section 44901 of title 49, United States Code. The Under Secretary shall establish levels of compensation and other benefits for individuals so employed.

Administrative Action 1-2: Lack of Collective Bargaining Rights for TSOs

United States Department of Transportation
TRANSPORTATION SECURITY ADMINISTRATION

400 Seventh Street, S.W.
Washington, D.C. 20590

TRANSPORTATION SECURITY ADMINISTRATION

SUBJECT: Determination Regarding Collective Bargaining – TSA Security Screeners

By virtue of the authority vested in the Under Secretary of Transportation for Security in Section 111(d) of the Aviation and Transportation Security Act, Pub. Law No. 107-71, 49 U.S.C. § 44935 Note (2001), I hereby determine that individuals carrying out the security screening function under section 44901 of Title 49, United States Code, in light of their critical national security responsibilities, shall not, as a term or condition of their employment, be entitled to engage in collective bargaining or be represented for the purpose of engaging in such bargaining by any representative or organization.

J. M. Loy, ADM.
Under Secretary of Transportation for Security
January 8, 2003

Administrative Action 1-3: Collective Bargaining for TSOs
(page 1 of 2)

Proposed TSA Directive on Collective Bargaining

Directive

(a) By virtue of the authority vested in the Under Secretary of Transportation for Security (now designated Administrator of the Transportation Security Administration (TSA)) in Section 111(d) of the Aviation and Transportation Security Act, Pub. Law No. 107-71, 49 U.S.C. 44935 Note (2001), I hereby direct that, except as provided in Sec. (b) below, Title 5, United States Code, shall govern the employment, appointment, discipline, termination, compensation, and other terms and conditions of employment of individuals carrying out the security screening function under section 44901 of Title 49, United States Code.

(b) Chapter 97 of Title 5, United States Code, shall not apply to individuals identified in Sec. (a).

(c) Except as provided in Secs. (d), (e), and (f) below, all TSA management directives or other policies previously implemented pursuant to Sec. 111(d) that conflict with Title 5 are hereby rescinded. Any pending disciplinary or adverse actions concerning individuals identified in Sec. (a) that have not yet been imposed shall be reconsidered and, as warranted, rescinded or reissued in accordance with the requirements of Chapters 75 and 77 of Title 5.

(d) The individuals identified in Sec. (a) shall continue to be paid pursuant to the compensation system under which they are currently covered until the 90th calendar day following this directive, at which time they will be converted to the classification and pay system set forth in Chapters 51 and 53 of Title 5 without any loss of pay.

(e) The individuals identified in Sec. (a) shall continue to work under the

performance appraisal system under which they are currently covered until the 90th calendar day following this directive, at which time they will be converted to the performance appraisal system set forth in Chapter 43 of Title 5.

(f)(1) TSA shall continue to withhold union dues from individuals who have submitted TSA Form 1158s ("Form 1158") as of the date of this directive and from individuals who submit Form 1158s after the date of this directive, but prior to certification of an exclusive representative in accordance with section 7111 of Title 5. TSA acknowledges that, for purposes of section 7111, an executed Form 1158 demonstrates that the individual wishes to be represented by the labor organization to which he or she has allotted dues on the Form 1158.

(f)(2) Upon certification of an exclusive representative pursuant to section 7111, the provisions of section 7115 of Title 5 shall apply, except that individuals who, prior to certification, submitted a Form 1158 to have dues allotted to the labor organization selected as exclusive representative shall not be required to submit a SF-1187 to remain a member of that labor organization. All such individuals shall, however, be given the opportunity to revoke their dues allotment during the first full pay period following this directive. In keeping with section 7115(a), any dues allotments not revoked during the first full pay period following this directive may not be revoked for a period of one year thereafter.

(g) TSA shall, in a manner consistent with procedures described in section 7113 of Title 5, consult with labor organizations prior to the conversions described in Secs. (d) and (e). For purposes of this directive, the term "labor organization" means only those labor organizations that represented individuals identified in Sec. (a) on the date of this directive.

Administrative Action 2-1: Partnership
(page 1 of 4)

New Executive Order on Partnerships to mirror Executive Order No. 12871, except as noted below

Introductory paragraph: Revise to read as follows:

The involvement of Federal Government employees and their union representatives is essential to achieving the highest level of service to our nation. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to change Government for the better. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people. By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a more cooperative and productive form of labor-management relations throughout the Executive Branch, it is hereby ordered:

Previous Sec. 1.b.2.: Delete
Previous Sec. 1.b.5.: Delete
Previous Sec. 1.d.3.: Delete
Previous Sec. 2:

Change the introductory phrase to read as follows: The head of each agency which is subject to chapter 71 of title 5, United States Code, or any other authority permitting employees of such agency to select an exclusive representative, and the head of the Transportation Security Administration shall:

Previous Sec. 2.d: Delete
Previous Sec. 3: Delete
New Sec. 3:

I hereby elect, on behalf of all agencies, to negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1). My election to negotiate may not be revoked by agency heads or their subordinate officials. For purposes of proceedings undertaken pursuant to chapter 71 of Title 5, any attempts by agency heads or their subordinate officials to revoke my election shall have no force or effect.

Administrative Action 2-1: Partnership
(page 2 of 4)

PRESIDENTIAL EXECUTIVE ORDER No 12871
Dated: 10-01-93
LABOR-MANAGEMENT PARTNERSHIPS

The involvement of federal Government employees and their union representatives is essential to achieving the National Performance review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people. By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the Executive Branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1: The National Partnership Council

a. **Establishment and Membership**
There is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:
   1. Director of the Office of Personnel Management ("OPM");
   2. Deputy Secretary of Labor;
   3. Deputy Director for Management, Office of Management and Budget;
   4. Chair, Federal Labor relations Authority;
   5. Federal Mediation and Conciliation Director;
   6. President, American Federation of Government Employees, AFL-CIO;
   7. President, National Federation of Federal Employees;
   8. President, National Treasury Employees Union;
   9. Secretary-Treasurer of the Public Employees Department, AFL-CIO; and
   10. A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively "agency"), not otherwise represented on the Council.

   Members shall have 2-year terms on the Council, which may be extended by the President.

b. **Responsibilities and Functions:**
The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:
   1. supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;
   2. proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the

3. National Performance Review's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;
4. collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;
5. utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and
6. working with the President's Management Council toward reform consistent with the National Performance Review's recommendations throughout the executive branch.

c. **Administration:**
   1. The President shall designate a member of the Council who is a full-time Federal employee to serve as the Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.
   2. The Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.
   3. To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.
   4. Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.
   5. All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.

d. **General.**
   1. I have determined that the Council shall be established in compliance with the Federal advisory Committee Act, as amended (5 U.S.C. App. 2).
   2. Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.
   3. The Council shall exist for a period of 2 years from the date of this order, unless extended.
   4. Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose.

Administrative Action 2-1: Partnership
(page 4 of 4)

Sec. 2. Implementation of Labor-Management Partnerships Throughout the Executive Branch.

The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

a. create labor-management partnerships by forming labor- management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;
b. involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;
c. provide systemic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;
d. negotiate over the subjects set forth in 5 U.S.C. 7106(b) (1), and instruct subordinate officials to do the same; and
e. evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

Section 3: No Administrative or Judicial Review

This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE

Administrative Action 5-1: Directly Interested Party

Proposed OMB/OFPP Memorandum—Directly Interested Party

MEMORANDUM FOR AGENCY COMPETITIVE SOURCING OFFICIALS

FROM:

SUBJECT: Clarification of "Directly Interested Party"

Pursuant to Office of Management and Budget Circular A-76, a "directly interested party" may contest certain procurement decisions that are made during the course of a public-private competition. Appendix D of the Circular (as revised on May 29, 2003) defines a directly interested party as "[t]he agency tender official; *a single individual appointed by a majority of directly affected employees as their agent*; a private sector offeror; or the official who certifies the public reimbursable tender." A Memorandum from David H. Safavian to Agency Competitive Sourcing Officials dated March 25, 2005, interpreted the italicized phrase as requiring that the agent of the directly affected employees be one of the directly affected employees.

The March 25, 2005 Memorandum is hereby rescinded and superseded by this Memorandum. The agent of the directly affected employees may be, but is not required to be, one of the directly affected employees. Moreover, in the event that a majority of the directly affected employees are represented by a labor organization (as defined in 5 U.S.C. § 7103(a)(4)), the head of that labor organization shall be considered the agent of the directly affected employees, unless he or she notifies the directly affected employees that he or she will not serve as their agent or another individual produces evidence establishing that a majority of the directly affected employees have selected that individual to be their agent. If no labor organization represents a majority of the directly affected employees, then there shall be no presumption as to the agent of the directly affected employees.

I appreciate your attention to this clarification and encourage you to share this memorandum with agency personnel who work on competitive sourcing issues in your agency. Questions regarding this memorandum may be referred to --.

Administrative Action 6-1: Truthfulness in Contracting

Sections 4 (a), 5 & 8 of H. R. 3426 the "Truthfulness, Responsibility, and Accountability in Contracting Act of 2003"

SEC. 4. CERTIFICATION OF COMPLIANCE.

(a) REQUIREMENTS FOR HEADS OF AGENCIES-

(1) CERTIFICATIONS- Not later than 1 year after the date of enactment of this Act, the head of each agency shall submit to the Director of the Office of Management and Budget a certification that--

(A) the agency has established a centralized reporting system in accordance with section 5;

(B) in the case of each function of the agency that is being performed under contracting undertaken after the date of enactment of this Act, the contracting function decision was based on a public-private competition described under section 6 or 7, as applicable;

(C) the agency is not managing Federal employees by any arbitrary limitations in accordance with sections 6 or 7, as applicable, and 9; and

(D) the agency is reviewing work performed by contractors, recompeting or contracting in work when appropriate, and subjecting to public-private competition an approximate number of Federal employee and contractor positions in accordance with section 9.

(2) PUBLIC AVAILABILITY- The Director of the Office of Management and Budget shall--

(A) promptly, after receiving certifications under paragraph (1)(B), publish in the Federal Register notices of the availability of the certifications to the public, including the names, business addresses, and business telephone numbers of the officials from whom the certifications can be obtained; and

(B) ensure that, after the removal of proprietary information, the head of each agency makes the certifications of that agency available to the public--

(i) upon request; and

(ii) on the World Wide Web.

SEC. 5. AGENCY REPORTING SYSTEMS AND REQUIRED REPORTS.

(a) CENTRALIZED REPORTING SYSTEM- Not later than 1 year after the date of enactment of this Act, the head of each agency shall establish a centralized reporting system in accordance with guidance promulgated by the Director of the Office of Management and Budget that allows the agency to generate periodic reports on the contracting efforts of the agency. Such centralized reporting system shall be designed to enable the agency to generate reports on efforts regarding both contracting and contracting in.

(b) REPORTS ON CONTRACTING EFFORTS-

(1) INITIAL REPORTS- Not later than 1 year after the date of enactment of this Act, the head of each agency shall prepare and submit to the Director of the Office of Management and Budget a report on the contracting efforts of the agency undertaken

during the fiscal year immediately preceding the fiscal year in which this Act is enacted. Such report shall comply with the requirements in paragraph (3).

(2) SUBSEQUENT REPORTS- For the fiscal year in which this Act is enacted and every fiscal year thereafter, the head of each agency shall complete and submit to the Director of the Office of Management and Budget a report on the contracting efforts undertaken by the agency during that fiscal year. The report for a fiscal year shall comply with the requirements in paragraph (3), and shall be completed and submitted not later than the end of the first fiscal quarter of the subsequent fiscal year.

(3) CONTENTS- With regard to each contracting effort undertaken by the agency, the reports referred to in this subsection shall include the following information:

(A) The contract number and the Federal supply class or service code.

(B) The names, business addresses, and business telephone numbers of the officials who supervised the contracting effort.

(C) The competitive process used or the statutory or regulatory authority relied on to enter into the contract without public-private competition.

(D) The cost of Federal employee performance at the time the work was contracted out (if the work had previously been performed by Federal employees).

(E) The cost of Federal employee performance under the most efficient organization plan identified for that performance (if the work was contracted out through Office of Management and Budget Circular A-76).

(F) The anticipated cost of contractor performance, based on the award.

(G) The current cost of contractor performance.

(H) The actual savings and cost increases, expressed both as a dollar amount and as a percentage of the cost of performance by Federal employees, based on the current cost, and an explanation of the difference, if any.

(I) A description of the quality control process used by the agency in connection with monitoring the contracting effort, identification of the applicable quality control standards, the frequency of the preparation of quality control reports, and an assessment of whether the contractor met, exceeded, or failed to achieve the quality control standards.

(J) The number of contractor employees performing the contracting effort under the contract and any related subcontracts.

(c) REPORT ON CONTRACTING IN EFFORTS-

(1) IN GENERAL- For the current fiscal year and every fiscal year thereafter, every agency shall complete and submit to the Director of the Office of Management and Budget a report on the contracting in efforts undertaken by the agency during that fiscal year. The report for a fiscal year shall comply with the requirements in paragraph (2), and shall be completed and submitted not later than the end of the first fiscal quarter of the subsequent fiscal year.

(2) CONTENTS- The reports referred to in paragraph (1) shall include for each contracting in effort undertaken by the agency the following information:

(A) A description of the type of work involved.

(B) The names, business addresses, and business telephone numbers of the officials who supervised the contracting in effort.

(C) The cost of performance at the time the work was contracted in.

(D) The current cost of performance by Federal employees or military personnel.

(d) REPORT ON FEDERAL EMPLOYEE POSITIONS- Not later than 30 days after the end of each fiscal year, every agency shall submit to the Office of Management and Budget a report on the number of Federal employee positions and contractor employee positions that have been subject to public-private competition during that fiscal year.

(e) SUBMISSION OF REPORTS TO CONGRESS-

(1) IN GENERAL- The Director of the Office of Management and Budget shall compile all reports submitted under this section and submit the reports to the committees referred to under paragraph (2), not later than 120 days after the end of the applicable fiscal year.
(2) COMMITTEES- The reports compiled under this subsection shall be submitted to the Committee on Government Reform of the House of Representatives and to the Committee on Governmental Affairs of the Senate.

(f) PUBLIC AVAILABILITY OF REPORTS-

(1) PUBLICATIONS- The Director of the Office of Management and Budget shall promptly publish in the Federal Register notices including a description of when the reports referred to in this section are available to the public and the names, business addresses, and business telephone numbers of the officials from whom the reports may be obtained.
(2) AVAILABILITY ON INTERNET- The reports referred to in this section shall be made available through the Internet.
(3) PROPRIETARY AND NATIONAL SECURITY INFORMATION- Proprietary information or information to which section 552(b)(1) of title 5, United States Code, applies shall be excised from information published or reports made available under this subsection.

(g) REVIEW- The Director of the Office of Management and Budget shall review the reports referred to in this section and consult with the head of the agency regarding the content of such reports.

SEC. 8. REVIEW OF CONTRACTOR PERFORMANCE.

(a) IN GENERAL-

(1) AGENCY ACTION AFTER REVIEW- If a report completed under section 5 indicates that, for 2 consecutive years, the actual cost of contractor performance of a particular function exceeds the anticipated cost, based on the award (referred to in section 5(b)(3)(G)), after adjustment for changes in the scope of work, inflation, and wage rates, or fails to substantially meet quality control standards (referred to in section 5(b)(3)(J)), the agency shall conduct a new public-private competition not later than the earlier of the date of the expiration of the contract or the beginning of the first fiscal year that is not more than 12 months after the initial determination that the cost of a contracting effort exceeds the anticipated cost of contractor performance or that quality standards have not been substantially met. Any resulting terminations for convenience may be undertaken without cost to the United States Government.
(2) INAPPLICABILITY- This subsection does not apply to work performed by contractors before the date of enactment of this Act.

(b) COMPARABLE PUBLIC-PRIVATE COMPETITION-

(1) IN GENERAL- No later than in the fifth year after the date of enactment of this Act, an agency shall subject to public-private competition annually approximately the same number of Federal employee positions and positions held by contractor employees.

(2) EXPIRATION- The requirement for comparable public-private competition expires upon the earlier of the following:

(A) The end of the first full fiscal year beginning after the date of enactment of this Act during which an agency subjects to public-private competition an approximate number of Federal employee positions and positions held by contractor employees.

(B) The end of the fifth full fiscal year beginning after enactment of this Act.

(c) PUBLIC-PRIVATE COMPETITION PROCESS FOR FUNCTIONS PERFORMED BY CONTRACTORS- After the date of enactment of this Act, any decision by an agency to initiate a contracting in for the performance of a function not previously performed by Federal employees, in accordance with this subsection, shall be based on the results of a public-private competition process that--

(1) formally compares the costs of Federal employee performance of the new function with the costs of the performance by a contractor;

(2) determines whether the offers submitted meet the needs of the agency with respect to items other than costs, including quality and reliability;

(3) employs the most efficient organization process;

(4) does not include in the cost comparison any savings to the agency attributable to lower pay, health insurance benefits, or retirement benefits provided by the contractor; and

(5) ensures continued performance of the function by a contractor if an agency determines that at least a 10-percent cost savings would not be achieved by performance of the function by Federal employees.

(d) PARTICULAR FUNCTIONS- In complying with this subsection--

(1) agencies shall, to the extent possible, subject to public-private competition those positions held by contractor employees that are associated with functions that are or have been performed at least in part by Federal employees at any time on or after October 1, 1980; and

(2) agencies shall not receive credit towards compliance with the requirement for comparable public-private competition for subjecting to public-private competition any contractor employees--

(A) associated with functions performed by small business concerns that meet the requirements under section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and regulations under that section; or

(B) whose minimum monetary wages and fringe benefits are based on 4(c) of the Service Contract Act (41 U.S.C. 353(c)), or whose minimum monetary wages and fringe benefits will become covered by section 4(c) of the Service Contract Act at the beginning of the next contract year.

(e) INAPPLICABILITY OF CERTAIN LIMITATION- Notwithstanding any limitation on the number of Federal employees established by law, regulation, or policy, an agency may continue to employ or may hire such Federal employees as are necessary to perform work acquired through public-private competition required by this section.

Administrative Action 6-1: Truthfulness in Contracting
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Sections 3 (a), 4 and 6 of S. 1152, the "Truthfulness, Responsibility, and Accountability in Contracting Act of 2001"

SEC. 3. CERTIFICATION OF COMPLIANCE.

(a) REQUIREMENTS FOR HEADS OF AGENCIES-

(1) CERTIFICATIONS- Not later than 180 days after the date of enactment of this Act, the head of each agency shall submit to the Director of the Office of Management and Budget a certification that--

(A) the agency has established a centralized reporting system in accordance with section 4;

(B) in the case of each function of the agency that is being performed under contracting undertaken after the date of enactment of this Act, the contracting function decision was based on a public-private competition described under section 5;

(C) the agency is not managing Federal employees by any arbitrary limitations in accordance with sections 5 and 6; and

(D) the agency is reviewing work performed by contractors, recompeting or contracting in work when appropriate, and subjecting to public-private competition an approximate number of Federal employee and contractor positions in accordance with section 6.

(2) PUBLIC AVAILABILITY- The Director of the Office of Management and Budget shall--

(A) promptly after receiving certifications under paragraph (1)(B), publish in the Federal Register notices of the availability of the certifications to the public, including the names, business addresses, and business telephone numbers of the officials from whom the certifications can be obtained; and

(B) ensure that, after the removal of proprietary information, the head of each agency makes the certifications of that agency available to the public--

(i) upon request; and

(ii) on the World Wide Web.

SEC. 4. AGENCY REPORTING SYSTEMS AND REQUIRED REPORTS.

(a) CENTRALIZED REPORTING SYSTEM- Not later than 180 days after the date of enactment of this Act, each agency shall establish a centralized reporting system in accordance with guidance promulgated by the Director of the Office of Management and Budget that allows the agency to generate periodic reports on the contracting efforts of the agency. Such centralized reporting system shall be designed to enable the agency to generate reports on efforts regarding both contracting out and contracting in.

(b) REPORTS ON CONTRACTING EFFORTS-

(1) INITIAL REPORTS- Not later than 180 days after the date of enactment of this Act, every agency shall generate and submit to the Director of the Office of Management and Budget a report on the contracting efforts of the agency undertaken during the fiscal year immediately preceding the fiscal year during which this Act is enacted. Such report shall comply with the requirements in paragraph (3).

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(2) SUBSEQUENT REPORTS- For the current fiscal year and every fiscal year thereafter, every agency shall complete and submit to the Director of the Office of Management and Budget a report on the contracting efforts undertaken by the agency during that fiscal year. The report for a fiscal year shall comply with the requirements in paragraph (3), and shall be completed and submitted not later than the end of the first fiscal quarter of the subsequent fiscal year.

(3) CONTENTS- With regard to each contracting effort undertaken by the agency, the reports referred to in this subsection shall include the following information:

(A) The contract number and the Federal supply class or service code.

(B) The names, business addresses, and business telephone numbers of the officials who supervised the contracting effort.

(C) The competitive process used or the statutory or regulatory authority relied on to enter into the contract without public-private competition.

(D) The cost of Federal employee performance at the time the work was contracted out (if the work had previously been performed by Federal employees).

(E) The cost of Federal employee performance under the most efficient organization plan identified for that performance (if the work was contracted out through OMB Circular A-76).

(F) The anticipated cost of contractor performance, based on the award.

(G) The current cost of contractor performance.

(H) The actual savings, expressed both as a dollar amount and as a percentage of the cost of performance by Federal employees, based on the current cost, and an explanation of the difference, if any.

(I) A description of the quality control process used by the agency in connection with monitoring the contracting effort, identification of the applicable quality control standards, the frequency of the preparation of quality control reports, and an assessment of whether the contractor met, exceeded, or failed to achieve the quality control standards.

(J) The number of employees performing the contracting effort under the contract and any related subcontracts.

(c) REPORT ON CONTRACTING IN EFFORTS-

(1) IN GENERAL- For the current fiscal year and every fiscal year thereafter, every agency shall complete and submit to the Director of the Office of Management and Budget a report on the contracting in efforts undertaken by the agency during that fiscal year. The report for a fiscal year shall comply with the requirements in paragraph (2), and shall be completed and submitted not later than the end of the first fiscal quarter of the subsequent fiscal year.

(2) CONTENTS- The reports referred to in paragraph (1) shall include for each contracting in effort undertaken by the agency the following information:

(A) A description of the type of work involved.

(B) The names, business addresses, and business telephone numbers of the officials who supervised the contracting in effort.

(C) The cost of performance at the time the work was contracted in.

(D) The current cost of performance by Federal employees or military personnel.

(d) REPORT ON EMPLOYEE POSITIONS- Not later than 30 days after the end of each fiscal year, every agency shall submit to the Office of Management and Budget a report on the number of Federal employee positions and positions held by non-Federal employees under a contract between the agency and an individual or entity that has been subject to public-private competition during that fiscal year.

(e) SUBMISSION OF REPORTS TO CONGRESS-

(1) IN GENERAL- The Director of the Office of Management and Budget shall compile all reports submitted under this section and submit the reports to the committees referred to under paragraph (2), not later than 120 days after the end of the applicable fiscal year.

(2) COMMITTEES- The reports compiled under this subsection shall be submitted to the Committee on Government Reform of the House of Representatives and to the Committee on Governmental Affairs of the Senate.

(f) PUBLIC AVAILABILITY OF REPORTS-

(1) PUBLICATIONS- The Director of the Office of Management and Budget shall promptly publish in the Federal Register notices including a description of when the reports referred to in this section are available to the public and the names, business addresses, and business telephone numbers of the officials from whom the reports may be obtained.

(2) AVAILABILITY ON INTERNET- The reports referred to in this section shall be made available through the Internet.

(3) PROPRIETARY AND NATIONAL SECURITY INFORMATION- Proprietary information or information to which section 552(b)(1) of title 5, United States Code, applies shall be excised from information published or reports made available under this subsection.

(g) REVIEW- The Director of the Office of Management and Budget shall review the reports referred to in this section and consult with the head of the agency regarding the content of such reports.

SEC. 6. REVIEW OF CONTRACTOR PERFORMANCE.

(a) IN GENERAL-

(1) AGENCY ACTION AFTER REVIEW- If a report completed under section 4 indicates that, for 2 consecutive years, the actual cost of privatization, outsourcing, or contracting out of a particular function exceeds the anticipated cost of contractor performance, based on the award (referred to in section 4(b)(3)(G)), or fails to substantially meet quality control standards (referred to in section 4(b)(3)(J)), the agency shall either conduct a new public-private competition or convert the function to performance by Federal employees not later than the earlier of the date of the expiration of the contract or the beginning of the first fiscal year which is not more than 12 months after the initial determination that the cost of a contracting effort exceeds the anticipated cost of contractor performance or that quality standards have not been substantially met. Any resulting terminations for convenience may be undertaken without cost to the United States Government.

(2) INAPPLICABILITY- This subsection does not apply to work performed in the non-Federal sector before the date of enactment of this Act.

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(b) PUBLIC-PRIVATE COMPETITION-

(1) IN GENERAL- For each fiscal year, an agency shall subject to public-private competition an approximate number of Federal employee positions and positions held by non-Federal employees under a contract between an agency and an individual or entity.

(2) PARTICULAR FUNCTIONS- In complying with this section, agencies shall, to the extent possible, subject to public-private competition those positions held by non-Federal employees under a contract between an agency and an individual or entity that is associated with functions that are or have been performed at least in part by Federal employees at any time on or after October 1, 1980.

(c) INAPPLICABILITY OF CERTAIN LIMITATION- Notwithstanding any limitation on the number of Federal employees established by law, regulation, or policy, an agency may continue to employ or may hire such Federal employees as are necessary to perform work acquired through public-private competition required by this section.

Administrative Action 7-1: FAIR Act Definition

FAIR Act definition of inherently governmental functions to be adopted by OMB

(2) INHERENTLY GOVERNMENTAL FUNCTION-

(A) DEFINITION- The term 'inherently governmental function' means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

(B) FUNCTIONS INCLUDED- The term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as--

(i) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) to significantly affect the life, liberty, or property of private persons;

(iv) to commission, appoint, direct, or control officers or employees of the United States; or

(v) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

(C) FUNCTIONS EXCLUDED- The term does not normally include--

(i) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or

(ii) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).

Administrative Action 11-1: Bargaining Unit Eligibility

Executive Orders have previously been issued excluding the following agencies or subdivisions (identified here by their then-current names):

- Office of Criminal Enforcement, Bureau of Alcohol, Tobacco, and Firearms
- Office of Enforcement (Headquarters and Regional Components, U.S. Customs Service)
- Criminal Investigative Division, Internal Revenue Service
- Criminal Division, Department of Justice
- Federal Air Marshal Branch, Federal Aviation Administration, Department of Transportation
- Units composed of Civil Aviation Security Inspectors in Civil Aviation Security divisions whose responsibilities require Federal air marshal functions.
- Albuquerque, Nevada, and Savannah River operations offices under the Under Secretary of Energy.

Legislative Action 1-1: Amending the Aviation and Transportation Security Act of 2001
(page 1 of 3)

Proposed TSA Title 5 Legislation

1. Pub. L. 107-71, Title I, sec. 111(d) is repealed.

2. 49 U.S.C. 114(n) is amended to read as follows:

(n) **Personnel management systems.**

(1) Except as provided in subsection (n)(2), the personnel management system established by the Administrator of the Federal Aviation Administration under section 40122 shall apply to employees of the Transportation Security Administration (TSA), or, subject to the requirements of such section, the Under Secretary may make such modifications to the personnel system with respect to such employees as the Under Secretary considers appropriate, such as adopting aspects of other personnel systems of the Department of Transportation.

(2) Title 5, United States Code, shall apply to individuals carrying out security screening functions under section 44901 of Title 49, United States Code, except that Chapter 97 of Title 5, United States Code, shall not apply to such individuals.

(A) Except as provided in subsections (n)(2)(B), (C), and (D), all TSA management directives or other policies implemented pursuant to Pub. L. 107-71, Title I, sec. 111(d) that conflict with Title 5 are rescinded on the date of enactment. Any pending disciplinary or adverse actions concerning individuals identified in subsection (n)(2) that have not, as of the date of enactment, been imposed, shall be reconsidered and, as warranted, rescinded or reissued in accordance with the requirements of Chapters 75 and 77 of Title 5.

(B) The individuals identified in subsection (n)(2) shall continue to be paid pursuant to the compensation system under which they were covered on the date of enactment until the 90th calendar day following the date of enactment, at which time they will be converted to the classification and pay system set forth in Chapters 51 and 53 of Title 5 without any loss of pay.

(C) The individuals identified in subsection (n)(2) shall continue to work under the performance appraisal system under which they were covered on the date of enactment until the 90th calendar day following the date of enactment, at which time they will be converted to the performance appraisal system set forth in Chapter 43 of Title 5.

(D)(i) TSA shall continue to withhold labor organization dues from individuals who have submitted TSA Form 1158s ("Form 1158") as of date of enactment and from individuals who submit Form 1158s after the date of enactment, but prior to certification of an exclusive representative in accordance with section 7111 of Title 5. For purposes of section 7111, an executed Form 1158 demonstrates that the individual wishes to be represented by the labor organization to which he or she has allotted dues on the Form 1158.

(D)(ii) Upon certification of an exclusive representative pursuant to section 7111, the provisions of section 7115 of Title 5 shall apply, except that individuals who, prior to certification, submitted a Form 1158 to have dues allotted to the labor organization selected as exclusive representative shall not be required to submit a written assignment pursuant to section 7115 to remain a member of that labor organization. All such individuals shall, however, be given the opportunity to revoke their dues allotment during the first full pay period following this directive. In keeping with section 7115(a), any dues allotments not revoked during the first full

pay period following the effective date of this Act may not be revoked for a period of one year thereafter.

(E)(i) Unless, prior to the 90th day following the date of enactment, one or more labor organizations has been accorded exclusive recognition as the representative of the individuals described in subsection (n)(2), TSA shall, in a manner consistent with procedures described in section 7113 of Title 5, consult with labor organizations prior to the conversions described in subsections (n)(2)(B) and (C). For purposes of this subsection (n)(2)(E)(i), the term "labor organization" means only those labor organizations that represented individuals identified in subsections (n)(2)on the date of enactment.

(E)(ii) Any labor organization accorded exclusive recognition as the representative of any portion of the individuals described in subsection (n)(2) shall be provided notice and an opportunity to bargain in accordance with chapter 71 of Title 5 over the conversions described in subsections (n)(2)(B) and (C). In the event of such notice and bargaining, the 90-day periods referred to in subsections (n)(2)(B) and (C) shall be extended as necessary to satisfy chapter 71's bargaining requirements.

Legislative Action 3-1: One-Year Moratorium on New A-76 Competitions

Text of language included in the House and Senate FY 2009 Financial Services and General Government Appropriations bills that would impose a one-year government-wide moratorium on all A-76 studies.

None of the funds appropriated or otherwise made available by this or any other Act may be used to begin or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.

Legislative Action 4-1: Repeal Private Tax Collection

ADDENDUM

1) Section 2 of H.R. 3056 , the "Tax Collection Responsibility Act of 2007"

SEC. 2. REPEAL OF AUTHORITY TO ENTER INTO PRIVATE DEBT COLLECTION CONTRACTS.

(a) In General- Subchapter A of chapter 64 is amended by striking section 6306.

(b) Conforming Amendments-

(1) Subchapter B of chapter 76 is amended by striking section 7433A.

(2) Section 7811 is amended by striking subsection (g).

(3) Section 1203 of the Internal Revenue Service Restructuring Act of 1998 is amended by striking subsection (e).

(4) The table of sections for subchapter A of chapter 64 is amended by striking the item relating to section 6306.

(5) The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7433A.

(c) Effective Date-

(1) IN GENERAL- Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) UNAUTHORIZED CONTRACTS AND EXTENSIONS TREATED AS VOID- Any qualified tax collection contract (as defined in section 6306 of the Internal Revenue Code of 1986, as in effect before its repeal) which is entered into on or after July 18, 2007, and any extension or renewal on or after such date of any qualified tax collection contract (as so defined) shall be void.

Legislative Action 4-2: No additional funding for private tax collection

Section 106 of S. 3260, FY 2009 Financial Services and General Government Appropriations bill:

> None of the funds made available in this Act may be used to enter into, renew, extend, administer, implement, enforce, or provide oversight of any qualified tax collection contract (as defined in section 6306 of the Internal Revenue Code of 1986).

Legislative Action 7-1: IRS "Ten Deadly Sins"

Proposed Changes to Section 1203 of the IRS Restructuring and Reform Act of 1998 (Public Law 105-206)

Section 1203 (a) of Public Law105-206 currently provides that:

> (a) IN GENERAL – Subject to subsection (c), the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct.

Proposed Modification:

> (a) IN GENERAL—Subject to subsection (c), the Commissioner of Internal Revenue ***may*** terminate the employment of any employee ***or may take other appropriate disciplinary action against the employee*** of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described under subsection (b) in the performance of the employee's official duties. Such termination ***or other disciplinary action*** shall be for cause on charges of misconduct.

Legislative Action 8-1: Bargaining for Pay at OCC

Suggested OCC language as follows:

12 USC 481 is amended (striking language) so that the portion that had read:

"; the employment and compensation of examiners, chief examiners, reviewing examiners, assistant examiners, and of the other employees of the office of the Comptroller of the Currency whose compensation is and shall be paid from assessments on banks or affiliates thereof or from other fees or charges imposed pursuant to this subchapter shall be without regard to the provisions of other laws applicable to officers or employees of the United States"

shall now read:

"; the employment and compensation of examiners, chief examiners, reviewing examiners, assistant examiners, and of the other employees of the office of the Comptroller of the Currency shall be paid from assessments on banks or affiliates thereof or from other fees or charges imposed pursuant to this subchapter."

Legislative Action 9-1: Amend Title 5, section 7112(b)

CURRENT LANGUAGE: 5 U.S.C. 7112 (b) (6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

PROPOSED LANGUAGE: 5 U.S.C. 7112 (b) (6) any employee who is (i) primarily engaged in intelligence, counterintelligence, investigative, or national security work that directly affects the national defense and (ii) regularly uses classified information; or

Legislative Action 11-1: Proposed Legislation Allowing for Appointment of Acting FLRA GC

[new] 5 U.S.C. 7104(f)(4): The General Counsel shall, within 60 days of confirmation, cause to be published in the Federal Register a designation of the position within the Office of General Counsel that constitutes the General Counsel's "first assistant" within the meaning of 5 U.S.C. 3345(a)(1). If that position is vacant, the General Counsel shall promptly appoint to that position a person who has served as an officer or employee of the Authority for not less than 90 days in a career or career-conditional position whose rate of pay is equal to or greater than the minimum rate of pay payable for a position at GS-15 of the General Schedule.