

GAO

Testimony

Before the Subcommittee on Civil Service,
Committee on Government Reform and Oversight
House of Representatives

For Release on Delivery
Expected at
10:00 a.m., EDT
Wednesday
June 24, 1998

CIVIL SERVICE REFORM

**Observations on
Demonstration Authority,
the Use of Official Time, and
the Administrative Redress
System**

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Civil Service Reform: Observations on Demonstration Authority, the Use of Official Time, and the Administrative Redress System

Two decades have passed since passage of the Civil Service Reform Act of 1978 (CSRA). Since then, as the pace of social, economic, and technological change has increased, Congress has responded with further refinements to the civil service. Today, Congress is again considering legislation that, like CSRA itself, is not intended to completely overhaul the civil service but rather to keep pace with the need to refine or modernize the system in several key areas. GAO discusses three issues addressed in the proposed legislation: personnel demonstration authority, the use of official time to support employee union activities, and the administrative redress system for federal employees.

- The personnel demonstration project authority provided by CSRA has been put to only limited use. There is some question as to whether this authority has accomplished, to the appropriate extent, the purpose for which it was intended—that is, determining whether specific changes in personnel management policies or procedures would result in improved federal personnel management. Enhancing the opportunities for agencies to pursue innovative human resource management (HRM) policies or procedures would be likely to create more knowledge about what works and what doesn't. As more agencies take steps to fashion their HRM approaches to support their missions and goals, it would be useful for them to have as many proven HRM approaches available to them as possible.
- If decisionmakers hope to resolve the question of the extent to which federal agencies use official time and other resources to support employee union activities, better data will be needed. But, recognizing that data gathering can be expensive, decisionmakers will need to balance the costs and benefits of the various options for doing so. This December, after the Office of Personnel Management (OPM) reports on its current effort to collect data from the agencies, decisionmakers may have a fuller picture of the issues involved in requiring agencies to report on the use of these resources, and may have more information with which to balance the costs and potential benefits of imposing this requirement in the future.
- GAO continues to view the administrative redress system for federal employees as inefficient, expensive, and time-consuming. Certain steps to relieve undue burdens on the system, such as eliminating “mixed case” appeals, would appear to make good sense, provided these actions upheld two fundamental principles: fair treatment for federal employees and an efficiently managed federal government. In addition, GAO's work on alternative dispute resolution (ADR) suggests that the current burden on the administrative redress system could be eased, at least in part, if agencies made ADR more widely available to their employees.

Civil Service Reform: Observations on Demonstration Authority, the Use of Official Time, and the Administrative Redress System

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to participate today in your discussion of the proposed Federal Employees Integrity, Performance, and Compensation Improvement Act of 1998. We feel that legislative efforts such as this to reexamine the civil service in a changing environment are both grounded in precedent and a fundamental congressional responsibility. They reflect the recognition that a capable and well-managed federal workforce is indispensable to the government's ability to fulfill its commitments to the American people.

Two decades have passed since Congress enacted the Civil Service Reform Act of 1978 (CSRA). Since then, as the pace of social, economic, and technological change has increased, Congress has responded with further refinements to the civil service. Congress created a new retirement system (the Federal Employees Retirement System (FERS)) in 1986; passed the Federal Employees Pay Comparability Act in 1990, putting into law the principle of locality pay; made changes to the Hatch Act in 1993; passed the Workforce Restructuring Act in 1994, which, while downsizing the federal workforce, provided broader training flexibility to make federal workers more employable; and passed the Family Friendly Leave Act in 1994. Today, Congress is again considering civil service legislation that, like CSRA itself, is not intended to completely overhaul the civil service but rather to keep pace with the need to refine or modernize the system in several key areas.

I would like to discuss three of the issues addressed in the proposed legislation. First, I will briefly discuss the use of the Office of Personnel Management's (OPM) personnel demonstration project authority, which offers the opportunity for determining whether specific changes in personnel management policies or procedures would result in improved federal personnel management. After that, I will discuss two issues that are of long-standing concern to the Subcommittee, and on which we have testified in the past. The first of these is the use of official time and other resources to support federal workers' union activities.¹ The second is the administrative redress system, which was designed to protect federal employees against arbitrary agency actions and prohibited personnel practices, such as discrimination or retaliation for whistleblowing. Drawing on additional work we have done, I will expand upon some of the information we presented in our earlier appearances before the

¹"Official time" is time granted an employee by a federal organization to perform certain union activities when the employee would otherwise be in a duty status.

Subcommittee and remark on these issues in the context of the new legislative proposals.

Although the legislation was still being drafted as this statement was being prepared, the Subcommittee staff provided us with an outline of the bill. My comments are based on our review of that outline.

Demonstration Project Authority Provides an Opportunity to Test Human Resource Management Practices That May Better Support Agencies' Missions

In recent years, changes in social, economic, and technological conditions put new pressures on both public and private sector organizations, which had to deal with calls for better performance and growing demands for more responsive customer service, even as resources were becoming harder to come by. Many of these organizations have looked hard at their human resource management (HRM) approaches, found them outmoded or too confining, and turned to new ways of operating.²

The human resource management model that many of these organizations have chosen is more decentralized, more directly focused on mission accomplishment, and set up more to establish guiding principles than to prescribe detailed rules and procedures.³ Under this model, an organization adopts its human resource management practices because they support the organization's needs and mission, rather than because they conform with practices that have been adopted elsewhere.

In our previous work, we have recognized that to manage effectively for results, agencies need the flexibility to manage according to their needs and missions. Under the Government Performance and Results Act of 1993 (known as GPRA or the Results Act), managers are expected to be held accountable for results, but also to be given greater flexibility to manage.

In this context, it is important that agency managers have usable knowledge about human resource management practices that could enhance agency performance. Under CSRA, a provision was made for determining whether specific changes in personnel management policies or procedures would result in improved federal personnel management. OPM's personnel demonstration project authority allows the central personnel agency to waive certain civil service rules so that federal agencies can try new HRM approaches. OPM demonstration projects have focused on such areas as streamlined hiring, classification, compensation systems, and skill-based pay. CSRA specified that no more than 10

²Civil Service Reform: Changing Times Demand New Approaches (GAO/T-GGD-96-31, Oct. 12, 1995).

³GAO/T-GGD-96-31, Oct. 12, 1995.

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demonstration projects may be active at any given time, that each demonstration project may cover no more than 5,000 employees, and that projects generally may take no longer than 5 years to complete.

During the nearly 20 years in which OPM demonstration project authority has been available, it has been put to only limited use. According to OPM, only eight demonstration projects have been implemented since the passage of CSRA. Four OPM demonstration projects have been completed. Two of these projects—at Navy’s China Lake facility and the National Institutes of Standards and Technology (NIST)—have been made permanent by legislation. Two others (at the Departments of Agriculture and Commerce) are now active, and one (at the Department of Veterans Affairs) has been formally proposed and is expected to be implemented in the near future.⁴

When we surveyed officials at 26 agencies near the end of the demonstration program’s first decade, two reasons for the limited use of the demonstration project authority were most widely cited: the time and resources required to develop and propose projects and the difficulty of getting project proposals through agencies’ approval processes.⁵ In studies of the demonstration project authority, both the Merit Systems Protection Board (MSPB) and OPM itself noted the frustrations some federal officials have experienced with the demonstration project development and approval process, both within their agencies and with OPM.⁶ OPM said it believed that “the process should be redesigned or better administered to achieve the always difficult task of reconciling OPM and agency interests in the name of innovation.”⁷

There is some question, considering the limited use to which demonstration project authority has been put, as to whether it has accomplished, to an appropriate extent, the purpose for which it was intended—that is, determining whether specific changes in personnel management policies or procedures would result in improved federal

⁴Five additional demonstration projects are active at Department of Defense facilities. These demonstration projects were authorized by Congress outside OPM demonstration authority, but were developed with input from OPM.

⁵Federal Personnel: Status of Personnel Research and Demonstration Projects (GAO/GGD-87-116BR, Sept. 1987). OPM has told us that these two reasons remain the most prominent.

⁶See Federal Personnel Research Programs and Demonstration Projects: Catalysts for Change, Merit Systems Protection Board, December 1992; and Retrospective on the Demonstration Project Authority: Lessons Learned, Office of Personnel Management, December 1993.

⁷Retrospective on the Demonstration Project Authority: Lessons Learned, Office of Personnel Management, December 1993.

personnel management. We believe that enhancing the opportunities for agencies to pursue innovative HRM policies or procedures would be likely to create more knowledge about what works and what doesn't—especially since agencies that implement demonstration projects are required to evaluate their results. As more agencies take steps to fashion their HRM approaches to support their missions and goals, it would be useful for them to have as many proven HRM approaches available to them as possible.

Support for Federal Employee Union Activities Is an Established Practice, but the Extent of That Support Is Unknown

We last testified on the use of official time for union activities in September 1996.⁸ At that time, we reported that (1) the use of official time for union activities was an established practice in the federal government; (2) based on our work at four federal entities, the total amount of official time used for union activities, the cost of that time, and the number of people using that time were unknown;⁹ and (3) no reporting requirement existed for agencies to generate comprehensive data on their support of union activities. Our “bottom line” was that if decisionmakers hope to resolve the question of the extent to which agencies use official time and other resources to support the activities of federal employee unions, better data are needed. But, recognizing as well that data gathering can be expensive, we said that decisionmakers would need to balance the costs and benefits of the various options for doing so.

Since then, at the Subcommittee's request, we have done further, more extensive work on official time and other forms of support for federal employee union activities, twice surveying 34 federal organizations that employ about 87 percent of the more than 1 million nonpostal federal workers who are represented by unions and are covered by collective bargaining agreements (see app. I). But, as you will see, our additional work on official time yielded findings very similar to those we previously reported. We found that the use of official time remains an established practice, but that the 34 federal organizations that we surveyed, which included the 30 federal organizations with the greatest number of employees covered by collective bargaining agreements, were neither routinely collecting nor reporting the kinds of comprehensive data needed to accurately portray the use of official time across the federal government. No permanent reporting requirement for the use of official time yet exists, but subsequent to our two surveys, both the House and

⁸Federal Labor Relations: Official Time Used for Union Activities (GAO/T-GGD-96-191, Sept. 11, 1996).

⁹The four federal entities were the U.S. Postal Service, the Internal Revenue Service, the Social Security Administration, and the Department of Veterans Affairs.

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Senate Committees on Appropriations directed OPM to report on the use of official time and other forms of support for union activities. OPM is to collect these data for the first 13 pay periods of calendar year 1998 and report to the Committees no later than December 1, 1998.

**The Use of Official Time
for Union Activities Is an
Established Practice**

As you know, CSRA allows federal employees to bargain collectively through labor organizations of their choice and thereby participate with agency management in the development of personnel policies and practices and other decisions that affect their working lives. For the most part, labor-management relations at the federal organizations we surveyed are governed by title VII of CSRA, which is administered by the Federal Labor Relations Authority (FLRA), an organization headed by a three-member panel that issues policy decisions and adjudicates labor-management disputes.

The charging of official time by union members for their participation in collective bargaining and FLRA-authorized activities is a matter of statutory right. Using official time for other union activities is negotiated. CSRA allows official time to be negotiated in any amount an agency and the union involved agree is reasonable, necessary, and in the public interest. However, CSRA specifies that activities that relate to internal union business, such as the solicitation of members or the election of union officials, must be performed when in a nonduty status, that is, not on official time.

Among the union activities for which the use of official time can be negotiated are activities related to grievance procedures; meetings called by management on a collective bargaining agreement; joint labor-management committee meetings addressing such issues as safety and health; semiannual labor-management relations committee meetings; union-sponsored training and other training pertaining to labor relations; meetings with union representatives concerning grievances, appeals, or personal matters; and presentations of union views to officials of the executive branch, Congress, or other appropriate authority. Under some contracts, official time is authorized for travel to and from some of these meetings, but other contracts may either deny the use of official time for travel or not mention it.

We asked the 34 federal organizations we surveyed to describe the benefits and disadvantages, if any, of using official time for union activities. In response, 23 said that the use of official time improved

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labor-management relations. Fourteen of the federal organizations also said that using official time helped with the implementation of organizational changes; 13 said it decreased the number of grievances. The single disadvantage, as identified by 13 of the 34 federal organizations we surveyed, was that using official time for union activities caused employees to set aside their regular work.

**The Extent of Official Time
Use and Other Support for
Union Activities Is
Unknown**

Regarding the extent of the use of official time and other support for union activities, the responses to our surveys were spotty at best. Therefore, although the data we obtained are the most extensive currently available, they are insufficient to accurately portray the total amount of resources used for union activities across the 34 federal organizations. Most of the respondents did not provide comprehensive data on these resources. None of them provided all of the data requested for the 8 fiscal years covered by our surveys. In some cases, the organizations provided data that covered only portions of fiscal years or were representative of calendar rather than fiscal years.

With limitations such as these in mind, we can report that, of the 34 federal organizations we surveyed, 32 provided information on the hours used for union activities during fiscal year 1996; these totaled almost 2.5 million hours. According to the survey responses from 27 of the federal organizations, about 11,000 employees used official time for union activities in 1996. About 460 employees spent 100 percent of their time on union activities at 23 federal organizations. Most of the information provided by the federal organizations regarding the amount of time spent on union activities and the number of employees using that time was based on reported data rather than estimates.¹⁰

¹⁰In this context, "reported data" means data either systematically captured in an existing database from payroll, personnel, or other official source or compiled for agency reports. Although we requested that the agencies provide us with reported data, we informed them that if reported data were unavailable, they should provide estimated data, along with the basis on which estimates were made.

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Table 1: Data on Hours of Official Time Used for Union Activities and the Number of Employees Using That Time During Fiscal Year 1996, as Provided by the Federal Organizations

Resources used for union activities	Number of organizations that provided resources in fiscal year 1996 ^a	Amount of resources used for union activities		
		Total reported data	Total estimated data	Total estimated and reported data
Hours of time that employees used for union activities	32	1,775,917	723,672	2,499,589
Number of employees who used official time for union activities	27	4,607 ^b	6,320	10,927
Number of employees who spent 100 percent of their time on union activities	23	379	79	458

^aThe numbers of organizations identified as providing resources are those that affirmatively responded that they did provide such support. Some organizations responded that they did not provide one or more of the types of resources, and some organizations did not respond at all with answers regarding whether they provided one or more of the resources.

^bIn our report entitled *Federal Labor Relations: Survey of Official Time Used for Union Activities* (GAO/GGD-97-182R, Sept. 11, 1997), we indicated that 8,092 employees used official time for union activities in fiscal year 1996, as reported by the federal organizations. In response to a subsequent survey, federal agencies reported an additional 1,877 employees who used official time in 1996, and we included them in this table. In addition, the Department of the Air Force identified an error in a computer program used by the Defense Finance and Accounting Service (DFAS) to compute the number of employees who used official time. Accordingly, Air Force officials asked us to reduce their total number of employees who used time for union activities by 2,855. We have since reviewed the DFAS computer program and agree that it resulted in an overstatement of the number of employees who used official time. Because the DFAS program was used in computing figures for the Departments of the Army and the Navy as well, we have sought to avoid overstating the number of employees using official time by excluding from this table the number of employees using official time originally reported by the Army (1,926), the Navy (581), and the Air Force (2,855).

Source: GAO survey of federal organizations.

Of the 34 federal organizations surveyed, 29 provided information on the dollar value of the official time spent on union activities during fiscal year 1996; this dollar value totaled about \$50 million. Twenty-three organizations indicated that, in 1996, they provided office space, equipment, telephone use, and supplies valued at over \$5 million for union activities, and that over \$3 million was spent on travel and per diem associated with union activities at 22 organizations. For the most part, the dollar values of the time, office equipment and related items, and travel and per diem reported by the federal organizations were based on estimates.

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Table 2: Data on the Dollar Values of the Official Time, Office Space and Other Related Items, and Travel and Per Diem Used for Union Activities During Fiscal Year 1996, as Provided by the Federal Organizations

Resources used for union activities	Number of organizations that provided resources in fiscal year 1996 ^a	Dollar value of resources used for union activities		
		Total reported data	Total estimated data	Total estimated and reported data
Official time used for union activities	29	\$22,426,692	\$27,095,784	\$49,522,476
Office space, equipment, telephone use, and supplies	23	1,659,547	3,364,964	5,024,511
Travel and per diem	22	1,007,010	2,172,696	3,179,706

^aThe numbers of organizations identified as providing resources are those that affirmatively responded that they did provide such support. Some organizations responded that they did not provide one or more of the types of resources, and some organizations did not respond at all with answers regarding whether they provided one or more of the resources.

Source: GAO survey of federal organizations.

We found that the methodologies used for deriving estimates of the resources used for union activities varied greatly among the federal organizations. For example, one federal organization based its official time estimate on the current union contract entitlement. Another organization estimated the number of employees using official time by collecting estimates from its components; each component, however, based its estimate on a different methodology. Another federal organization used an average GS grade level to estimate the dollar value of the time spent on union activities. And yet another organization indicated that it estimated the dollar value of travel and per diem for one union on the basis of data reported for two other unions. Some of the organizations indicated that their estimates were based on documents and records that were not comprehensive or complete. Others provided no bases at all for their estimates.¹¹

¹¹We did not assess (1) the completeness of the estimated data provided by the federal organizations or (2) the appropriateness of the bases on which the estimates were formed.

No Reporting Requirement Has Been in Place, but an OPM Effort Is Currently Under Way

The overall lack of comprehensive or reliable data among the respondents to our two surveys was not surprising, considering, as we noted in our September 1996 testimony, that no reporting requirement existed for agencies to generate comprehensive data on their support of union activities.¹² Subsequent to our two surveys, however, the House and Senate Committees on Appropriations directed OPM, in consultation with the Office of Management and Budget (OMB), to report on the use of official time and other support for union activities among federal agencies. OPM is currently collecting data for the first 13 pay periods of calendar year 1998, and is expected to report to the Committees no later than December 1, 1998. OPM's guidance to the agencies requires them to report actual data, if available. Lacking that, they are to formulate estimates on the basis of the best available data or use standard statistical sampling techniques. If an estimate or sample is used, the methodology is to be documented and fully explained.

The Committees expect that the data provided by OPM will include a description of both the benefits and disadvantages, if any, of using official time for union activities and a list of specific activities undertaken by federal employees while using official time. The Committees also expect that OPM will report, for the 6-month period in 1998, (1) the total hours of official time that employees spent on the various activities identified; (2) the number of employees who used official time for these activities; (3) the number of employees who charged 100 percent of their work hours to official time, the number who charged 75 percent, and the number who charged 50 percent; (4) the dollar value of the official time, in terms of employee compensation, used for such activities; and (5) the dollar value of federally funded office space, equipment, telephone use, and supplies provided to unions.

When OPM's report is issued, decisionmakers may have more information than at present on the extent to which federal agencies are providing official time and other support for federal employee union activities. They may also have a fuller picture of the issues involved in requiring agencies to report on the use of these resources, and may have more information with which to balance the costs and potential benefits of imposing this requirement in the future.

¹²In 1981, agencies were required by OPM, under Federal Personnel Manual Letter 711-161, to activate a recordkeeping system to capture official time charged for representational functions. However, the letter did not require agencies to report the yearly time charges to OPM. As a result, OPM never consolidated the amount of time charged governmentwide to union activities and had no information on agencies' compliance with the recordkeeping requirement. When the Federal Personnel Manual was abolished in 1994, all recordkeeping requirements regarding time spent on union activities were rescinded.

The Administrative Redress System Remains Overburdened, but Greater Use of Alternative Dispute Resolution May Offer Some Relief

We first testified on the administrative redress system for federal employees in November 1995, when we stated that the complexity of the system and the variety of redress mechanisms it affords federal employees make it inefficient, expensive, and time-consuming.¹³ Our view remains unchanged. Issues of jurisdictional overlap and multiple venues for complaints—particularly in the area of workplace discrimination—continue to afflict an already overburdened redress system. I would like to discuss two of these issues—“mixed case” appeals and the disproportionate share of discrimination cases brought by U.S. Postal Service employees. In addition, I would like to discuss the expectation that alternative dispute resolution (ADR), if used appropriately, may help lessen the demands on the redress system.

A System Marked by Jurisdictional Overlaps

The purpose of the current redress system, which grew out of CSRA and related legal and regulatory decisions over nearly 20 years, is to uphold the merit system by ensuring that federal employees are protected against arbitrary agency actions and prohibited personnel practices, such as discrimination or retaliation for whistleblowing. While one of the purposes of CSRA was to streamline the previous redress system, the scheme that has emerged is far from simple. Today, four independent adjudicatory agencies can handle employee complaints or appeals: MSPB, the Equal Employment Opportunity Commission (EEOC), the Office of Special Counsel (OSC), and FLRA. While these agencies’ boundaries may appear to have been neatly drawn, in practice the redress system is a tangled web.

To begin with, a given case may be brought before more than one of these agencies—a circumstance that adds time-consuming steps to the redress process and may result in the adjudicatory agencies reviewing each other’s decisions. Moreover, each of the adjudicatory agencies has its own procedures and its own body of case law.¹⁴ Each varies from the next in its authority to order corrective actions and enforce its decisions.

Further, the law provides for additional review of the adjudicatory agencies’ decisions—or, in the case of discrimination complaints, even de novo trials¹⁵—in the federal courts. Beginning in the employing agency,

¹³Federal Employee Redress: An Opportunity for Reform (GAO/T-GGD-96-42, Nov. 29, 1995).

¹⁴EEOC has proposed substantial changes in the processing of federal employees’ discrimination complaints. Intended to “address the continuing perception of unfairness and inefficiency in the federal sector complaint process,” the proposals appear in EEOC’s Notice of Proposed Rulemaking, Federal Register, February 20, 1998, Vol. 63, No. 34, pp. 8594-8606.

¹⁵In a de novo trial, a matter is tried anew as if it had not been heard before.

proceeding through one or more of the adjudicatory bodies, and then carried to its conclusion in court, a single case can—and often does—take years.

The “Mixed Case” Scenario

As we testified in July 1996, the most frequently cited example of jurisdictional overlap in the redress system is the so-called “mixed case,” under which a career employee who has experienced an adverse action appealable to MSPB (such as a termination or suspension of more than 14 days) and who feels that the action was based on discrimination, can appeal to both MSPB and EEOC.¹⁶ Under this scenario, the employee would first appeal to MSPB, with hearing results further appealable to MSPB’s three-member Board. If the appellant is still unsatisfied, he or she can then appeal MSPB’s decision to EEOC. If EEOC finds discrimination where MSPB did not, the two agencies try to reach an accommodation. In the event they cannot reach an accommodation, a three-member Special Panel is convened to reach a determination.¹⁷ At this point, the employee who is still unsatisfied with the outcome can file a civil action in U.S. district court, where the case can begin again with a de novo trial.

Eliminating the mixed case scenario would appear to make good sense, especially in light of the record regarding mixed cases. First, few mixed cases coming before MSPB result in a finding of discrimination. In fiscal year 1997, for example, of the 1,833 mixed case appeals that MSPB decided, a finding of discrimination occurred in just 6. Second, when EEOC reviews MSPB’s decisions in mixed cases, it almost always agrees with them. Again during 1997, EEOC ruled on appellants’ appeals of MSPB’s findings of nondiscrimination in 124 cases. EEOC did not disagree with MSPB’s findings in any of these cases.

Under the mixed case scenario, an appellant can—at no additional risk to his or her case—have two agencies review the appeal rather than one. MSPB and EEOC rarely differ in their determinations, but an employee has little to lose in asking both agencies to review the issue. Eliminating the possibility of mixed cases would eliminate both the jurisdictional overlap and the inefficiency that accompanies it. If the mixed case scenario were eliminated, appellants who were dissatisfied with the outcome of the

¹⁶Civil Service Reform: Redress System Implications of the Omnibus Civil Service Reform Act of 1996 (GAO/T-GGD-96-160, July 16, 1996).

¹⁷Special Panels have been needed only rarely; three such panels have been convened in the past 18 years, and none since 1987.

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administrative redress processes would still have recourse to the federal courts.

For purposes of comparison, it should be noted that legislative branch employees are provided different redress rights from those given executive branch employees. For example, since January 1996, congressional employees with discrimination complaints have been required to choose between two redress alternatives, one administrative and one judicial.¹⁸ Under the administrative alternative, an employee files his or her complaint with the Office of Compliance—an independent legislative branch agency that administers the process—with the results appealable to a five-member board. The board’s decision can be appealed to the U.S. Court of Appeals for the Federal Circuit, which has a limited right of review. Under the judicial alternative, the employee bypasses the administrative process and files suit in U.S. District Court, with the opportunity to appeal the district court’s decision to the appropriate U.S. Court of Appeals. The effect of this arrangement is to avoid the “two bites of the apple”—one administrative and the other judicial—currently available to executive branch employees.

**Dual Filings at the Postal
Service**

The growing pressures on the administrative redress system—specifically, in the area of discrimination complaints—continue a trend on which we last testified in July 1996. The latest available data reveal that, from fiscal years 1991 to 1997, the number of discrimination complaints filed increased by 56 percent, the number of requests for a hearing before an EEOC administrative judge increased by 94 percent, and the number of appeals to EEOC of agency final decisions increased by about 61 percent. Meanwhile, the backlog of requests for EEOC hearings more than tripled, and the inventory of appeals to EEOC of agency final decisions increased by nearly 600 percent.

In our recent analyses of the rising number of federal employee discrimination complaints and of EEOC’s growing hearings and appeals workload, one significant factor that stands out is the Postal Service. The number of postal workers’ complaints has represented a disproportionate and increasing share of federal employee complaint filings. In fiscal year 1996, for example, postal workers represented less than a third (31.2 percent) of the federal workforce but accounted for fully half (50 percent) of all the discrimination complaints filed by federal workers.

¹⁸The redress system for congressional employees was created by the Congressional Accountability Act of 1995. The act also specifies that, before a congressional employee chooses either redress alternative, he or she must go through counseling and mediation processes.

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In fiscal year 1991, postal workers represented less than a quarter (23.9 percent) of the federal workforce but accounted for about 44 percent of the complaints filed. Because postal workers' cases account for a large share of complaints filed, they represent a large share of EEOC's workload, accounting for 47 percent of the hearing requests filed with EEOC and 44 percent of the appeals to EEOC in fiscal year 1997.

We identified two factors that may help explain why postal workers account for so large a share of the complaint caseload. One is that while the number of nonpostal federal workers has been falling, the number of postal workers has been going up. Between fiscal years 1991 and 1996, the number of nonpostal federal workers decreased by about 18 percent (from 2,378,934 to 1,948,009), while the number of postal workers increased by about 18 percent (from 748,121 to 883,370). The other factor is that postal workers have been more likely than their nonpostal counterparts to file complaints. In fiscal year 1996, for example, there were 15 complaints filed for every 1,000 postal workers, compared with 6.8 complaints for every 1,000 nonpostal workers.

According to the Postal Service Manager for EEO Compliance and Appeals, one reason postal workers are more likely to file complaints than other federal workers is that postal workers alleging discrimination who are covered under collective bargaining agreements have more redress opportunities than nonpostal federal workers covered under collective bargaining agreements. Unlike most other federal workers, postal workers can pursue two courses of action concurrently. They can (1) file a discrimination complaint under the federal employee discrimination complaint process and (2) file a grievance through procedures negotiated under the collective bargaining agreement.¹⁹ The Postal Service told us that between 35 and 45 percent of postal workers who file a complaint under the federal employee discrimination complaint process also file a grievance. This opportunity for dual filings—that is, to take discrimination claims into two forums at once—allows postal employees to start two formal procedures based on one allegation. Restricting postal employees to one avenue of redress for their discrimination complaints would therefore reduce the total number of formal procedures arising from these complaints.

¹⁹Nonpostal employees who work for agencies subject to title 5 of the U.S. Code and who are covered under collective bargaining agreements must choose between these two courses of action. By filing a grievance, for example, a nonpostal employee forgoes the option of pursuing a complaint under the discrimination complaint process for federal employees.

Alternative Dispute Resolution (ADR) Offers Some Measure of Relief for the Redress System

As we reported in August 1997, private companies and federal agencies have been moving toward the use of ADR as one way of reducing the burden of formal redress processes, particularly in the case of discrimination complaints.²⁰ The term ADR covers a wide variety of dispute resolution processes, such as mediation, usually involving intervention or facilitation by a neutral third party. While no comprehensive data were available on ADR results in the private or federal sectors, the five companies and five federal agencies that we studied reported generally positive experiences with their ADR programs.²¹ For example, the Postal Service, which conducted a fairly extensive evaluation of a pilot mediation program in its North Florida District, found that mediation resolved nearly three-quarters (74 percent) of the cases in which it was used, and reduced by about one-half (from 43 percent to 22 percent) the proportion of informal discrimination complaints that became formal complaints. Based on its pilot program experiences, the Postal Service decided to adopt ADR throughout the organization. The Postal Service Manager of EEO Compliance and Appeals told us the Postal Service believes that its ADR program, once fully implemented, will have a substantial effect on future caseloads, both at the Postal Service and at EEOC.

Since our report, there has been further emphasis on using ADR in workplace disputes. In May 1998, the President established the Alternative Dispute Resolution Working Group, chaired by the Attorney General, to facilitate and encourage agencies' use of ADR. In addition, EEOC's proposals for changes in the regulations governing the EEO complaint process for federal employees include a requirement for all agencies to establish or make available an ADR program during the informal or "pre-complaint" process. Federal employees would be able to choose between the ADR or the traditional counseling processes without affecting their right to file a formal complaint.

Based on our work, it appears that the wider use of ADR in the pre-complaint stage of the discrimination complaint process could help resolve many disputes before they become formal complaints. One reason

²⁰Alternative Dispute Resolution: Employers' Experiences With ADR in the Workplace (GAO/GGD-97-157, August 1997).

²¹The five companies were Brown & Root, Inc.; Hughes Electronics Corporation; the Polaroid Corporation; Rockwell International Corporation; and TRW Inc. In the federal sector, we studied the Department of Agriculture, the Department of the Air Force, the Postal Service, the Department of State, and the Walter Reed Army Medical Center. We included the Postal Service among federal agencies, even though it is an independent governmental establishment, because the Postal Service is bound by most of the same discrimination complaint processes that apply to most federal agencies. As mentioned earlier, however, postal workers are eligible to file discrimination complaints and grievances concurrently.

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is that, as EEOC has reported, there may be a sizeable number of disputes in the discrimination complaint system that may not involve discrimination issues at all. Rather, they reflect basic communications problems in the workplace, and may be in the EEO process as a result of employees' perceptions that there is no other forum available for airing general workplace concerns. EEOC reported that there is little question that these types of issues would be especially conducive to resolution through ADR. Moreover, ADR generally comes into play in the early stages of workplace disputes, and practitioners have told us that it is important to intervene in the early stages of such disputes, before the disputants' positions solidify and become more intractable.

While our work suggests that agencies would do well to make ADR more widely available to their employees, we need to be cautious in how much to expect of ADR programs or whether to make them a more formal part of the redress system. One reason for caution is that, although ADR programs have been widely perceived as beneficial, most ADR programs are relatively new and generally have yet to be evaluated. As a result, we found no comprehensive evaluative data on the extent to which ADR has saved time and money by avoiding formal redress or litigation. Further, practitioners have already noted that ADR is not always appropriate, as in cases, for example, when disciplinary action has been taken against an employee because of a violation of law. Further, the "A" in ADR stands for "alternative." To the extent that ADR has been effective in federal agencies, it has been effective as an alternative to the more formal redress processes. Customarily, employees participate in ADR by choice, and when they do, they sacrifice none of their rights of recourse to the more established, more structured, and generally better-known administrative redress processes. If employees are ever asked, not merely to try ADR as an alternative to the formal redress processes, but to rely upon ADR as a substitute for them, they may be wary of losing some of their workplace protections. We could, therefore, see less use of ADR in the future rather than more.

Another new policy toward ADR that has been suggested by some—that is, making use of ADR a mandatory part of the discrimination complaint process—might also have drawbacks. So far, the fact that ADR use among federal employees is voluntary has helped ensure, at least to some extent, that employees who participate in the process are willing to try to make it work. If participation in ADR becomes mandatory, some complainants will participate in ADR merely because they have to. If that occurs, ADR may

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become just another step in an already lengthy redress process, and help make that process even lengthier and less efficient than it is today.

Summary

In summary, Mr. Chairman, having noted the limited use to which personnel demonstration project authority has been put, we believe there is some question as to whether it has accomplished, to an appropriate extent, the purpose for which it was intended—that is, determining whether specific changes in personnel management policies or procedures would result in improved federal personnel management. We believe that enhancing the opportunities for agencies to pursue innovative HRM policies or procedures would be likely to create more knowledge about what works and what doesn't. As more agencies take steps to fashion their HRM approaches to support their missions and goals, it would be useful for them to have as many proven HRM approaches available to them as possible.

In another vein, our work has shown that if decisionmakers hope to resolve the question of the extent to which federal agencies use official time and other resources to support employee union activities, better data will be needed. But, recognizing as well that data gathering can be expensive, we believe that decisionmakers will need to balance the costs and benefits of the various options for doing so. This December, after OPM reports on its current effort to collect data from the agencies, decisionmakers may have a fuller picture of the issues involved in requiring agencies to report on the use of these resources, and may have more information with which to balance the costs and potential benefits of imposing this requirement in the future.

Finally, we continue to view the administrative redress system for federal employees as inefficient, expensive, and time-consuming. Certain steps to relieve undue burdens on the system, such as eliminating mixed case appeals, would appear to make good sense, provided these actions upheld two fundamental principles: that of fair treatment for federal employees and of an efficiently managed federal government. In addition, our work on ADR suggests that, as one way of providing some relief to the administrative redress system, agencies would do well to make ADR more widely available to their employees.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or any other members of the Subcommittee may have.

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Department of the Air Force
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Social Security Administration
Defense Logistics Agency
National Guard Bureau
Federal Aviation Administration
Bureau of Prisons
Immigration and Naturalization Service
Forest Service
National Aeronautics and Space Administration
Customs Service
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Defense Finance and Accounting Service
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