

**Statement of Linda M. Springer**  
**Former Director of the Office of Personnel Management**  
**Former Office of Management and Budget Controller and Senior Advisor**

**Before the Committee on Oversight and Reform**  
**Subcommittee on Government Operations**  
**United States House of Representatives**

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Good Afternoon Chairman Connolly, Ranking Member Meadows and Members of the Subcommittee. Thank you for the opportunity to appear before the Subcommittee to testify about the Administration's plans to reorganize the Office of Personnel Management (OPM).

**Importance of this Hearing and Background**

The proposal we are examining here today has widespread implications. It is not just about an individual agency. It isn't even just about the executive branch of the government. The subject of our hearing affects millions of men and women, as well as their families, who have devoted all or a portion of their lives serving their country across the entire spectrum of the federal government. It affects how they are treated and cared for while they are employed and then into their retirement years. It deals with the value we place on the government's commitment to setting and overseeing policies that protect them and ensure they are treated fairly and equitably.

I am testifying at this hearing to bring a perspective and insights to inform your evaluation of this proposal. As a retired individual with no employment relationships, I have no other motivation and do not stand to gain in any way from the ultimate outcome of these deliberations. My insights are based on fifteen years of leading and advising federal agencies. As the director of the agency that is the target of the reorganization proposal, OPM, the controller and head of the Office of Federal Financial Management at the Office of Management and Budget (OMB), and a senior advisor to the OMB management area, as well as years of assisting agency management leaders as an outside advisor, I have credible, relevant experience behind the things I'm going to share with you. I am not a newcomer to the federal government. My forty years of professional experience, both in the public and

private sectors, is not just focused on one sub-area of management, such as technology. It is comprehensive and extensive.

This is an issue that rises above partisanship. The future of OPM and the statutory role it executes is important to all its stakeholders, regardless of political party. I also believe this proposal is not a presidential initiative, but rather the culmination of years of intent by OMB, spanning administrations of both political parties, to acquire ownership of personnel management policy from OPM. In fact, the original issuance of the proposal in June 2018 (and its drafting prior to that date) predates the Acting OPM Director's appointment to that position by four months. This intent has been married up with a misplaced private sector consolidation tactic that has resulted in the proposal to break up OPM. Frequent vacancies in OPM's top leadership positions, other issues in recent years causing less aggressive modernization, as well as a lack of acknowledgement by the Administration of alternatives to addressing institutional challenges, have been seized upon to justify this long-standing objective. Accordingly, my willingness to testify should be interpreted as a critique of the proposal and those who designed it, not the Administration.

What follows is a candid assessment of the development process and content of the reorganization proposal, as well as thoughts on the justification for the continued existence of OPM as an independent entity and its future. First, I begin with some historical perspective.

### **136 Years of Independent Central Personnel Management**

In one form or another, the federal government has had an independent central personnel management entity since 1883. Prior to passage that year of the Pendleton Civil Service Reform Act (Act), the spoils system for awarding federal jobs to political supporters was commonplace, even by the White House. The Act affirmed that government appointments should be based on merit. Other protections were established that previewed the Merit System Principles and prohibited personnel practices under which the government operates today. Importantly, the Act reestablished the Civil Service Commission to not only safeguard the merit system, but also execute other responsibilities such as administration of the government's personnel system.

In 1978, the Civil Service Reform Act (CSRA) put a sharper focus on workforce management oversight by replacing the Civil Service Commission with three successor agencies - OPM, the Merit System Protection Board and the Federal Labor Relations Authority. While the personnel management structure was updated, one thing didn't change. The CSRA strongly reaffirmed the commitment to the merit system and freedom from prohibited personnel practices. In fact, of the ten elements in the Findings and Statement of Purpose section of the CSRA, six of the first seven explicitly underscore these foundational principles. There was to be no doubt that a return to inappropriate political influence on workforce policies and actions would be a violation of the law.

The CSRA could have placed OPM in the Executive Office of the President (EOP). But it did not. Mindful of the past, it set OPM as “an independent establishment in the executive branch”. Independent agencies retain certain distinguishing characteristics. While their leaders are presidentially appointed, they do not technically serve at the pleasure of the president and often have term appointments. Such agencies are not buried inside executive departments and thus there is transparency over their actions. By retaining their own identities, independent agencies are more easily overseen by Congress and accountable to the public. In the case of OPM, this accountability extends to the workforce that it serves and protects.

The CSRA vests multiple responsibilities with the OPM Director, including “executing, administering, and enforcing [except for MSPB and Special Counsel duties] the civil service rules and regulations... and the laws governing the civil service.”

It’s important for today’s hearing to underscore these two characteristics: (1) OPM was to be an independent agency outside the EOP and (2) the OPM Director had the broad responsibility for civil service management.

Consistent with the CSRA was executive action taken by President Carter to transfer certain personnel management functions previously given to OMB by executive order to OPM.

### **Justification for OPM to be an Independent Agency – Critical Mass**

Perhaps the only criticism of the CSRA is the designation of OPM as an “office”. Even more so than in 1978, the present size and scope of its management, service and oversight responsibilities for millions of current and past federal employees are much broader than the name implies. They certainly justify OPM’s existence as an independent agency.

OPM is responsible for employee benefit programs whose size rivals or exceeds comparable functions in even the largest corporations. These programs and related responsibilities include:

- World’s largest employer-sponsored group health insurance program (FEHB program), including over 250 plan offerings to cover more than 8 million federal employees, retirees and family members worldwide
- Retirement and disability programs for 5.3 million active and retired employees and other annuitants, including multiple plans and specialized provisions such as for Members of Congress and congressional employees, U.S. Postal Service employees, law enforcement officers, firefighters, individuals with military service credits and other situations, as well as post-adjudication services
- World’s largest employer-sponsored group life insurance program covering more than 4 million employees, retirees and family members
- Oversight of prescription drug benefits administration by FEHB program health plans
- Multiple Flexible Spending Accounts for approximately 500,000 federal employees

- Other benefit programs including long term care, dental and vision

OPM is also responsible for oversight of human capital programs covering the approximately two million-person civilian workforce. Examples of these duties include:

- Workforce and strategic planning, implementation and evaluation services
- Position management and classification for agencies government-wide
- Operation of three centers of leadership training offering interagency and customized programs and courses for government employees, including the Federal Executive Institute
- Government-wide leadership on hiring and retaining veterans, transitioning military service members and their families into the civil service
- Providing guidance for human capital issues, personnel management and flexibilities in special circumstances such as nationwide pandemics, natural disasters and other emergencies
- Administration of the pay system for federal blue-collar workers
- Recruiting and examining administrative law judge candidates for employment at agencies nationwide
- Administration and analysis of the Federal Employee Viewpoint Survey
- Government-wide oversight of the Voting Rights Program that sends federal observers to monitor polling places and report back to the Department of Justice

### **Justification for OPM to be an Independent Agency – Merit System Protection**

Consistent with its historical legacy, OPM continues to execute responsibilities and establish policies that embrace and ensure merit system accountability. OPM’s status as an independent agency provides assurance that these responsibilities are conducted appropriately both in fact and in appearance. Examples include:

- Adjudication responsibilities for job grading and classification appeals
- Adjudication of Fair Labor Standards Act claims and other compensation and leave claims
- Policy guidance and review of agency requests to appoint political appointees to non-political or competitive positions to ensure Merit System Principles and legal compliance and prevent “burrowing in”
- Policies for excepted service hiring authorities
- Establishment and approval of special pay rates to address significant recruiting and retention needs
- Management of the federal executive personnel programs, including oversight and support for agencies in selecting, developing and managing federal executives, including the Senior Executive Service
- Review of appeals by individuals seeking federal employment that are barred due to non-registration with the Selective Service System

- Responsibility for government-wide Hatch Act regulations

### **Flaws of the Proposed Reorganization - Process**

A reorganization of the magnitude proposed for OPM is characterized by extensive analysis and consideration of its implications in advance of the decision on a course of action. I know from experience as a senior executive of a company involved in a \$1.5 billion merger, that this type of in-depth due diligence and organizational understanding is essential to achieving a successful outcome and avoiding initiatives that damage not only the principal entities involved, but other stakeholders, as well. Statements of opinions are no substitute for due diligence. In the case of the proposed OPM reorganization, the shortcomings of the few supporting documents that have been made public and the apparent insufficient response to the Subcommittee's data requests as evidenced by the Subcommittee's April 4, 2019 letter to the relevant appropriations committee and subcommittee leadership lead one to surmise that many of these steps have not been fully executed. Examples of the types of fundamental analysis required include, but are not limited to, the following:

- Comprehensive inventory and analysis of the migrating entity's functions and technology and the relevant counterparts of the acquiring entity
- Integration risks and challenges for all entities, including programmatic and execution; remediation plans; and the ability and capacity to execute the merger
- Impact on employees of all entities and review of labor-management agreements
- Inventory of and impact on all other stakeholders
- Inventory of and impact of all statutory and regulatory references and responsibilities of all entities involved
- Complete understanding of financial implications of the migration on all entities involved
- Inventory of and impact on existing contractual agreements
- Review and status of audit and other internal and external review findings
- Cost/benefit analysis
- Development and assessment of alternative options
- Justification for the selected option
- Complete, detailed development of future state organizational design
- Detailed migration plan, with milestones, metrics, stakeholder communications plans, assignments

It's important to underscore that a robust due diligence process will also focus on the acquiring entity, in this case the General Services Administration (GSA). This includes its pre-merger challenges and the impact of additional organizational stress on GSA's ability to address those current issues while effectuating an acquisition of a significant part of OPM's operations.

In addition to process deficiencies, a favorable determination about the proposed reorganization is prohibited by fundamental flaws in the associated business cases that have been offered. Several representative samples follow.

## **Flaws of the Proposed Reorganization – Unsubstantiated Plan to Migrate HRS to GSA**

OPM's Human Resources Solutions division (HRS) offers federal agencies a wide range of human resource management services. Some of these are provided on a fee-for-service basis to reimburse program costs. Departments and agencies are not required to use OPM's HRS services. They are free to choose from other federally-approved service providers.

A core component of the proposed reorganization is to move HRS to GSA. Just days prior to this hearing, the Administration released its legislative proposal to transfer HRS and other major functions to GSA and to house them in a new Personnel Service. We are told in the proposal that this service will be "on par" with GSA's Public Building Service and Federal Acquisition Service. The implication is that services and oversight to support federal civil servants are of the same significance as those for buildings and contracts. Further, the OPM Director, who will head this service, will be demoted and under the direction of the GSA Administrator.

Beyond those concerns, several underlying elements of the business case render this move problematic.

- There is insufficient commonality of services to be leveraged

HRS and GSA services are fundamentally different. HRS services are predominantly specialized, consultative and advisory. GSA's "human capital" portfolio is primarily in payroll and travel management, which are commodity, administrative services. Maintaining the schedule for acquiring human capital services from the private sector is no different than other service schedules that GSA administers in its role as the lead procurement administrator for the federal government. GSA advertises on its website that it offers HR consulting, although it is curious under what authority this is being done. Regardless, the reported 11,000 employees associated with its customers renders this program de minimis. In short, there is insufficient human capital service commonality to be leveraged.

- Human capital services do not need to be unified. They are centered in OPM.

Human capital services are already unified - in OPM. Payroll and travel management are administrative functions, not human capital management services. Any small HR consulting service offered by GSA should be transferred to OPM.

It's worth noting that under the Administration's new shared services policy, there will be four initial agencies that lead a shared service. Three of the four Quality Services Management Offices (QSMOs) - financial services, grants management and cybersecurity - are all housed at the department that has the subject matter expertise (Treasury, Health and Human Services, Department of Homeland Security). Only the human resources QSMO is moved from the subject matter agency (OPM). Why?

If human resource shared services are narrowly defined as administrative and commodity, rather than specialized consultative services, then there are other federal payroll centers besides GSA, including the Defense Finance and Accounting Services and the National

Finance Center, to consider. If GSA is looking for synergies for consolidation, perhaps they should focus there.

- Modernization of technology at HRS does not require the merger

GSA asserts it is “well-positioned to help agencies meet” IT improvement and modernization goals. It proposes that a merger is justified by an opportunity to improve technology supporting HRS, but never acknowledges that technology modernization does not require a merger into GSA. Has GSA acquired other federal agencies as a precondition for assisting them with technology improvement? Unlikely. Then why not assist OPM/HRS as with other agency clients?

In this context it is worth considering the source of funding for the proposed HRS technology improvement. A logical approach would be to use the fund established under the Modernizing Government Technology Act to strengthen and modernize OPM’s IT structure directly.

- The business case lacks fundamental data required to validate its assumed future state benefits.

The business case asserts a merger is justified by anticipated improved HRS performance, but never demonstrates that HRS is not meeting performance expectations currently. It asserts that the merger should enable HRS to “deliver services more quickly”. On what is this based? Does the Administration have baseline current and historical HRS speed of service delivery data? If so, why isn’t it presented?

Does the Administration know how well HRS performs today? Does it have performance metrics such as the following?

- Customer satisfaction
- Year-on-year change in amount of business (\$, number of engagements...)
- Repeat customers
- New customers

If it doesn’t have such baseline current state data, what is the basis for saying HRS performance can be improved? If the Administration does have it, why isn’t it in the business case? Either way, claims about post-merger performance improvement are not substantiated by data in the business case.

- Insufficient understanding of underlying causes of backlogs

While not part of HRS, backlogs in the background investigation and retirement application processing functions have been used to justify the move to GSA. The background investigation issue is discussed in the next section and it will no longer be an OPM issue after the NBIB transfer. The retirement administration situation is complicated with frequently conflicting data from multiple sources across the government and federal payroll centers on which OPM depends, but does not control. That is compounded by the many dozens of permutations of service and benefit formula calculations. This is an area that

needs to be addressed, however, the notion that GSA is prepared or is the best option to address the technology issues related to this complex situation raises skepticism, especially when it comes from an official that has only recently been introduced to OPM.

### **Flaws of the Proposed Reorganization – Erroneous Response to NBIB Transfer Financial Impact**

The recent transfer of the National Background Investigation Bureau (NBIB) to the Department of the Defense (DOD) and subsequent executive direction to consolidate other background investigation functions at DOD eliminate the undesirable bifurcation that would have resulted without a unified investigation structure. I endorse that consolidation. While significant case backlogs existed at DOD prior to the transfer of its background function to OPM during the Bush Administration, and the backlog spike in recent years, primarily due to the loss of a major portion of the investigation force after the USIS contract termination, is noticeably dropping pre-transfer, a unified operation makes sense.

A financial consequence of the transfer is the loss of revenue to OPM's revolving fund associated with NBIB's activities that is reported to be \$1.3 billion. The Administration asserts that this loss of revenue threatens the financial viability of OPM. This assertion is deficient and misleading in that there is no acknowledgement in the public document of the reduction in cost resulting from the NBIB transfer. The reader of the Administration's recent presentation is left with no ability to assess the net financial impact of the transfer on OPM. In fact, it is likely to be a fraction of the lost revenue. Subsequent to the distribution of this case study document, a \$70 million estimate of the net effect was offered, without any context such as whether all overhead costs previously associated with supporting NBIB were assumed to be eliminated or how direct costs were treated.

Further, the proposed remedy - a merger of OPM (or parts of it) with GSA - is offered as the solution to achieve "long-term financial stability for the human capital mission" by realizing efficiencies that would save tens of millions of dollars. We are not told how that figure was derived, what assumptions are involved or any other critical factors to assess the accuracy of that estimate. No alternative solutions are offered. Not a single one. In effect, the Administration is saying that absent this merger, the Government of the United States of America is incapable of providing its workforce with an independent central personnel management agency. Such a sentiment is an embarrassment.

Ironically, the document itself alludes to a solution to this supposed financial disaster. It is centered on exploring whether the trust fund expense reimbursement is at the proper level. If costs arising from trust fund administration are not fully covered by the current reimbursement, then a modest increase in the expense reimbursement ratio could free up appropriated funds currently used for trust fund support to cover some of the shortfall resulting from the NBIB transfer. It is entirely possible that a shortfall could be significantly addressed. Acquisition of OPM by GSA is not required to make this adjustment.

As with the HRS transfer proposal, the Administration has determined that OPM's IT infrastructure needs should be addressed by OPM becoming part of GSA. The statement is made that OPM has limited IT capacity as it "lies outside its core competency and fundamental mission." While IT and its security are of the utmost importance and OPM needs to substantially strengthen its technology capabilities, this statement begs the question of whether IT is expected to be a "fundamental mission" of OPM or most other agencies for that matter. I doubt most department and agency heads would articulate it in their mission statement. Regardless, IT issues at departments with FITARA scores like OPM's are being addressed without acquisition by GSA. The same can be done at OPM.

It is important to comment on the breach into OPM's systems that occurred several years ago. The breach exposed information that resulted in the potential for severe national security danger. Those of us whose tenures as OPM Directors preceded this timeframe felt a particular horror at what transpired. A comprehensive study on the breach was conducted and published in September 2016 by the House Committee on Government Reform. One near-term dimension of the response to the breach was to move responsibility for the background investigation IT system to DOD. OPM has already been relieved of its responsibility for that system in advance of the transfer of NBIB.

While this event was particularly regrettable, OPM is not the only agency to have experienced an IT system breach. Other agencies make the investment and changes to address IT weaknesses and there's no reason OPM shouldn't do the same.

### **Flaws of the Proposed Reorganization – Problematic Policy Migration to OMB**

Finally, and perhaps most distressing, the Administration's 2018 reform plan proposes transferring personnel policy functions into the EOP. It is contended that this would elevate workforce policy. In the days immediately preceding this hearing, we learned that the Administration's legislative proposal "transfers OPM's rulemaking authority to the Office of Management and Budget, to allow the new Office of Federal Workforce Policy to assume a policy leadership role." This new small OMB policy office would be under the direction of the OMB Deputy Director for Management (DDM), who reports to the OMB Director. In practice, the OMB Deputy Director is widely recognized as the number two official at the office, not the DDM. Burying federal workforce personnel policy in OMB is hardly an elevation.

Compounding the absence of visibility and independence of this proposed structure is the fact that the head of this new office will not be subject to Senate confirmation. This again reveals the autonomy and lack of accountability and oversight that OMB desires in its ownership of personnel policy.

The plan asserts a motivation to "modernize the approach to human resources policy", "so that evidence and leading practice can drive strategic management of the workforce". This directly implies that OPM is either unwilling to employ these practices or incapable of

so doing and that implementation can only be achieved by moving personnel policy to OMB. This implication is irrational and arrogant.

The reform plan further asserts that a whole of government approach to personnel policy would be facilitated by transferring OPM's policy functions to OMB. While it is not clear that this is entirely correct in the case of certain agencies like those in the intelligence community or the Government Accountability Office (which is specifically exempted in OMB's proposed legislation) for example, it is true that some agencies or parts thereof have authorities outside of Title 5 of the U.S. Code. However, the vast majority of federal agencies fall either fully or partially under Title 5 and there is nothing that prevents OPM from collaborating with any agency regarding insights even where there is not a jurisdictional obligation. For these reasons, this assertion is overstated.

Another concerning objective for federal personnel policy is embedded in the reform plan's diagram that presents Organizational Roles. A goal to "Align federal HR standards to Private Sector" evidences the lack of appreciation for the most fundamental difference between public and private sector personnel challenges - the need to guard against the prohibited personnel practices that gave rise to the merit system. Indeed, there is no reference to Merit System Principles anywhere in either the Future State Vision, New Organization Structure or Organizational Roles displays. Recently reported statements from Administration officials also indicate ignorance of the significance of this system by equating it simply to a lack of performance recognition in compensation.

A far more serious concern with this proposal is that it puts a White House office in the position of setting personnel policy in areas that are directly tied to merit system protection. Is it reasonable for a White House office to issue policy guidance and review requests to appoint political appointees to competitive positions? Or to take OPM's responsibilities for setting policies for excepted service hiring authorities? Should establishment and approval of special pay rates be decided by OMB? Or review of appeals by individuals (some of whom have been politically active) seeking federal jobs for exceptions from the Selective Service System registration requirement? How about responsibility for developing Hatch Act regulations? A provision to delegate rulemaking to GSA only creates an option to do so. Any White House could easily elect to retain full ownership for personnel policy.

The proposal places federal personnel policy setting right back in a place where the spoils and patronage system had taken hold. At best the optics are terrible. But even worse is the opportunity it creates for enabling a return to unfair personnel practices. Mechanisms for appealing such practices would still exist, but why create a situation that retreats from the statutory safeguard of having personnel policy set in an independent agency?

## **An Alternative Path for OPM**

The future for OPM should not be the status quo. The sky is not falling, but no one proposes that nothing should be done to address existing issues. However, OPM should be revitalized - not eliminated, carved up or subsumed.

Like other departments and agencies, OPM needs to refocus on its core statutory mission and original intent. It needs to eliminate functions that are duplicative, obsolete, low value or peripheral to its mission. This was the essence of the federal government reform program that was launched early in this Administration. I led the initial months of that initiative when I served as Senior Advisor to the management area of OMB. I can confidently say that what has emerged as the OPM reorganization plan was never in view during my tenure, nor would it have seen the light of day.

OPM has always had deep federal personnel policy knowledge and subject matter expertise. Many of OPM's responsibilities are executed reliably and accurately. Remarkably, over the past year since the announcement of the plan to carve up their agency, OPM employees have continued their dedicated service. However, OPM must finally evolve from its reputation of sluggish service delivery and antiquated technology. In some instances, this profile is very real and in others it is mostly a perception. It really doesn't matter which is the case. OPM's services need to become more visionary and innovative in content as well as delivery. It needs to incorporate such techniques as predictive analytics to anticipate the personnel management demands of the future and move to a proactive, rather than reactive, posture.

As noted earlier in this statement, Congress provided a mechanism for agencies like OPM to address information technology challenges – the Modernizing Government Technology Act of 2017 (MGTA). The MGTA stated in its Findings that “the Federal Government spends nearly 75 percent of its annual information technology funding on operating and maintaining existing legacy information technology systems. These systems can pose operational risks, including the inability to use current security best practices...”. This describes many federal agencies, not just OPM. OPM is not alone in its technology challenges or the MGTA wouldn't have been necessary. MGTA is designed for agencies in OPM's situation and it should use the Act as part of its IT modernization process.

OPM needs a contemporary organizational design, streamlined processes, secure, nimble supporting technology and fresh talent where there are gaps. The transfer of NBIB to DOD gives OPM the opportunity to focus on a more manageable universe of operations to achieve this objective.

Addressing OPM's issues, contemporizing its service delivery, reestablishing its priorities and creating a new culture is achievable with the right leadership, expertise and resources, including funding. Some of this expertise of necessity will come from outside the agency under the leadership, ideally, of a director and executive team who are proven large

organization fixers and committed to this vision for the OPM of the future. The point is that the reform plan should be focused on making OPM smart, not obsolete.

### **A Charge for Congress**

The authors of the Civil Service Reform Act of 1978 rightly recognized that the size, scope and political abuse-protection demands of the federal government's personnel management function required the leadership of a dedicated, independent, central agency. Those attributes are as significant in 2019 as they were in 1978. The fundamental question is whether the federal government workforce and other stakeholders deserve that same service and protection today. This is not a "Washington-centric institutional orientation that created a false equivalency between OPM...and merit system principles". Nor is it a partisan issue.

Will this Congress stand with the leaders of the past who established the Merit System Principles and codified the independent agency to oversee compliance to them? Or will its legacy be one of introducing the risk of a return to inappropriate political influence on federal personnel practices and policy, and tearing apart the independent organization that has stood in the vanguard against these practices? This Congress can add its name to the protectors of the past by putting an end to this misguided reorganization plan. There is no other acceptable alternative.