OUTSOURCING OF OPM'S INVESTIGATIONS PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

JUNE 15, 1995

Printed for the use of the Committee on Government Reform and Oversight



U.S. GOVERNMENT PRINTING OFFICE

38-530 CC WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-054284-7

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

WILLIAM F. CLINGER, JR., Pennsylvania, *Chairman*

BENJAMIN A. GILMAN, New York
DAN BURTON, Indiana
J. DENNIS HASTERT, Illinois
CONSTANCE A. MORELLA, Maryland
CHRISTOPHER SHAYS, Connecticut
STEVEN SCHIFF, New Mexico
ILEANA ROS-LEHTINEN, Florida
WILLIAM H. ZELIFF, JR., New Hampshire
JOHN M. McHUGH, New York
STEPHEN HORN, California
JOHN L. MICA, Florida
PETER BLUTE, Massachusetts
THOMAS M. DAVIS, Virginia
DAVID M. McINTOSH, Indiana
JON D. FOX, Pennsylvania
RANDY TATE, Washington
DICK CHRYSLER, Michigan
GIL GUTKNECHT, Minnesota
MARK E. SOUDER, Indiana
WILLIAM J. MARTINI, New Jersey
JOE SCARBOROUGH, Florida
JOHN SHADEGG, Arizona
MICHAEL PATRICK FLANAGAN, Illinois
CHARLES F. BASS, New Hampshire
STEVE C. LATOURETTE, Ohio
MARSHALL "MARK" SANFORD, South Carolina
ROBERT L. EHRLICH, JR., Maryland

CARDISS COLLINS, Illinois
HENRY A. WAXMAN, California
TOM LANTOS, California
ROBERT E. WISE, JR., West Virginia
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
JOHN M. SPRATT, JR., South Carolina
LOUISE McINTOSH SLAUGHTER, New York
PAUL E. KANJORSKI, Pennsylvania
GARY A. CONDIT, California
COLLIN C. PETERSON, Minnesota
KAREN L. THURMAN, Florida
CAROLYN B. MALONEY, New York
THOMAS M. BARRETT, Wisconsin
GENE TAYLOR, Mississippi
BARBARA-ROSE COLLINS, Michigan
ELEANOR HOLMES NORTON, Washington, DC
JAMES P. MORAN, Virginia
GENE GREEN, Texas
CARRIE P. MEEK, Florida
FRANK MASCARA, Pennsylvania
CHAKA FATTAH, Pennsylvania

BERNARD SANDERS, Vermont (Independent)

JAMES L. CLARKE, *Staff Director*
KEVIN SABO, *General Counsel*
JUDITH McCOY, *Chief Clerk*
BUD MYERS, *Minority Staff Director*

SUBCOMMITTEE ON CIVIL SERVICE

JOHN L. MICA, Florida, *Chairman*

CHARLES F. BASS, New Hampshire
BENJAMIN A. GILMAN, New York
DAN BURTON, Indiana
CONSTANCE A. MORELLA, Maryland

JAMES P. MORAN, Virginia
BERNARD SANDERS, Vermont (Ind.)
FRANK MASCARA, Pennsylvania

EX OFFICIO

WILLIAM F. CLINGER, JR., Pennsylvania
CARDISS COLLINS, Illinois

GEORGE NESTERCZUK, *Staff Director*
NED LYNCH, *Professional Staff Member*
CAROLINE FIEL, *Clerk*
CEDRICK HENDRICKS, *Minority Professional Staff*

CONTENTS

	Page
Hearing held on June 15, 1995	1
Statement of:	
Bowling, Timothy P., Associate Director of the Federal Human Resource Management Issues, General Accounting Office, accompanied by Alan Belkin, Office of General Counsel, General Accounting Office, and Deborah Taylor, Accounting Division, General Accounting Office	83
Clark, Michael, Federal Investigators Association; Arthur Cordova, ADC Ltd.; and Herbert Saunders, Varicon	100
King, James B., Director, Office of Personnel Management, accompanied by Patricia Lattimore, Assistant Director, Office of Personnel Management, and Lorraine Lewis, General Counsel, Office of Personnel Management; and G. Edward DeSeve, Controller, Office of Management and Budget	10
Letters, statements, etc., submitted for the record by:	
Bowling, Timothy P., Associate Director of the Federal Human Resource Management Issues, General Accounting Office, prepared statement of	86
Clark, Michael, Federal Investigators Association, prepared statement of	103
Cordova, Arthur, ADC Ltd., prepared statement of	111
King, James B., Director, Office of Personnel Management, prepared statement of	13
Lattimore, Patricia, Assistant Director, Office of Personnel Management, information concerning deficient investigations	80
Moran, Hon. James P., a Representative in Congress from the State of Virginia, prepared statement of	8
Reams, Ronald A., Director of Investigations and Counterintelligence, Bureau of Diplomatic Security, U.S. Department of State, prepared statement of	152

OUTSOURCING OF OPM'S INVESTIGATIONS PROGRAM

THURSDAY, JUNE 15, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:10 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Bass, Moran, and Mascara.

Ex-Officio member present: Representative Clinger.

Also present: Representative English.

Staff present: George Nesterczuk, staff director; Ned Lynch, professional staff; Caroline Fiel, clerk; Adya Denysyk, intern; Cedric Hendricks, minority professional staff; and Jean Gosa, minority staff assistant.

Mr. MICA. Good morning. I'd like to call this meeting of the Civil Service Subcommittee to order. I apologize for being late; I'm working on the art of being at two places at once, and haven't quite accomplished that objective. But this morning, we're going to have our second hearing on the privatization of OPM's Office of Federal Investigations.

This is our second day of hearings relating to policies and procedures governing background investigations for Federal employment. I believe that yesterday's hearing provided essential background information that demonstrated, for this subcommittee, that other Federal agencies—OPM customers—have serious concerns about the security and suitability of applicants for Federal employment. And background investigations can provide useful information to resolve questions about employment qualifications.

We know from previous GAO reports that Federal agencies currently contract with private firms for approximately $20 million worth of investigation services annually. In its written statement, the Department of State reported conducting many of its background investigations through personnel service contracts with independent investigators. Even the Department of Defense, with substantial security concerns, contracts for approximately 5 percent of its background investigations. We learned yesterday that the costs of background investigations can vary widely, with the Defense Investigative Service estimating its full background investigation costs were somewhere in the neighborhood of $1,750 apiece; where OPM estimated its costs at around $3,300 per case.

This range indicates that even if OPM were to retain the function, some effort should be made to bring its costs into line. While both agencies that appeared before us yesterday supported the administration's initiative to create an Employee Stock Ownership Plan—ESOP—with the Office of Federal Investigations, I think that it's important to put on the record the qualifications that agencies have written in response to our invitation to testify.

For example, the Department of Energy reported to us that it is developing a state-of-the-art automated integration of personnel security and other data bases, which rely upon a linkage to the OPM Federal Investigations Processing Center. The statement from the Department of Energy Deputy Secretary William White, which arrived after yesterday's hearing, emphasized, and I quote:

> If the FIPC should be disrupted, either through direct dismantlement, or through an inability to receive a suitable investigative product from the Office of Federal Investigations, this innovative automation effort will fail. This will be at a cost of not only millions of dollars, but also at an incalculable cost in lost productivity.

The record appears clear that background investigations related to Federal employment can be done by private sector organizations. It appears equally clear, however, that any decision about creating a new organization to conduct these investigations should be based in a rational business plan that is consistent with the Government's own standards for cost comparisons, while it incorporates other planning factors and legislative requirements.

From all appearances, the administration's planning in this regard appears to be deficient. According to the only estimate on the record, the administration's fiscal year 1996 budget has forecast that OPM's privatization initiatives relating to investigations and training will save $30 million over 4 years. That amounts to 4 percent of the combined training and investigations budget.

By standards established in OPM Circular A–76, a proposal to contract out a function must show a 10 percent savings, or the activity must remain in house. There is no evidence on the record, however, that a cost comparison has been completed. Indeed, OPM Associate Director, Patricia Lattimore, will be quoted by another witness today as stating that cost is not the issue.

If cost is not the issue in a proposal that purports to save $30 million, we have to ask, what is the issue? On April 1st, I wrote to the General Accounting Office to request that the GAO review business plans and evaluate any projected savings associated with this proposal. In May, OPM published a request for a proposal seeking a private contractor to develop a business proposal.

That contract was awarded last week. This appears to me that 6 months after a leading proposal was announced, its initial planning phases are just beginning. Even though the planning for the development for an ESOP appears to be in beginning phases, news reports associated with the announcement of the contract claim that if the ESOP is going to succeed, it will need commitments from half the investigators by August.

In effect, then, investigators are being asked to make firm commitments to a proposal that, from all available evidence, is on rather shaky ground. Indeed, so far, this proposal has all the earmarks of sort of an "Alice in Wonderland" tale, that gets more curious with every question asked. The answers on the record are less than

impressive, and there are many indications of an administration at odds with itself in this process of reinvention.

From the beginning, the administration has trumpeted the concept of employee empowerment, and encouraged the reinvention of government to proceed from the bottom up, working through partnership councils. Few people seem more isolated from this proposal than the employees. Not only has this subcommittee and the chairman heard from many investigators, often using official fax machines and letterheads and other public expense communications, but many Members have received complaints about the tactics used to generate an appearance of support for this proposal.

From all evidence provided to us, these efforts have been futile. And support from investigators appears to be almost non-existent. On the basis of what I've seen so far, I find no basis for the Congress to encourage anyone to proceed with this endeavor. We are holding this hearing to enable the administration to put on the table some of the answers to the questions that trouble everyone who examines the process.

We'll also provide the GAO an opportunity to evaluate several dimensions of the fiscal, legal, and procedural claims being made for this unique proposal. Today's hearing also provides an opportunity for private business firms and the private sector and for representatives of Federal investigators to give us additional perspectives on these issues. I look forward to this session, and hope that we can complete this morning's business and obtain some better answers to questions that we've posed during the last 6 months.

And it is an important hearing, because we have literally hundreds of people's careers and livelihoods at stake, and also tens of millions of taxpayer dollars. So we do look forward to the process. With those comments, I see we have the chairman of our full committee with us, and Mr. Chairman, would you mind if I yielded first to our single minority member here, the distinguished gentleman from Pennsylvania, Mr. Mascara; because I think he has another appointment. Mr. Mascara.

Mr. MASCARA. Thank you very much. Thank you, Congressman Clinger. Good morning, Mr. Chairman. Looking out over our panel of witnesses this morning, I'm getting a real sense of deja vu. I only wish the situation had changed overnight for the better, but I'm afraid that is not the case. As I indicated quite clearly yesterday morning, I'm deeply troubled by the whole idea of privatizing OPM's Office of Federal Investigations.

The most basic questions about how this effort would work have not been clearly answered. No one seems to know whether the establishment of an ESOP would actually save any money. And perhaps more importantly, no one seems to know whether the Government could still count on receiving reliable quality professional background checks. My staff had been briefed on the GAO testimony, but I must say, what we are going to hear this morning is much more troubling than I had anticipated.

GAO officials will testify that not only is the $30 million savings figure, estimated by the Office of Management and Budget, based on very flimsy assumptions, but also that the deficit attributed to the OFI's revolving fund—the primary reason for privatizing—is questionable. According to GAO, OPM has been assigning an exces-

sive amount of overhead costs to the OFI operations; approximately 19 percent in fiscal year 1994, a figure GAO considers to be very high.

Moreover, this high overhead rate is apparently a major reason why the OFI fund has reported deficits since 1986. Further, GAO says OPM's methodology did not take into account some basic costs, such as severance pay and unemployment. If this wasn't bad enough, unfortunately, GAO found several other major problems that could, by themselves, stop this proposal in its tracks—a notion which I frankly think might be the wisest move at this point.

State law enforcement agencies contacted by GAO made it very clear they would be unwilling to share sensitive information and criminal records with private groups such as the proposed ESOP. The Departments of Justice and Treasury officials also told GAO they would be reluctant to share information with such a privatized operation. That's a question I raised yesterday during the question period.

Another major problem is that OFI employees are upset and angry, to put it mildly, and are currently in no mood to join the proposed ESOP work force. Apparently, the ESOP will need a commitment from 50 to 75 percent of the current work force, to make the ESOP fly. GAO politely says this kind of sign-up rate is basically a pipe dream, and is not going to happen.

GAO itself heard from more than 200 OFI workers, all expressing their displeasure at the OPM plan. The testimony Mr. Clark will present can only be described as the potential straw that breaks the camel's back. It paints a most disturbing picture. As I indicated yesterday, I simply do not understand why OPM officials are refusing to look at any other solutions to this dilemma.

I appreciate the fact that Director King is following budget orders set down by OPM and the White House. But this whole situation is like a car being driven down a road at night without its headlights on—it is bound to crash. Again, I implore my colleague to stop this flawed effort now. This whole situation needs to be reevaluated before it is too late.

The good and hardworking OFI employees, who have by all accounts served their country well over the years, deserve better treatment. And as the chairman indicated, I must leave for a while, duty calls. I have a Veterans Committee mark-up, and will be looking at the Agent Orange bill. So I ask you to bear with me, and I'll be back shortly. Thank you very much, Mr. Chairman.

Mr. MICA. Thank you, Mr. Mascara, and I'd like to yield now to our chairman, Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr Chairman. I commend you for holding this series of hearings on a very critical and controversial proposal. The subcommittee, as I understand it, will continue to hear testimony today on the administration's proposal to privatize the investigations and training functions of the Office of Personnel Management. In particular we'll be looking at creating the ESOP that you referred to, with the Office of Federal Investigations, so that current employees would continue to carry out their functions as an employee owned, non-governmental entity.

This proposal is one of the administration's reinventing government initiatives, which were included in the fiscal year 1996 budg-

et request. And as the chairman of the full committee, I appreciate and welcome the administration's efforts to make Government more efficient and less costly. And I think the committee has established a pattern of being in cooperation with the administration on some of these efforts.

Over the coming months, this committee has been designated to play a critical role in transforming the Federal Government and redefining the roles and relationships of Federal, State, and local governments. And I hope to continue to work in cooperation with the executive branch as we meet this challenge. At this time, I will not dismiss any serious proposals to restructure the Federal Government.

We will privatize, eliminate, downsize, and devolve where that activity is appropriate. Nevertheless, merely downsizing for the sake of downsizing and privatizing for the sake of privatizing is neither responsible nor practical. We have to ask ourselves basic tough questions about each proposal to transform the Federal Government.

For instance, is the program a necessary function of the Federal Government, due to Constitutional, national security, or cost efficiency considerations? Can the private sector or another level of government do it more effectively? Will we be sacrificing or improving the quality of services? Are we truly saving the American taxpayers money, or just reshuffling responsibilities?

These are just some of the questions that members of this subcommittee have been and will continue to be asking, with regard to the administration's ESOP proposal. I, myself, do have a number of questions about the proposal, and I hope that today's hearings will put to rest my concerns, or at least that we'll get some answers to some of the concerns that the chairman has raised and others.

Nonetheless, let me run down a list of just some of my concerns. First, I question the cost savings associated with the plan, as Mr. Mascara has done, and as Mr. Mica has done. To my knowledge, no formal cost analysis has been conducted. The administration claims it will save $30 million, which is 4 percent of the training and investigation's budget. As Chairman Mica mentioned, OMB standards require functions to remain in house, if contracting out does not yield 10 percent savings.

If in fact we are pursuing illusory savings, why are we wasting our time? Second, I'm concerned that no business plan exists, in particular. A number of agencies have expressed reservations about the proposal because they feel the quality of service will suffer. What will be OMB's role in assuring that the new organization maintains the quality standards of investigative services that Federal agencies have come to expect?

Third, the promise of a sole source contract to the new organization troubles me deeply. To attract employee support for OPM's plan, and to ease employee concerns about the viability of a privatized Office of Federal Investigations, a commitment has been made to award a sole source contract to the new corporation to conduct background investigations for all Federal agencies. And this arrangement would flout Federal acquisition regulations, which require all large Government contracts to be competitively bid, absent some overwhelming reason to grant a waiver in that regard.

If the Federal Government cannot competitively bid out our investigation contracts, how are we expected to save money?

Finally, despite efforts to solicit employee support for the proposal, many employees are resistant to the proposed changes. The Federal Investigations Processing Center in Boyers, PA, is located just outside my congressional district, and many of the employees are my constituents. And I've heard from as many as 100 employees or more at the Boyers facility, who are strongly—I repeat, strongly—opposed to the plan.

So the success of the ESOP initiative hinges on employee support and participation. If experienced investigators and OFI staff leave for other Federal jobs or private sector employment with established investigative firms, the quality of service of investigations will suffer; or worse, the new corporation will fail.

Mr. Chairman, these are among my top concerns with the administration's privatization proposal. I look forward to listening and reviewing today's testimony, and hope some of my questions and yours will be answered, and some of our fears eased. And again, I commend you on holding these very important hearings.

Mr. MICA. Thank you, Mr. Clinger, and I'd like to welcome our first panel this morning. We have Mr. James King, the Director of Office of Personnel Management; Mr. Edward DeSeve, Controller of the Office of Management and Budget. Ms. Lorraine Lewis, OPM General Counsel; and also Pat Lattimore, who was with us yesterday, who oversees this program.

As is customary, ladies and gentlemen, if you could please stand I'll swear in our witnesses. Raise your right hands.

[Witnesses sworn.]

Mr. MICA. If you don't mind, we've been joined by our ranking member, and he may have some opening comments, as he gets his papers together here. We would like to welcome him and see if he has some opening salvos.

Mr. MORAN. Well, I can actually wing it, Mr. Chairman, without getting the papers together here, I think. I appreciate your yielding to me. The investigations function of the Office of Personnel Management is an unusual one. I don't think it fits in the traditional blocks of organizational theory, because it's not something where you can predict a normal day in and day out workload.

You would assume that it would lend itself to contracting out, since it is the kind of function where you may have extraordinary demands on people for two or 3 months, and then not so for another year or so. And the period that we're in right now, you wouldn't think that there's going to be a lot of buildup; that in fact most of what we're doing is downsizing.

But there have been periods when there's been extraordinary demands made upon the OPM people. I think that the Office of Personnel Management investigations staff has done a very good job. And they are probably the only professionals who could perform that job in as satisfactory a manner and professional a manner as they have. The problems with contracting it out may not appear evident on the surface. But there are several.

One, of course, is access to the kinds of sensitive information that the Government has, that private contractors would not and should not have access to. Another problem is the experience that we've

had, and that came up yesterday—where we have tried to contract it out, almost 10 years ago, and it was an absolute unmitigated failure. We asked for over 40,000, 42,000, I think, background checks to be conducted, and about 3,300 were conducted; and most of those were pretty poorly done.

So I would not want to contract out something with that kind of experience behind us. I think we ought to be very careful before we do that. Now, the ESOP is a creative concept. I'm not sure that it is going to work in the manner in which we would hope it would. And I have some problems with the fact that we pulled back the delegation to the Commerce Department and all.

That is the purpose of this hearing today, to get a sense of how the new creative approach might work. But I think we owe some responsibility to the OPM employees who have conducted themselves in a very professional, very satisfactory—and I could probably use a much, and should use a much more generous term than that—manner throughout their employment.

And those are the people that we clearly need, and I would not want to see them lost to the Federal Government. Because there's no way of telling when, and to the extent to which, we might need their services in the future. So with that, Mr. Chairman, let's go ahead and hear from the people who are charged with making this responsibility and carrying out this responsibility and making these recommendations. I'm glad that you have the right people before us this morning, and that you're having the hearing. Thank you, Mr. Chairman.

[The prepared statement of Hon. James P. Moran follows:]

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

SUBCOMMITTEE ON CIVIL SERVICE RANKING MINORITY MEMBER

COMMITTEE ON INTERNATIONAL RELATIONS

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

JAMES P. MORAN
8TH DISTRICT OF VIRGINIA

WASHINGTON OFFICE:
405 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4608
(202) 225-4376

Congress of the United States
House of Representatives
Washington, DC 20515-4608

Statement of Representative James P. Moran
on Privatization of the OPM Investigations Program
Subcommittee on Civil Service
June 15, 1995

Mr. Chairman:

I appreciate your having this hearing today.

I am concerned about the decision to privatize the Office of Federal Investigations and the impact this decision will have on future federal background investigations. The problem I have with this proposal is that it does not appear to have been adequately thought out and considered before being proposed. I first heard of this initiative in February when the President submitted his first budget to Congress. It was part of the Reinventing Government Phase II initiative where the Vice President proposed that every agency examine its different functions to determine whether they are inherently governmental or could better be performed by the private sector. Like Phase I of Reinventing Government, Phase II made a broad policy announcement and then offered a sacrificial cow to show that the policy was actually being followed through. In Phase I, the sacrificial cow were the 252,000 federal employees. In Phase II, it is the OPM Investigations.

There are functions of the federal government that could and should be privatized. There are functions that could be devolved to state and local governments. But there are some functions that are inherently government and must stay within the federal government. Either way, whether the decision is to privatize, devolve, or retain we must know exactly what we are doing and what the consequences of our actions will be.

As Ms. Latimore testified yesterday, there were approximately 39,000 background investigations conducted by OPM last year alone. There were approximately 5,817 investigations performed by private contractors working for those agencies with delegated authority in FY93. While I do not doubt that the private contractors do their best to provide accurate investigations, I do not think they can absorb 39,000 additional investigations on January 1, 1996.

I also do not think the agencies which represent OPM's current clientele have the resources or the training to accept the responsibilities that will be thrust on them by this

PRINTED ON RECYCLED PAPER

proposal. As OPM has shown in the past, there are problems and deficiencies found in contracted out investigations. The majority of these are caused by the agencies not following through and investigating those areas the contractor cannot. Contractors cannot obtain National Agency Check information such as FBI fingerprints and name checks, Defense Clearance and Investigations Index, Bureau of Vital Statistics verification, and confirmation that the applicant has registered with the Selective Service. Can we be sure that some of the smaller federal agencies, facing different budgetary constraints of their own, will be able to do these checks? This is a questions that should have been asked in February.

I understand the interest in creating an Employee Stockownership Plan. I appreciate the commitment OPM has made to its employees and its constituents. But I fear that the ESOP will not succeed and that we may be setting these employees up for failure. The ESOP can only succeed if it absorbs all of the current OPM investigations workload. It will get this contract only if it is sole-sourced. As we heard yesterday, this sole-sourcing will immediately generate a law suit that will tie up the contracts. There have also been indications that an effort will be made to prevent any sole-sourcing in FY1996 Appropriations. This is going to make it more difficult for the employees and the constituent agencies that rely on these investigations.

One of my concerns is that there has never been a fall back plan on which we could rely if the ESOP proposal fell through. As far as I am aware, there has never been any point in which OPM was able to make the decision on whether they should go through with the privatization plan or not. The privatization proposal came from above and OPM only has the responsibility to carry it out. This is not the way to properly reinvent government.

Again, I appreciate your holding this hearing today and I look forward to the testimony of our witnesses.

Mr. MICA. Thank you, Mr. Moran. Again, welcome Mr. King. It's good to see you again. Yesterday, we tried to look at some of the oversight background of this issue. Mr. Mascara jumped the gun a little bit, and got into some of your plans which we wanted to hear, and other members did, too. But Ms. Lattimore handled it very well. She said that the program was so messed up that only you could explain it. So we're glad that you're here today, and we look forward to your explanation. We'll have to check the record to see if those were her exact words. Welcome, Jim.

STATEMENTS OF JAMES B. KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY PATRICIA LATTIMORE, ASSISTANT DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT; AND LORRAINE LEWIS, GENERAL COUNSEL, OFFICE OF PERSONNEL MANAGEMENT; AND G. EDWARD DESEVE, CONTROLLER, OFFICE OF MANAGEMENT AND BUDGET

Mr. KING. Thank you, Mr. Chairman, and thank you, Chairman Clinger, for being here, also Mr. Moran and Mr. Mascara and the subcommittee. It really is an opportunity for us to testify on the privatization of OPM's Office of Federal Investigations. You have my prepared statement, Mr. Chairman. I believe you've distributed it to the committee.

Mr. MICA. Without objection, we'll enter that as part of the record.

Mr. KING. And you also have our detailed answers to your very specific questions. And if you would be kind enough to account that for the record, sir.

Mr. MICA. That will also be part of the record, without objection.

Mr. KING. Thank you, Mr. Chairman. At this time, and with your permission, Mr. Chairman, I'd like to open with a much briefer statement. The futurist Alvin Toffler said something that sums up much of what we at OPM are trying to accomplish. And I quote, "Our moral responsibility is not to stop the future, but to shape it, to channel our destiny in humane directions, and to ease the trauma of transition."

And that, essentially, will be the context in which I would speak today, and will reflect back on that; and hopefully will respond to your specific questions and concerns as expressed through you from a number of witnesses and other sources that have come to you. Mr. Chairman, we are here to talk about the future of Government. Everyone agrees there must be change.

The President believes that; the Congress believes that; this committee believes that; and the voters, in two past elections, have shown that they want change, and that clearly includes a smaller, more efficient Federal Government. President Clinton made clear his commitment to change in 1993, when he commissioned the National Performance Review, known as NPR, and then endorsed its historic call for government that works better and costs less.

As you well know, this administration has begun a massive downsizing of the Federal Government. More than 100,000 jobs have been eliminated already, as well as many other reforms, to make the entire Government serve our customers—the American

people—better. Among the concepts the National Performance Review has embraced is that of privatization.

I think that's totally consistent with your hearings in March of this year, in which you talked about contracting out, which is also another phrase for privatization in some form or another. At the President's request, Federal agencies have taken a hard look at themselves. And as a result of these deliberations, last December, as a second phase of the reinvention of government, the President announced that large parts of OPM's training and investigations functions would be privatized.

We're here today to discuss the privatization plan for our investigations unit. We are breaking new ground, Mr. Chairman, as you so well know. But this plan was not hastily arrived at. We have sought from the first to do it as right for our employees, for our customers, and for the American taxpayers. We view it all as being in the public interest.

We have talked with our employees. We have talked with our customers. We have sought expert advice in the form of in-depth feasibility studies that concluded that privatization in the form of an employee stock ownership plan, or ESOP, if you will, can work; but only if guaranteed OPM's business for a period of time. We have awarded a contract to a leading bank to develop the ESOP plan.

And it will team with an equally distinguished law firm and investment banking firm to carry out this responsibility. We have kept our employees informed every step of the way. Some have disagreed with the plan. Some have resisted it. But they have been consulted and informed all the way. We are proceeding with all deliberate speed; with the speed the American people demand; and yet one thoughtful step at a time, making sure we build a solid foundation.

We've thoroughly examined and continue to examine the legal and administrative issues that surround this action. We believe it can succeed, but only if the new organization is given the help it deserves. Let me stress this point. The ESOP cannot work without the sole source contract that we propose. Therefore, if there is no sole source, we gut the idea of ESOP, and ESOP is the other end of privatization.

If you would, Mr. Chairman, I just have a very, very simple chart, because sometimes I think that the idea is that the decision on privatization is on this side. The sole source and employee ownership is here. And the other option is that they work for another. So if you will, Mr. Chairman, we're talking ESOP, but it's the other side of the decision.

And therefore, the employees' option really would be they either have an organization—which is the ultimate empowerment—their own organization to run and be properly structured and supported. Or they go to work and go to the street and hopefully get hired by a contractor, doing the same work.

So we're not discussing the ESOP as a necessary part of privatization. What we're talking about is ESOP as the extension after the decision has been made. And we'll talk more to both of those as the chair wishes. We do not propose to put these employees out on the street. We do not propose economic Taoism.

And we do propose to give these workers the tools to succeed on their own. So I must say to the members of the subcommittee, if you believe in downsizing, we believe it must have a human face. The sole source contract is the gate to an employee-owned operation. It is the only option that will give us a viable organization—us being the Federal Government—as well as a seamless transition into the future and continuity of service to our customers.

Everywhere you talk about reinvention, about more effective, more efficient government. But do we really want to do something about it? Is privatization to be rhetoric or reality? We would like it to be a reality. And we ask for your support on a well-planned humane and good faith proposal that we have put forward to you. If streamlining is the way of the future, Mr. Chairman, then let us get it right, now at the very start.

And that's why, Mr. Chairman, these hearings are so significant. We speak of thousands of people being affected at the very base of their lives—their jobs. We understand that. And the question before us is that if we're going to downsize, if that's what we're looking at in government, will we give the employees the ultimate economic empowerment to control their lives once that decision has been made?

It is not the ESOP that privatizes them, it is the question of, if we're going to privatize, do we support our Federal employees, and do we have a responsibility to them? That is the issue that we'll discuss, and that will be the context in which we'll try to be responsive to all of the questions that have been raised by all of the parties. And I'd like to thank you, Mr. Chairman. And we'd like to answer any questions you or the subcommittee may have.

[The prepared statement of Mr. King follows:]

STATEMENT OF
HONORABLE JAMES B. KING, DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

at an oversight hearing on

POLICIES GOVERNING BACKGROUND INVESTIGATIONS
FOR FEDERAL EMPLOYEES
AND THE
OFFICE OF PERSONNEL MANAGEMENT'S PROPOSAL
TO CREATE AN EMPLOYEE STOCK OWNERSHIP PROGRAM
TO PERFORM RESPONSIBILITIES CURRENTLY WITHIN
THE OFFICE OF FEDERAL INVESTIGATIONS

JUNE 15, 1995

Mr. Chairman, I thank you and the subcommittee for this opportunity to testify on the privatization of OPM's Office of Federal Investigations.

Permit me to begin with a quotation from the futurist Alvin Toffler which I believe puts what we at OPM are doing in context, both as to the process and our goals:

"Our moral responsibility is not to stop the future, but to shape it, to channel our destiny in humane directions, and to ease the trauma of transition."

Mr. Chairman, OPM and its predecessor, the Civil Service Commission, have been carrying out investigations since the 1950s. We provide this service on a reimbursable basis, within a revolving fund. In recent years we have served about 100 agencies.

Ms. Lattimore yesterday discussed the scope of the investigations program, and we have provided written responses to the questions you sent us. Today she and I will respond to your questions about implementation of the decision to privatize.

The investigations program is supposed to operate on a businesslike, self-sufficient basis, but because of changing market conditions, over nearly a decade, its revolving fund had accumulated a deficit that, at the end of FY 1993, had reached $24 million and was still rising.

We were staffed to conduct more than 60,000 personnel investigations a year but were actually carrying out only about 40,000.

To stop the hemorrhaging, I had no choice but to carry out a reduction in force which eliminated about 443 jobs for investigators and support staff.

We then developed and implemented a business plan to put the investigations unit back on a sound financial footing, and hoped for a stable market for our work and high productivity from our professional staff.

Last December, the President announced plans for the second phase of the reinvention of government. These plans included the privatization of OPM's investigations and training units.

Let me note that the privatization of our training unit is being accomplished by its transfer to the U.S. Department of Agriculture Graduate School. The Graduate School, which receives no federal funding, is offering jobs to about two-thirds of the unit's approximately 200 employees.

OPM set three criteria for the privatization of the investigations unit.

First, to do what was best for the American taxpayer, by streamlining government and reducing the number of federal employees.

Second, to continue to provide high-quality service to our customers.

Third, to do what was best, and most humane, with regard to our employees.

These criteria led us to an Employees Stock Ownership Plan (ESOP), which could permit our existing employees to continue to do the work in the context of an employee-owned, non-governmental organization.

In March of this year, we contracted for a study of the feasibility of such a privatization. The study concluded that an ESOP owned by the investigation unit's employees was feasible, but only if guaranteed OPM's business for a period of time.

Our employees, while generally not in support of the original decision to privatize, expressed interest in the ESOP option, if there was to be privatization.

We have recently awarded a contract to a trustee to work with the employees and represent their interests in the development of an ESOP. As you know, we have provided details of this transaction to the subcommittee. Additionally, as we pursue privatization, we will take all steps necessary to ensure that our employees avoid potential conflicts of interest.

Perhaps there are those who believe we should simply have cut loose the investigations unit's employees, but we do not believe that would be fair to our employees, to our customers, or to the taxpayers.

An ESOP is the privatization option that allows a nearly seamless transition for our customers and does not disrupt or compromise the integrity of our process or our product.

Moving to an ESOP is a cost-effective way to streamline this service, to preserve an efficient investigative network, and to provide opportunities for about 760 outstanding workers.

Moreover, given the historical integrity of our investigations program, and the technological advances we have made, I do not believe it would be wise or prudent to simply abandon these employees.

For all these reasons, it is in the public interest to award a sole source contract to this ESOP company during its first several years as an independent operation.

The privatization plan has led to concerns about the safeguarding of information, process and systems. We therefore will maintain a staff to carry out policy and oversight responsibilities on the new entity, including ownership and protection of our data base and records, and to assure adherence to Privacy Act requirements.

This will be similar to the Department of Energy's arrangements in nuclear development or the Department of Defense when it builds the Trident submarine or the Patriot missile.

Mr. Chairman, as we carry out this privatization, all of us -- at OPM, in the administration and Congress, as well as the employees involved -- are charting new territory as we seek new ways to streamline government.

We are attempting to do what is best for the taxpayers, for our customers, and for our employees.

We have acted in good faith, trying to balance our concern for valued employees and the needs of our customer agencies with the demands -- from the President, from Congress, and from the American people -- for a smaller federal government and a more cost-efficient federal government.

Ms. Lattimore and I will be glad to take your questions.

###

MASTER

JUN 12 1995

Why are (background investigations) conducted?

So that objective determinations may be made with respect to the employability of an individual or the granting or denial of a security clearance, pursuant to requirements contained in executive order, statute, and regulation.

Describe the current workload of the Office of Federal Investigations, including the size of the workforce, and categories of investigations conducted, including those aimed at security questions, suitability questions, those to address fraud in federal employment applications or otherwise concerned with protecting the integrity of the merit system, and any other types of investigations conducted by your agency.

We project receipt of about 39,000 background investigations this year, which would put us at or slightly above last year's number. In addition, we will process a total of about 270,000 of the other-than-background investigations shown below. The workforce currently numbers 760. Of this number, 424 are field Investigators.

Investigative products generally aimed at security include:

- National Agency Check (NAC). Done as part of another background investigation. In most instances, when other investigative agencies do their own investigations, OPM conducts the NAC portion for them. The basic NAC consists of a search of the Security/Suitability Index (SII) with retrieval of related files; fingerprint search; search of the FBI's Records Management Division; and search of the Defense Clearance and Investigation Index (DCII) with retrieval of related files. Additional searches, such as credit, are available by request for an additional cost.

Background Investigations are compilations of information, obtained from a combination of the NAC with a credit search, and personal and record sources, covering an individual's background for a specified period of time. Coverage includes the subject's residence, education, employment, references, and local law enforcement. Coverage is based on the type of background investigation being conducted, determined by the level of sensitivity or risk of the position being sought or held.

- Single Scope Background Investigation (SBI). The minimum investigative standard for granting individuals access to Top Secret national security information and Sensitive Compartmented Information (SCI). Coverage requirements are established in National Security Directive 63, signed by President Bush on October 21, 1991. The scope of the investigation is 10 years.

- Background Investigation (BI). Conducted for placement into positions at the Noncritical-Sensitive, Critical-Sensitive, Moderate Risk, or High Risk level. Scope of the investigation is 5 years.

- Limited Background Investigation (LBI). Conducted for placement into positions at the Noncritical-Sensitive, Moderate Risk, or High Risk level. Scope of the investigation is 3 years.

- Preliminary Background Investigation (PBI). Same coverage

as for a BI, but designed to provide an advance notification of the results of the subject interview. This allows for the granting or denial of a waiver to bring an individual on board for training. (Now used exclusively for INS/Border Patrol cases.)

- Minimum Background Investigation (MBI). Conducted for placement into positions at the Noncritical-Sensitive or Moderate Risk level. It includes the NACI, credit search, and personal interview.

Variations of the above are conducted to cover situations where there has been a break in service or because of movement from a lower to a higher sensitivity or risk level.

Incumbents of positions designated Special-Sensitive or Critical-Sensitive must have a periodic reinvestigation five years after placement and each succeeding five years. OPM has three products to meet agencies' periodic reinvestigation needs:

- Periodic Reinvestigation (PRI). Consists of the NAC, credit search, personal subject interview, and local law enforcement coverage.

- Periodic Reinvestigation-Residence (PRIR). Adds three years of residence coverage to the PRI.

- Periodic Reinvestigation-SBI (PRIS). Adds personal source and NSD-63 coverage items to the PRI. It is the periodic reinvestigation available to meet NSD-63 criteria.

Investigative products generally aimed at suitability:

- Special Agreement Check (SAC). A limited investigation (or series of checks) conducted on a subject, done only through special agreement between OPM and an agency. The SAC provides an alternative procedure by which an agency can obtain searches specific to its particular needs.

- National Agency Check and Inquiries (NACI). This is the minimum investigation prescribed for federal competitive service. It includes the NAC and a five-year investigation by inquiry, covering the subject's residence, education, employment, references, and local law enforcement.

- Applicant Suitability Determination (ASD). This investigation results when an application submitted to an examining office for a competitive service appointment is referred to OPM because a question of suitability is raised during the application review process. If OPM determines there is a serious suitability issue that needs to be resolved, further investigation (which may include a NACI, correspondence, phone calls, record search, or personal investigation) is scheduled.

- NACI Suitability Determination (NSD). This investigation

results from the agency-requested NACI conducted on an applicant or appointee. If serious suitability issues develop that need to be resolved, further inquiries through correspondence, phone calls, record search, or personal investigation are made to develop the issues sufficiently to consider any effect on the hiring or retention of the individual.

- Reimbursable Suitability/Security Investigation (RSI). If an agency needs investigation beyond the scope of a routine OPM investigative product, it may request OPM to conduct a Reimbursable Suitability/Security Investigation. The RSI focuses on the specific issue(s) requiring resolution, and does not provide overall coverage like a NACI/BI type investigation.

OPM conducts a variety of investigations to administer the merit system effectively and enforce Civil Service rules and regulations. In most cases, a merit system investigation is conducted to determine whether an applicant, appointee, Federal employee, or other person under OPM's jurisdiction has violated the provisions of any applicable Federal statute or Civil Service regulation (5 CFR) affording protection to the Federal Civil Service.

Merit system investigations may examine the following issues:

- Impersonation or collusion in exam;
- Irregularities in appointment to Federal service;
- Solicitation of a declination of applicants/eligibles;
- Purchase or sale of public office;
- Perjury before an OPM Investigator or other OPM official;
- False statement in application or related papers;
- Submitting or altering official documents;
- Lost, stolen, misplaced, or mutilated test material;
- Compromise of test security or irregularities by officials in testing procedures; and
- Other investigations deemed reasonable to investigate matters which circumvent or threaten the merit system.

Other Types of Investigations:

- Trust Fund Investigations. OPM receives requests for different types of investigations under a special agreement with its Retirement and Insurance Service (RIS). In these cases, the objective is to locate someone and either verify that they are alive and/or obtain certain information or documentation from them.

- SES Distinguished Executive Rank. 5 USC 4507 provides for nominating SES career appointees for the rank of Distinguished Executive, for sustained extraordinary accomplishments. Receipt of this rank entitles the individual to a lump sum payment of $20,000. OPM has the responsibility of reviewing such recommendations and providing recommendations to the President as to which agency-recommended appointees should receive such rank.

Each year OPM makes limited, high-level inquiries to verify the accomplishments of those recommended.

- Post Appointment Arrests. If the FBI Identification Division Records receives an arrest record, and there is an indication that OPM previously conducted an investigation on the subject, the FBI refers the arrest record to OPM. OPM determines the current employing agency, and forwards the information to the agency for appropriate action.

What policy guidance does the Office of Personnel Management provide to agencies regarding the conduct of investigations and subsequent adjudications?

The framework for OPM guidance is provided in 5 CFR Parts 731 (Suitability), 732 (National Security Positions), and 736 (Personnel Investigations). Part 731 establishes criteria for making determinations of suitability (adjudications) for employment in positions in the competitive service. It provides risk designation and investigative requirements, and sets forth the procedures to be followed when OPM proposes to take or instruct an agency to take a final suitability ineligibility action against an applicant or appointee.

Part 732 sets forth requirements and procedures which each agency shall observe for determining national security positions pursuant to Executive Order 10450 -- Security Requirements for Government Employment (April 27, 1953). The Order requires agency heads to designate positions "sensitive" based on national security considerations, requires appropriate investigations, and grants oversight responsibility to OPM.

Part 732 also provides for sensitivity level designations, investigations tied to these levels, and periodic reinvestigations to determine whether the continued employment of the individual in a sensitive position is clearly consistent with the interests of the national security.

Part 736 specifies certain requirements for personnel investigations conducted by OPM, and for those conducted under delegated authority from OPM. The requirements apply to both suitability and national security investigations. Unless provided otherwise by law, responsibility for the investigation of persons entering or employed in the competitive service, or by career appointment in the Senior Executive Service, rests with OPM.

We will be amending 5 CFR parts 731, 732, and 736 to incorporate more specific guidance formerly contained in the Federal Personnel Manual. Other guidance is made available in the form of handbooks or manuals, and through periodic meetings and training courses.

Onsite guidance is furnished under our Security Appraisal function, through which we appraise agency compliance with program standards, and offer assistance to help them carry out their personnel security responsibilities.

Provide a detailed description of differences between criteria invoked to determine security and suitability clearance issues.

Suitability determinations made under Part 731 are distinct from determinations of eligibility for assignment to, or retention in, sensitive national security positions made under Executive Order 10450 or similar authorities.

1. Security clearance criteria concern employment and retention of persons in national security positions that involve preserving and protecting the nation's military, economic, and productive strength, including the security of the Government, from all acts likely to weaken or destroy the United States.

Security clearance criteria are outlined in E.O. 10450, which specifies the factors that should be considered when determining whether the employment, or retention in employment, of individuals in the Federal service is clearly consistent with the interests of the national security.

The security determination is an individual agency responsibility. E.O. 10450 requires that all Federal employees be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States. Agency heads must establish security programs to assure that the employment or retention of all civilian employees is clearly consistent with the interests of the national security. The Order states such information shall relate, but shall not be limited, to:

a. Depending on the relation of the government employment to the national security

- Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

- Any deliberate misrepresentations, falsifications, or omissions of material facts.

- Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

- Any illness, including any mental condition, the nature of which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

- Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

b. Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

c. Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

d. Advocacy of use of force or violence to overthrow the government of the United States, or the alteration of the form of government of the United States by unconstitutional means.

e. Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

f. Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

g. Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

h. Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

2. Adjudication for access to classified national security information (E.O. 12958). Access to national security information classified TOP SECRET, SECRET, or CONFIDENTIAL is granted by individual agencies under E.O. 12958, which requires persons granted access to be trustworthy and to have a need for access to the information to accomplish a lawful, authorized Government purpose.

Suitability is a requirement for Government employment that refers to a person's character, reputation, trustworthiness, and fitness as related to the efficiency of the service. To be suitable, a person's employment or continued employment must be reasonably expected to promote the efficiency of the service. A reasonable expectation that a person's employment will not promote the efficiency of the service is established when an adverse connection, or nexus, is shown between the conduct in question and the performance of the person or the agency's accomplishment of its mission.

The basic suitability disqualification factors and additional considerations used in making competitive service suitability decisions are found in 5 CFR 731.202(b) and (c). Each agency is responsible for setting standards for determining suitability for excepted service positions.

In determining whether its action will promote the efficiency of the service, OPM or an agency to which OPM has delegated authority shall make its determination on the basis of:

- Whether the conduct of the individual may reasonably be expected to interfere with, or prevent, efficient service in the position applied for or employed in;

- Whether the conduct of the individual may reasonably be expected to interfere with, or prevent, effective accomplishment by the employing agency of its duties or responsibilities; or

- Whether a statutory or regulatory bar prevents the lawful employment of the individual in the position in question.

Any of the following reasons may be considered a basis for finding an individual unsuitable:

- Misconduct or negligence in prior employment which would have a bearing on efficient service in the position in question, or would interfere with or prevent effective accomplishment by the employing agency of its duties and responsibilities.

- Criminal or dishonest conduct related to the duties to be assigned to the applicant or appointee, or to that person's service in the position or the service of other employees.

- Intentional false statement or deception or fraud in examination or appointment.

- Refusal to furnish testimony as required.

- Alcohol abuse of a nature and duration which suggests the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct

threat to the property or safety of others.

- Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation.

- Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force.

- Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.

OPM and agencies consider the following additional factors to the extent that they deem these factors pertinent to the individual case:

- The kind of position for which the person is applying or in which the person is employed, including the degree of public trust or risk in the position.

- The nature and seriousness of the conduct.

- The circumstances surrounding the conduct.

- The recency of the conduct.

- The age of the person involved at the time of the conduct.

- Contributing societal conditions.

- The absence or presence of rehabilitation or efforts toward rehabilitation.

Identify any laws or policies (from any source) that might impede the effectiveness of background investigations.

Varying requirements of each jurisdiction and repository for submission to gain access to records. For example, each state has different requirements for how to describe the subject in order to obtain BVS records. Each may require a different release form or different releases for different types of records. Some may require different fingerprint cards. Some require submission of their request form for some records and may not respond to our automated inquiry form.

Varying state policies/laws on expungement/sealing of criminal records, and a trend toward easy expungment of drug and alcohol-related records (which are pertinent in security/public trust/suitability investigations) impede the ability to develop accurate assessment of patterns of criminal behavior. This is particularly apparent with the treatment of crimes under various "Youth Offender" laws, where we are unable to use such information to establish what is clearly a pattern of criminal behavior.

Lack of a consistent policy among the state/local jurisdictions on how to manage and release criminal history records impinges on the efficient and effective gathering of this information. This is becoming more apparent as we try to develop a program to assist other federal agencies meet the requirements of the National Child Protection Act of 1993.

OPM's (and DIS') designation as a "non-criminal justice" agency for purposes of the Security Clearance Information Act (SCIA) makes access to criminal records limited. For example, use of NCIC to obtain rapid access to FBI records is limited to national security positions, but is not available for public trust or other "employment" inquiries. Similarly, access to the Interstate Identification Index (III) is limited to national security positions. This limitation also applies to how we are viewed and treated by state and local jurisdictions, many of which view us as no more than another employment inquiry. This is particularly aggravating to investigations for law enforcement positions such as Border Patrol Agents, Prison personnel, etc., where weapons are carried and public safety is at stake, or in suitability investigations where ability to use derogatory information is critical to taking action.

Because of a desire to avoid litigation, conflict, violence, etc., many sources, both individual and corporate, hesitate to cooperate in providing information.

Obtaining coverage overseas through State Department, and other agencies as appropriate, is unpredictable at best. There is not enough work to justify OPM presence, but State/other agencies cannot meet our timeliness standards at the expense of their normal workload.

Assessment of exorbitant user fees to access record repositories at state and local level, and the varying methods of access and waiver policies slow the investigative process and increase it's cost.

Explain the standards used to evaluate background investigations policies and programs at other agencies.

Executive Order 10450, Executive Order 10577, OMB Circular A-130, 5 CFR Parts 731, 732, and 736, and manuals dealing with the conduct and adjudication of investigations provide the standards by which other agency programs are evaluated.

Describe OPM's role in the coordination of policy oversight and program management of background investigations within the executive branch.

Executive Order 10450 authorizes OPM to make a continuing study of the manner in which the Order is carried out by the departments and agencies, for the purpose of determining deficiencies in the program which might directly or indirectly weaken the national security. It requires that OPM recommend means to agencies to correct deficiencies in agency security programs.

Executive Order 10577 gives OPM the authority to issue rules and regulations to investigate the qualifications and suitability of applicants for positions in the competitive service; evaluate the effectiveness of agencies' personnel policies, programs, and operations; ensure enforcement of the civil service laws, rules and regulations, and applicable Executive Orders.

OMB Circular A-130 authorizes OPM to establish personnel security program policy covering positions involved in the design, storage, retrieval, access and dissemination of information for federal computer/ADP systems.

5 CFR Parts 731, 732, and 736 cover OPM's regulations on making personnel suitability investigations and designating public trust positions, national security requirements, and personnel investigations guidelines.

OPM's policy oversight responsibility is carried out by the Investigations Service appraisal staff which conducts on-site appraisals at agency headquarters and field locations to determine the effectiveness of their security and suitability programs.

Describe procedures for oversight of these delegations, including criteria that would be used to indicate deficiencies in such programs.

Agencies with delegated authority are provided a copy of the OPM Investigator's Handbook, which sets forth guidelines for conducting personnel security background investigations. During the first year of a delegation, OPM works closely with the agency, providing a 100% review of contractor-completed investigations to ensure they meet OPM standards.

Additionally, under Executive Order 10450, OPM uses its appraisal of the agency personnel security and suitability programs to conduct a more comprehensive review of the effectiveness of the investigative program. A written report with recommendations is furnished to the agency.

OPM uses specific criteria to assess other agency programs:

- The extent to which investigative reports satisfy OPM standards for adequacy, completeness, scope, and coverage.

- The degree to which manuals and Investigator instructions that relate to conducting background investigations meet OPM standards.

- The type and amount of training or assistance provided to Investigators.

- Agency/contractor timeliness in completing investigations.

- The extent to which the agency is complying with provisions of the Privacy Act as it relates to the use of pledges of confidence and unwarranted invasions of privacy.

- The extent to which the agency has complied with the guidelines with regard to selecting, training, and supervising its Investigators.

- The extent to which the agency is carrying out its responsibilities of assuring that contracted investigations meet the same standards as those conducted in house.

- Agency compliance with OPM reporting requirements.

- Agency procedures used to monitor the integrity of contractor-produced investigations.

- Agency procedures used to ensure contract Investigators have had the requisite investigation.

Procedures for review and evaluation of investigations conducted under delegations of authority:

Once completed by contractors or as required for agency personnel, background investigations conducted under delegations of authority are submitted to OPM. The investigations are reviewed/evaluated following the guidelines set forth in the OPM Investigator's Handbook, NSD-63, and DCID 1/14, as applicable to the specific type investigation conducted. The reviewer prepares an evaluation of each case, identifying whether it is acceptable (meets OPM or other appropriate standards), acceptable with comments (not deficient but could be improved), or deficient (does not meet standards). If the investigation is deficient, a form is prepared showing the specific work needed to bring the case up to standard.

If the investigation is acceptable or acceptable with comment, the investigation is then microfilmed and a copy of the evaluation is referred to the submitting agency.

If the investigation is deficient, the case is returned to the submitting agency for rework. When the revised/corrected report is submitted, it is reviewed for completeness. If found acceptable, a new evaluation is prepared, feedback is given to the submitting agency, and the investigation is microfilmed.

Periodically, a report is prepared outlining the results, by agency, of the review process. The report is furnished to the Appraisal Officers who deal with the agency. The report includes data which outlines numbers of investigations reviewed, number acceptable, acceptable with comment, and deficient, and specific deficiencies noted.

Indicate any agencies whose delegation of authority to conduct such investigations is under review and systematic monitoring or counseling.

All agencies with delegated authority are subject to review and monitoring. There are no agencies currently deemed to be in noncompliance with standards.

Describe current plans defining the continuing responsibilities for oversight of the investigative functions performed for other agencies, the maintenance of security and suitability standards as well as to maintain the integrity of the merit system.

OPM plans to continue an oversight role pursuant to 5 CFR 731, 732, and 736. OPM will have a presence in assuring that agencies are acting responsibly in carrying out their obligations.

We will continue to support the integrity of the merit system through our suitability operation. Although a good deal of the applicant/appointee suitability screening has been or will be delegated to agencies, OPM will retain jurisdiction over matters involving fraud or falsification.

Describe current funding and personnel dedicated to these functions as well as plans for establishing and maintaining oversight of private sector organizations and/or individual contractors performing these functions in the future.

Generally, our oversight and integrity-maintenance roles are supported by appropriated funds. Currently, this amounts to approximately $3.5 million annually for 66 FTE.

We are committed to maintaining a policy and oversight function in OPM. There will be a cadre of individuals carrying out on-site appraisals of agency operations. It has been the agency's responsibility to oversee the management of their contracts, and it is not anticipated this will change in the future. Although our responsibility will not include the oversight of contractors *per se*, we will still be responsible for the oversight of agencies which, among other things, will include how they manage their investigations contract.

Describe the procedures by which the decision (to privatize OPM investigations) was reached.

The National Performance Review (NPR) reinvention initiative pertaining to OPM's investigations program recommends that OPM decentralize authority to conduct background investigations to federal departments and agencies. The recommendation of the National Performance Review DOJ12: Streamline Background Investigations For Federal Employees, September 1993, stated: "By January 1994, OPM should repeal relevant sections of the regulation and issue appropriate implementing instructions. Federal departments and agencies would have full and complete authority to conduct or to otherwise accomplish background investigations..."

On December 19, 1994, it was announced by the Administration that OPM would be privatizing its training and investigations functions.

Provide planning documents that calculate the projected savings forecast as a result of this privatization and the methodology associated with those calculations.

The projected savings figures were developed by the Office of Management and Budget. OMB has estimated a savings to the Government of $30 million over 5 years, beginning in FY 1997, through privatization of OPM's investigations and training units. OMB can best comment on the methodology.

Describe the procedures through which this approach is being implemented.

Upon learning from the privatization feasibility study that an ESOP would allow continued employment for our employees, and could be implemented through a transition which would essentially be transparent to our customers, we decided to pursue this course of action. We are following the process laid out by the study contractor, which now calls for securing a trustee to establish the new company.

The trustee will be responsible for incorporating the new company, developing a business plan, financial structure, capital structure, and obtaining financing commitments. Concurrently, OPM will be developing the policy, oversight and contract management operation which will remain with the agency.

How was the phased approach to implementation of this strategy developed?

It was the opinion of the contractor performing the feasibility study that, absent a phased-in process, successful operation in the private market of the new entity is highly problematic. The phased approach will give the new company time to learn how to operate as a private business, and establishes reasonable future prospects for the company which are necessary for recruiting and retaining employees.

The phased approach also satisfies many of the concerns of our customer agencies. Two of our largest customers have said that such an approach is the only mechanism by which they could reasonably assure that their concerns can be addressed.

How was the contractor for the feasibility study selected?

We obtained a directory for the ESOP Association, and our procurement office sent solicitations to the five firms in the local area listed in the Directory as specialists in feasibility and design, and to another local firm with actual experience in transitioning a government operation to an ESOP.

Four of the six firms responded, and a contract was awarded to the firm which had both the highest technical evaluation score and lowest price. The procurement for the trustee was handled similarly, with solicitations sent to 30 firms identified as trustees in the ESOP Association Directory.

Provide a detailed account of the cost of this privatization effort to date, including the ESOP feasibility study, the solicitation of a trustee, the anticipated cost of developing a business plan, costs associated with separation of current employees, and any other cost factors anticipated in this transition.

OPM paid $107,740.08 for the feasibility study. It is estimated the effort involving the trustee, including the development of a business plan, will cost less than $500 thousand. As of April 26, 1995, costs associated with separation of current employees were projected to be $11.8 million.

What is the total estimated cost of this strategy?

As of April 26, 1995, the estimated cost of privatization through an ESOP is $54.4 million, of which $30.2 million represents the deficit in the revolving fund associated with the Investigations Program. Immediate program shutdown would cost approximately $86 million. The difference between the two figures lies primarily in two areas -- an increase in the current revolving fund deficit due to a decrease in revenue, and the disposition of furniture and equipment expense which has not yet been resolved under an ESOP.

What is the anticipated workload of the new corporation, and what revenues might this work be expected to generate?

Revenue projections start with current client accounts as a base, and assume there will be virtually no growth in the most costly investigations over the next few years. Certain lesser investigations are projected to increase by 5% per year in number for the first two fiscal years (FY 1996-7), and then flatten out. The low-level, essentially automated investigations are projected to be a growth area with increases in number projected at 5% per year.

Projected revenues range from about $76 million in the first year to about $81 million in year five.

In the absence of a formal business plan, what is the basis for these projections?

These projections were developed by the contractor conducting the feasibility study, using information from a business plan put together by program staff in May of last year and various other data such as agency estimates, cost reduction opportunities, etc.

Describe the procedures used to date for notifying the Office of Federal Investigations' workforce of progress on this initiative.

On December 22, 1994, three days after it was announced that the Training and Investigations Units of OPM were to be privatized, we issued a memo to all program employees. This memo, the first in a continuing series, announced the Administration's decision, and asked each employee for their input as to how the Unit might best re-create itself to operate successfully outside OPM. To date, we have issued 16 memos to the workforce on this initiative.

A nationwide telecon, with participation of 30 Investigator locations, was held on April 26, 1995. Most of the two-hour session was dedicated to answering employee questions.

Describe workforce participation in the development of this initiative -- including any organized involvement of the OPM Partnership Council or any other organization representing OFI staff.

Members of the Investigations Partnership Council have been fully involved in the process. A member of this Council is also a member of the OPM Executive Partnership Council, and has kept that body informed. We recently concluded an effort to establish an Employee Liaison Committee, responsible for communicating employee interests to the trustee structuring the Employee Stock Ownership Plan (ESOP). Investigators and Supervisory Investigators chose their own representatives for the Committee.

Representatives from AFGE Local 32, representing central office employees, and from AFGE Local 2450, representing employees at our Federal Investigations Processing Center at Boyers, PA, have been members of the workgroup involved in the process.

Describe the reasons supporting the speed involved in conducting this initiative, especially the brief period between publication of the "feasibility study" and the request for responses indicating the interest in additional information on the part of field Investigators.

The goal, privatization by January 1, 1996, was set by the Administration. The contractor doing the feasibility study developed a recommended process and timeline to meet the goal.

The ESOP evolved as an alternative privatization vehicle as a result of the feasibility study. A quicker way to achieve privatization would be to shut the unit down as of a date certain. In response to the concerns of our employees and of our customers, we chose to pursue a course of action which may allow continuation of the Investigations work by all, or most, of the current employees in a non-Government organization.

Describe the level of support for this initiative among members of the current OFI staff, as well as your agency's plans to recruit sufficient participation to ensure the viability of this new corporation.

Many of the current staff of our Investigations unit have vocally opposed the decision to privatize the program, regardless of the means used. The makeup and structure of the new corporation, as well as its relationship to OPM, have yet to be determined. These issues will be resolved during negotiation between OPM and the trustee. It will fall to the trustee to determine the level of support needed to go forward, make job offers to current employees, and handle any imbalance between staff and workload.

Describe plans for the transition of these employees either to the "new corporation," to other positions in the federal service, and/or other outplacement assistance that will be provided.

Every program employee not being retained by OPM will receive a job offer from the new corporation. Those who accept will be separated from OPM under reduction-in-force (RIF) procedures, and will become employees of the new corporation on the day following the effective date of the RIF. Those who do not accept a job offer will also be separated through RIF action.

We intend to work with those who decline the job offer by giving them outplacement tools, and by facilitating their outplacement efforts by allowing them to adjust their regular work schedules for outplacement activities, interviews, and the like.

What planning has OPM initiated on behalf of its employees, both in terms of those likely to be eligible for participation in the new corporation and in terms of the functions planned to be retained within the agency after this initiative is completed?

OPM employees involved in the operation of the investigations unit will have right of first refusal for positions with the new corporation. We plan to retain functions associated with policy and oversight, contract management, control and maintenance of the investigations main frame, data base and investigative records.

What management alternatives were considered (e.g., regional subcontracts, agency delegations, or others) before settling on the current proposal?

We looked at five alternatives, ranging from total elimination of investigations at OPM, to creation of a consolidated organization within the government to conduct all background investigations. In between were the delegation of investigative fieldwork to agencies, OPM as a contract manager, and privatization into a government corporation. Subcontracts did not receive serious consideration because of previous unsatisfactory performance by subcontractors, and because it would reverse many of the beneficial technological advancements we have established in investigating and reporting.

Identify the advantages and disadvantages of each, and the decisive factors favoring the ESOP alternative.

Elimination of investigations at OPM would satisfy the Administration's NPR goals of providing agencies more flexibility in how they meet their investigation needs. However, this alternative would eliminate OPM's policy, oversight, coordination and guidance roles, disconnect our central records repository (SII), database interface, and automated linkages, and would severely disrupt the timeliness and service levels enjoyed by our customer agencies.

Delegating investigative fieldwork to agencies, while maintaining our Processing Center at Boyers, Pennsylvania, would create a greater need for private industry investigative services, but would shift investigative and administrative responsibilities to agencies and create a service disruption as above.

Establishing OPM as a contract manager would keep OPM in a policy and oversight role and would minimize the need for other agencies to change their operations. A downside would be the disappearance of existing liaison channels and unpredictable vendor costs and services.

Privatization would not occur by creating a government corporation and was not seen as meeting the Administration objectives from the NPR. Nor was the alternative of consolidated government investigations. They were not further pursued.

What justification is offered for establishing a new competitor in a market with numerous existing businesses?

Pursuing the ESOP option will ensure offers of employment for program employees who will be separated from government service. The transition from public to private will not disrupt the level of service currently provided to our customers. And, according to the feasibility study, none of our agency customers believe that there exists an alternative contractor or contractors with the trained staff able to pick up the OPM caseload and satisfy the large numbers of case closings required, let alone maintain investigative integrity.

What measures have you taken -- and/or do you propose -- to address concerns about the quality of investigations during the transition period?

What measures does OPM contemplate to resolve concerns about any potential deterioration in the quality of investigations during this (sole source) period?

We do not anticipate any drop in quality because the same people will be doing the same work, although for a different employer. We expect to incorporate our existing standards into the contract specifications with the new company.

We have promised our customers that they will be involved in the transition process, and that we will work together to ensure they remain satisfied with the high-quality product they currently receive.

The feasibility study supporting the ESOP initiative contended that no legislative authority would be necessary to implement this plan. Please summarize your legal thinking supporting this conclusion.

After the President determined that OPM would privatize the investigation function, the Director of OPM exercised his discretion in carrying out the President's directive by deciding to pursue the possibility of contracting with an ESOP corporation owned by individuals who are now employees in OPM's Investigations Service. In furtherance of this decision, the Director determined to contract with an ESOP trustee to perform the tasks necessary to establish the ESOP corporation. We determined that OPM may undertake each of these steps within its existing statutory authority.

With respect to contracting for performance of the investigation function, Government agencies have the inherent authority to contract for the performance of functions, unless specifically prohibited from doing so by law. Our analysis of the statutes that underlie OPM's responsibilities for investigation services did not reveal any prohibition or specific restrictions on OPM's ability to contract with the private sector for the performance of this function. Further, OPM' s regulations related to investigations specifically recognize that agencies may contract with the private sector to perform this function when it is delegated to them, and agencies have been doing so for years. In fact, for a period in the 1980's, OPM did so as well. Thus, the decision to contract out the investigative function does not require legislation.

With respect to contracting with an ESOP trustee to establish an ESOP corporation, we determined that no statute prohibited OPM from contracting for these services and that expending funds to enter into such a contract was a necessary expense pursuant to applicable fiscal law authority. We believe that the expenditure of funds for the ESOP trustee will contribute materially to OPM's exercise of its authority to perform investigations and the effective privatization of this function by implementing the decision to pursue the ESOP option, by addressing the need to provide a seamless transfer of this function while ensuring no disruption in service or deterioration in the quality or timeliness of investigations, by sustaining employee morale and productivity to continue outstanding performance of this function until it is privatized, and by addressing OPM's legitimate personnel administration obligations to treat our employees in a responsible and humane fashion during this process. Therefore, OPM's decision to contract with an ESOP trustee does not require legislation.

With respect to restricting competition for OPM's contract for investigations, the study to determine whether it would be feasible to pursue the ESOP option concluded that an ESOP would be feasible, but only if the ESOP corporation does not have to compete initially for the investigation services contract. Pursuant to the Competition in Contracting Act, OPM believes that it would be in the public interest for OPM to procure investigation services from the ESOP corporation without competition, that is, through a sole source contract. Thus, OPM's decision to limit competition for a contract to perform its investigations function also would not require legislation.

Please summarize the legal thinking supporting this initiative that would justify other than full and open competition for any functions intended for privatization. To what extent were any cost-benefit comparisons conducted consistent with requirements of OMB Circular A-76? If none were conducted, what justification would support the proposed sole-source contract?

The Competition in Contracting Act (CICA) allows other than full and open competition when the agency head determines that it is necessary in the public interest to use a method other than the competitive procedures, and the agency notifies Congress in writing of its determination not less than 30 days before the award of the contract. Under this exception, competition may be limited to the minimum extent required by the public interest. Although a formal determination and notification have not yet been done, OPM believes that employing a procurement method other than full and open competition in the privatization of investigation services would be necessary in the public interest.

Following the President's decision to privatize the investigation function, OPM explored the best means to implement this decision. OPM was particularly mindful of the need to continue uninterrupted the service of conducting background investigations, the uncertainty whether adequate sources are available to provide the high quantity and quality investigations required, the need to maintain employee morale to ensure continued employee productivity, and the need to treat OPM employees as humanely as possible. The Director of OPM determined that the best manner to achieve these goals was to pursue forming an employee stock ownership plan (ESOP) for the Investigations Service employees whose positions will be eliminated by the privatization, and then, contracting for investigation services with the corporation formed by the ESOP.

Accordingly, OPM has commissioned a feasibility study to determine whether it would be feasible to pursue the ESOP option. The conclusion of this study is that an ESOP would be feasible, but only if the ESOP corporation does not have to compete initially for the investigation services contract. Based upon these factors, OPM believes that it would be in the public interest for OPM to procure investigation services from the ESOP corporation without competition, that is, through a sole source contract.

With respect to any cost-benefit comparison, as part of the initial review, OMB developed estimates of government-wide savings to be realized by privatizing OPM's investigation and training functions. Under the unique and groundbreaking approach presented here -- that is, proceeding with privatization by contract with an ESOP corporation -- OMB has informed OPM that no further cost analysis is required of OPM pursuant to OMB Circular A-76 in order to proceed.

Mr. MICA. Thank you, Mr. King. We're going to call now on Mr. Edward DeSeve, Controller of the Office of Management and Budget, for his comments; and then we'll get back to questions. Welcome, Mr. DeSeve.

Mr. DESEVE. Thank you very much, Mr. Chairman. Mr. Chairman, members of the committee, I'm G. Edward DeSeve, the Controller of the Office of Management and Budget, Office of Federal Financial Management. I'm pleased to have the opportunity to testify before the committee. Your letter of invitation asks that OMB appear to provide detailed estimates of the savings to be realized from privatizing the Office of Personnel Management's background investigations and training programs.

As you are aware, the President's fiscal year 1996 budget included a $30 million governmentwide savings estimate for this Reinventing Government Phase Two initiative. You also asked for a description of the methodology used to calculate these savings. Before addressing the specific questions posed by the committee, I would like to provide an overall perspective on the context of this initiative.

The President has demonstrated a strong commitment to creating government that works better and costs less. The National Performance Review Phase One was the most visible example of the President's commitment to this goal. The September 1993 NPR report and subsequent actions by the agencies under phase one clearly showed the American people and the Congress that we could streamline, downsize, reengineer work processes, empower Federal employees, and focus more on customers. We showed that this could be accomplished by measuring performance and emphasizing accountability. Much was done during that phase.

However, we recognize that such a major challenge in reinventing government could not be a short-term or one time effort. For the fiscal year 1996 budget presentation, the President asked his senior advisors and the departments and agencies for bold, new, creative ideas about how to further improve services.

One result was the singling out of five agencies that had proposed particularly appealing strategies to meet the President's request. Of these agencies, one was the Office of Personnel Management. Their proposal transforms OPM from an agency that is a provider of training and background investigative services to one that will concentrate its attention on policy direction and oversight of more diverse and competitive sources of these needed services.

OPM will continue to provide leadership and oversight of the 100-year-old merit system, to ensure that Government continues to operate with an open and competitive, merit-based, non-political civil service. By privatizing the investigation and training functions, OPM estimates that it will cut its own work force by about one-third. But since the work performed by OPM in these two functions—including administrative support—is financed entirely through reimbursements from agencies that request the services, there is, in our view, little actual savings to be realized within OPM's own budget resources by this proposal. There are, however, some savings to be realized by individual agencies that would have increased flexibility in shopping the private sector marketplaces for these services.

I should note here that the primary objective of this privatization proposal was to permit agencies more autonomy in meeting their training and investigation needs. NPR specifically recommended this in its reports on the Department of Justice and Treasury. Many agencies are already using their own internal staff for contracting out for investigations. Likewise, agencies customarily meet the bulk of their training requirements from sources other than OPM. OPM currently provides about 40 percent of agency background investigations and less than 10 percent of all training, governmentwide.

Nor did it reflect any concerns about the quality of the work OPM was currently providing. Cost saving considerations were secondary to the principal objective. But nonetheless, necessary for purposes of the fiscal year 1996 budget presentation. OMB was asked to develop the specific savings estimates to be included in the President's budget. We did so in the following manner.

OMB and GAO have consistently found that savings resulting from individual OMB Circular A–76 cost comparisons average up to 20 or 30 percent or more. And if I may digress, I went back to a specific recent study by GAO, and I refer you to a May 1994 briefing report to the Ranking Minority Member, Subcommittee on Investigations and Oversight Committee and Public Works and Transportation of the House of Representatives, which is a detailed discussion of the public and private mix for particular real estate related services.

In this, the GAO finds first that low contractor bids for activities contracted out were 39 percent less than Government cost estimates. On its face, that bears the truth of the statement that it's 20 to 30 percent or more in the savings from contracting out. However, they further go on to say, on average, the low contractor's bid for particular custodial services was 50 percent less than the Government estimate, while their estimate for maintenance services was only 2 percent less than the Government estimate.

So we have here a broad range, within this particular GAO study, depending on the type of function involved, for the exact percentage of savings that one might use. This range holds true whether the function ends up being performed by the private sector or with in-house resources. In-house savings result from efficiencies identified in preparation for competition with the private sector.

For the second objective of determining cost savings, we assume that privatization of OPM's training and investigation service would result in savings from the increased level of competition, and hence the lower price for these services, that agencies would realize. We noted that OPM's training and investigation services were already fully reimbursed services to existing customer agencies.

Most of the savings, therefore, will be realized not by OPM, but by the agencies themselves, as they seek competitive service providers. We selected a very conservative 4 percent, on which to base governmentwide savings estimates, despite higher rates of savings found in earlier A–76 studies. Any savings generated in excess of the 4 percent estimate could well be used by the agencies to invest in new technologies or to meet other requirements.

We estimated at total dollar volume of the two OPM business lines, training and investigations, using 1994 actual operating ex-

penses. This figure is $101.721 million for training, and $88.133 million for investigations, which total $189.854 million. We did not adjust for training activities that might remain at OPM, as those decisions were not made until sometime after the budget had been sent to Congress.

Calculating 4 percent of the $189.854 million gave us an annual savings estimate of $7.594 million. Allowing for some reduction in volume that might be anticipated due to decreased demand for investigation work because of the governmentwide staffing reductions, we rounded down to $7.5 million.

Further recognizing that it would take a full year to implement the proposals, we did not show savings beginning until fiscal year 97. The fiscal year 97–2000 Budget Authority and Outlay savings estimates totaled $30 million. The $7.5 million was rounded down for the first 2 years to $7 million, and rounded up, for the last 2 years, to $8 million.

I want to point out clearly that these assumed savings make no judgment about the quality or effectiveness of the staff who currently conduct OPM's personnel investigation programs. Rather they reflect the fact that there are inherent seasonalities and structural inefficiencies that drive costs in this program.

Staff levels of trained investigators' overhead cannot be quickly adjusted to widely shifting workload demands. Others may be able to overcome these flexibilities with an enlarged client base and less overhead. Let me reiterate that these savings estimates were just that—estimates based on prior experience, with studies of moving work from the Government to the private sector; and even then, making a very conservative judgment on the amount that might be realized.

I believe that it is a reasonable estimate. It may be that even greater savings will be realized as agencies become more experienced in making their determinations themselves on how to best meet their needs. This concludes my statement. I would be happy to respond to any questions the committee may have.

Mr. MICA. Thank you, Mr. DeSeve, and again, Mr. King. Gentlemen, I'm trying to sort out some of the history of the ESOP. Where did the ESOP generate? Was that OPM?

Mr. KING. Quite frankly, in December when we were told that this was going to be privatized, I inquired at that moment whether privatization included an option—first, Mr. Chairman, quickly, a small chunk of history. Virtually all—well, all of the King family in the whole world is buried in Lawrence, MA. Lawrence was a city created to make textiles. It was built on the Merrimac River to use water power.

When that resource of both water and people and the textile industry moved—and it moved south—they shut the mills down. And nobody was given any option. The mills still sit there; they're partially used. The town of Ludlow which I came from was a jute mill. And when it closed, there was no option; we all went to the street. I think my thought was, how do we avoid that with our investigators?

And very simply, I turned and said, is there any objection to having these folks take over their own business and operate it? And that was the original idea. It was not part, at any time, of the pri-

vatization decision. And that's why I showed the chart I did. It's not a question of whether you privatize or not. As you know very well, Mr. Chairman, it's the options that the employees have following privatization.

Because at the end of the day, privatization means people are laid off their jobs. And the question was, what direction would we go? And that's the humane side. The other one was that the issues came up on the public interest side almost instantly. And I know Ms. Lattimore has worked directly with it, and I want to ask her to speak to this. But the organizations that we service responded immediately that they shared with us their concerns that were professional. Ms. Lattimore.

Ms. LATTIMORE. A lot of the evolution of the ESOP not only addressed the human side in terms of alternative employment for employees that would be separated from the Federal service as a result of the privatization decision, but also reflected a number of our agencies which I think you heard from directly, and saw copies of letters they sent to me that they were extremely concerned about any undue disruption as a result of privatization.

They were concerned that there was no single entity that could pick up our 30-plus thousand investigations and give them the same product in the same timely manner at the same quality level that they had gotten accustomed to; and were very much interested, if we were moving to privatization, as they understood the executive branch decision to be, how we could work to replicate as close to the status quo, outside of the Federal sector, as possible.

And that was one of the factors that played into the decision of how we moved to privatization.

Mr. MICA. Well, one of the things that disturbs me—in the evolution you say that you're trying to save these people's jobs. They are not really pleased with being a part of this, it appears; and don't feel that they've been a part of helping make the decision to create this new entity.

Mr. KING. Mr. Chairman, I think, again, it's been blurred. And the blurring is that a number of our employees are convinced that if there's no ESOP, there will be no privatization. But we actually asked them the direct question—which was, if this is privatized, would you rather go to the street or would you rather work and own your own corporation?

And in that, the response was that well over 70 percent said that they're willing. We weren't asking, by the way, and we never pretended to——

Mr. MICA. But so far, it says you need commitments from half the investigators.

Mr. KING. That's correct.

Mr. MICA. Where are we now?

Ms. LATTIMORE. The commitment to actually go to work for the ESOP is significantly further down the road. The trustee that was engaged to formulate an employee owned company structure, part of the charter of that trustee is to develop not only the structure of the company, but to develop the kind of hard base data, which is types of compensation, types of benefits, types of structure.

Mr. MICA. Well, have you generally asked, do you want in?

Ms. LATTIMORE. The question placed to the employees of whether or not you want in, specifically, and will you join this ESOP, would be asked somewhat later in the trustee's process, when the employees are given all the pertinent information regarding the formulation, the structure of an ESOP, in terms of the specific job offer. But that would not come until the trustee had developed that structure, developed the compensation and benefits package, so that the employee would have something positive and concrete in front of them to respond to.

Mr. KING. So, Mr. Chairman, we were operating on the other side of the decision. If I could once more—the decision had been made, Mr. Chairman, to privatize. The question was, would it be an employee owned organization, or would we put the employees on the street?

Mr. MICA. You basically made the decision it would be employee owned and you give sole source.

Mr. KING. But the confusion has been continuously, Mr. Chairman, that if you stop the ESOP, you stop privatization. Mr. Chairman, I think the overwhelming majority of our employees said, well, if that's the case, then we would prefer to stay for the ESOP. But we would prefer to be on the Government payroll. Nobody questions that.

That decision was made by the President, and I've been asked to carry it out, Mr. Chairman. And what we're saying is, would we like to give the opportunity, the real opportunity, and in the public interest, to give our employees an opportunity to manage their own business. And that's really what that discussion was.

We have made up the matrix of the organization. By the way, we had several questions that came up in each one. Where does the public—where do the agencies, our customers who represent that public interest—here are the numbers on the suitability question for civil service employment for personnel security.

And Pat, you went through this. And we said, what's intrinsically governmental, and then what could be done in the private sector if it were supervised and directed? And everything falling below this red line, and that shows us very simply, below the red line could be done on some contractual basis. It could be done in a privatized context.

Everything above that, we believe, is intrinsically governmental. So it's in two parts, and they're directly related. And they're different from civil service employment as opposed to the personnel security issues.

Mr. MICA. Well, I think you've shed a little bit of light on some of your procedures and thought processes in getting to this point. There are other questions, you know. The question of reinventing government isn't just to move things around; it's to try to provide better services. And in looking at privatizing, if the private sector can accomplish this at a lower cost, I'm not sure if that's been a consideration.

Mr. DeSeve, you testified that you've looked at some of the costs involved here. And I think you also gave an example of the study that went to the Public Works and Transportation Committee. Has there been any cost comparison or effort to look at what the private sector can perform these services for?

Mr. DESEVE. No, sir, there has not.

Mr. MICA. Did you look at the private sector? We've got some figures. Just take the number of investigations and we divided them and we came up with a certain amount. And Ms. Lattimore testified, and others testified as to costs. Did you do cost comparisons in the private sector?

Mr. KING. Well, with the private sector, the costs——

Ms. LATTIMORE. We did not do a direct cost comparison with the private sector as part of this process.

Mr. KING. But part of the costs aren't shown. Mr. Chairman, if I could use an analogy, as alien as that is to me. What you think of is building on a flood plain. We had a business on a flood plain. The floods come, we're told, once every 100 years. What we have discovered is that they don't come every 100 years; we are hit regularly by a flood, and we have been since 1986, where we can't respond to the market.

This kind of an organization is basically a private enterprise with Federal employees. It's totally a revolving fund; you get paid for what you do. It can't be responsive in that sense. It carries enormous burdens of governmental costs, and yet we talk about comparing it to the private sector. It plain isn't fair to do that. But second, in the inability of this kind of an organizational structure, to respond to the market, we get wiped out.

We ran up this enormous deficit in large part because we couldn't respond to our market when almost 80 percent of our costs are basically people tied. And we don't have the flexibility of managing people. So what we're doing is saving the taxpayers money by doing what we're talking about. Because downstream, we're not going to have that happen again.

This will be managed in another context, under Federal supervision, with the highest standards and delivery; and by people who are motivated and tied directly to making the program successful. And after a short transition period, that will be established, so that it is going to go into a bid system. So the entire look-see is in the public interest right from the get-go.

And that public interest is served by having an ESOP. And that ESOP won't go unless there's a sole source contract.

Mr. MICA. I have some additional questions, but I can't take all the time. I want to yield to the ranking member at this time, and I'll come back. Mr. Moran.

Mr. MORAN. Thank you, Mr. Mica. Whose idea was it that this had to be privatized in the first place? It wasn't your idea initially, was it, Mr. King?

Mr. KING. Mr. Chairman, it was from the reinvention. The feeling was that we were to all look at how we could move work into non-governmental areas, and to examine each of our programs for that. This seemed to be a logical decision because, well, two reasons. One was, as we indicated on the chart, that some of this work could be done in the private sector. And then second, that it had continued problems because of its financing, which was an anchor on the organization to be as productive and to reflect the professionalism and the ability of the people who were in it.

So that was it in large part. But the Vice President and the President, through reinvention, suggested or announced, actually—

the President announced on the 19th of December that this area was to be privatized, both our training and our investigations, sir.

Mr. MORAN. And that was as a recommendation from you, which was in response to a request to tell us what you can privatize. Did you have some kind of quota to privatize?

Mr. KING. No, sir.

Mr. MORAN. You didn't. But it did come—the initial recommendation came from you.

Mr. KING. No, sir.

Mr. MORAN. OK, so it came from the White House. And who came up with this initial kernel of an idea that investigations should be privatized?

Mr. KING. I think by looking at it, it looks——

Mr. MORAN. Yes, but who, who?

Mr. KING. It operates from the private sector. It came out of "reinvention."

Mr. MORAN. OK, so it came from the Vice President's office?

Mr. KING. Yes, sir.

Mr. MORAN. Somebody in the Vice President's office decided it should be privatized?

Mr. KING. I think that was the encouragement, sir.

Mr. MORAN. What I'm getting at Mr. King, and to be perfectly frank, I think you've done a terrific, professional and compassionate effort to make the best of a difficult situation. And I'm not being critical of you. What I want to figure out is, who decided that it should be privatized; and the level of their understanding of the function at the point at which they decided to privatize.

Because at the point at which they decided it needed to be privatized, then everything else gets set into motion. And what really happens within the Federal Government is that everybody backs into a decision. They tell you why it's a great decision, Mr. President, or Mr. Vice President. They give you all the numbers. OMB is very adept at that—giving you numbers to support whatever your conclusion is.

I suspect that had the conclusion been differently, they could have gotten compelling numbers to prove why the decision not to privatize was a wonderfully insightful decision.

Mr. DESEVE. We appreciate your confidence in us, Mr. Moran.

[Laughter.]

Mr. MORAN. I worked with OMB directly in the executive branch, for many years, and I have nothing but respect for your ability to back into a decision with all the numbers that you might ever want to have available to you. Do you want to vote first, Mr. Mica, then come back?

Mr. MICA. Mr. Moran, GAO has a similar talent. We'll hear from them in a minute, but we don't want to leave out anyone from deserved recognition.

Mr. MORAN. I'm familiar with that talent, too.

Mr. MICA. But we have a little less than 10 minutes. Why don't we recess for 15 minutes? We'll run over, vote, and then come back, if that's acceptable; and then you can continue.

Mr. MORAN. Great.

Mr. MICA. Thank you.

Mr. KING. Thank you, Mr. Chairman.

[A brief recess was taken.]

Mr. MICA. We'll reconvene this hearing, and in just a few minutes, I anticipate my colleagues will return. In the meantime, maybe I could get back to a couple of the questions for Mr. King and Mr. DeSeve in the genesis of an evolution of the ESOP plan. You showed me from one of your several charts, Mr. King, that you had identified what were inherently governmental functions or non-governmental functions that could be accomplished by just about anyone.

What kind of surprised me was that there was no attempt to identify these functions that could be accomplished by anyone to the private sector. Was there any effort at all to examine if the private sector could accomplish some of these functions?

Mr. KING. A number of those functions have been done in the private sector for several years, Mr. Chairman. I believe Pat, I think you could——

Ms. LATTIMORE. In terms of, did we look at passing the body of work that's currently within OPM directly to the private sector; is that the question?

Mr. MICA. Well, some of the functions shown on your chart where you drew your line.

Mr. KING. There was investigate, fact-gathering, data entry, and records maintenance on one side. Then investigate, fact-gathering, data entry, and records maintenance on the other. Those things on both sides, we believe, could be managed outside in non-governmental areas, Mr. Chairman.

Mr. MICA. But there's been no attempt to get any figures as to what it would cost to conduct those functions in the private sector as opposed to the public arena.

Ms. LATTIMORE. As we moved through our implementation planning process for that, the things that we were looking at as guiding parameters were, one, that privatization was a decision that had already been made; that we were moving to privatize, which meant that our employees would be separated from the rolls by the end of the year.

The other parameter that we were looking at is whether or not, since this work had to be privatized and the privatization resulted in separation, there was a manner in which we could privatize that would allow these employees to take over this work in the private sector. And that was one of the goals that we looked at; along with the third goal of replicating the existing network for quality and timeliness as our customers requested.

So as we were looking to craft a privatization vehicle, those were the guiding parameters. So if we were looking at it in terms of, does this provide an alternative form of employment for Government employees that are going to be separated; and would it allow them to take the work there to continue as close to quality and time that our customers already had, it didn't factor in looking for another entity or another source to deliver the work.

Mr. KING. Well, it was partially—it was not partially, it was entirely driven by our own customers, who said they were looking for continuity and a seamless transition, if a transition was going to be coming. So what we first were being responsive to was our cus-

tomers, the agencies, on this. And that was where the public interest hooks in.

Everything else triggered from that. How do we maintain the continuity, is that not correct—and still meet our customers' demands, which were legitimate.

Mr. MICA. We had Mr. DeSeve testify that we might look at giving flexibility to agencies to almost go their own way, and to actually contract out privately or conduct some of this investigative responsibility in house. Mr. DeSeve, am I taking this out of context?

Mr. DESEVE. No, sir, you're not.

Mr. MICA. OK. Was that explored?

Mr. KING. Looking at the private sector?

Mr. MICA. Well, two things. One, if we gave the agencies flexibility and they could conduct some of the activities—and some already do some of this in house—and allow them the flexibility to conduct separate contracting with private vendors for the service.

Ms. LATTIMORE. In the discussions that I've had with our agencies in regular and intermittent meetings, none of the—the majority of our customers do not want to pursue that route. And that was part of the shaping of the decision as to how we developed our implementation plan. With the Department of Energy; looking at a number of our interfaces with Justice, including, as we said, in various meetings with our director with the President——

Mr. MICA. But one of the factors here may be that it could be done at less cost to the taxpayers, either in house or contracted out, if the agencies were given the flexibility.

Ms. LATTIMORE. That's the——

Mr. KING. We asked them what they wanted, Mr. Chairman, is that not correct?

Ms. LATTIMORE. We pursued the full delegation to the agencies. In several meeting sessions with them, the majority of our customers felt that the ability to replicate doing what OPM does for them now, within their agencies, and the need to deal with multiple contractors was not in their best interest, and would be more costly.

And several of the letters we got from our major customers stated that. They didn't have an interest in pursuing it.

Mr. MICA. But you did not conduct any specific review of what those costs may be?

Mr. KING. Mr. Chairman, what we tried to do, again, in the context of the interest of our customers, and maintaining that interest—which we viewed as a major public interest area—that was the driving force. There was no alternative because our customers told us they did not want that alternative. Would that be a fair statement?

Ms. LATTIMORE. Yes.

Mr. MICA. Again, I've been in business, and you can ask your customer what they want, and a lot of them want Cadillacs; but they only have beer budgets. Here we have the taxpayer paying the tab, and it doesn't appear to me that a number of options were explored. And maybe this is where Mr. Moran left off, because it seems that a lot of this is just directed on high.

And then you had to justify the directive. Mr. Moran, you've returned. Did you want to continue?

Mr. MORAN. Yes, actually, since I had just started.

Mr. MICA. We have a little team effort here. We'll beat upon you in a dual fashion.

Mr. MORAN. Oh, we're not beating up on them, no. I suspect that the people we want to beat up on may not be in the room today.

Mr. MICA. That's right.

Mr. KING. Don't bet on that, Mr. Moran.

Mr. MORAN. But I appreciate the segue there, Mr. Chairman, and since I had just started phrasing my question, I would just as soon continue for a little while longer. The issue I was getting at was the initial decision to privatize. And it does seem as though it probably came from the White House. And I wouldn't be at all surprised if it originated outside the White House by people who have very much a vested interest, even beyond a political interest, in privatization.

It may be the same process that has been occurring in some of our State legislatures. I bought into that, actually, because it's so seductive, with the Medicare program. We have these proposals where elderly people may have to sacrifice a bit. They won't get the choice they get, in terms of providers. And they won't get, perhaps, as high a quality or as frequent a service.

But everybody has to give a little, and so we go into managed care with the Medicare program. They're trying that with the Medicaid program and all. And some of our initial numbers—and you may be interested to know this, Mr. Chairman—the initial numbers are showing that it is true that the elderly are giving up some; the poor are giving up a fair amount of quality and frequency of medical services.

So that happened. But the savings didn't occur, which is real strange. And yet when we look at the composition of the numbers, it turns out that the amount that was projected to be saved has actually gone into the profit margin of the managed care companies that are providing the care. I don't want to get too far off the track, but I think there's an analogous situation here.

The stockholders for the managed care firms got the profit, which was the reduction, in some cases, not all, but in some cases, the reduction in the quality and quantity of services saved money, all right. But that money didn't accrue to the taxpayer; it actually went to the firms that were managing the health care. So they had a vested interest, and it's working for them.

But it's not working for the taxpayers; it is not working for the recipients. We may have a similar situation here. I wouldn't be at all surprised if this original idea came from some of the private investigation firms that stand to make some profit; the very ones, possibly—I don't know this, this is conjecture—but it could be the very ones that did such a miserably poor job in assuming that responsibility for carrying out the background checks in the mid-'80's.

That's why I mentioned that at the beginning; that when we did try to privatize it, and they said that they could do 42,000 checks, and they come up with 3,500, and then it was a lousy job they did, even with many of those 3,300. That should serve as some experience, and give us some indication of the credibility of perhaps the people who stand to benefit the most from this policy.

Now, having been in the executive branch from 1968 to—for at least, I guess, it was about 10 years, and then kicked around in the Federal Government. I have a strong suspicion that if in fact the agencies were conducting this function themselves, which could well have happened when it was originally decided, just to let each agency do their background checks, the way the CIA and the security agencies do it now, that the recommendation would have been to consolidate at OPM.

I mean, that would have been a common sense recommendation—let OPM do all the background checks, because they have the expertise. We could do co-location of function, consolidation of function, all those great terms. And then we could have come forward and had a great story to tell. That has already been done. The consolidation, which makes a lot of sense, has already been achieved at OPM. It's there where I think it ought to be.

Then the next step would be to come up with a business plan, to show that if the function is done at OPM, and it charges the agencies what they would normally have to pay for these background checks, then let's see how we could make a profit, or at least break even for the taxpayers, by consolidating this function.

And I think that was done, too. Wasn't that done last year? That study to come up with a business plan for the investigation staff—how they could——

Mr. KING. Well, we did one. Ms. Lattimore did one for the agency, yes.

Mr. MORAN. For OPM, you mean?

Mr. KING. Yes, for OPM. We did our business plan.

Mr. MORAN. And it showed that you can—I think, right now, aren't you just about breaking even, or maybe even showing a little bit of a profit; is that possible?

Mr. KING. Well, when you say right now, this month, yes. If you're talking about, say, the last 12 months, which might be a question that might be asked of a business, no, we still haven't broken even on an average across. We're making about $1 million a month, above costs, at this moment. We are still below breaking even for the year.

Mr. MORAN. Well, how old is the plan?

Mr. KING. Pardon?

Mr. MORAN. How old is the plan, the business plan?

Ms. LATTIMORE. It's about a year.

Mr. KING. A little over a year.

Mr. MORAN. It's only a year? Well, in most business restructure and reorganization plans, you do it over a period—the period in which you achieve your recommendations lasts a couple of years, doesn't it?

Mr. KING. Well, Mr. Moran, we were in free fall. Or, to come back to my flood plain, we were standing up to our nostrils in water on the flood plain of investigation. The river withdrew; we started to clean up the mud, the sludge, and get the machinery operating again. And now what we're doing is praying the high water doesn't come back.

There are the costs—and I think that's where, Ed, you were talking about the savings. We continue to remain vulnerable because we're heavily vested in people. We have all of the Government

structures of managing people, and yet we have an absolutely free market that we rely on for our income. Would that be a fair analysis of where you find yourself every day?

Ms. LATTIMORE. Yes.

Mr. KING. So we have the worst of all worlds, as it were.

Mr. MORAN. I'm still trying to picture you up to your nostrils in mud.

Mr. KING. Did I leave you in the middle of the mud, Mr. Chairman?

Mr. MORAN. Yes, well, I got to the flood and the mud and the sludge and trying to breathe through your nostrils. But now I'm trying to make the connection with OPM. Why are you up to your nostrils at OPM?

Mr. KING. Because we have certain fixed costs which are our employees, and the ebb and flow of the market. The market has been volatile. Within the governmental structure that we operate in, we lack the flexibility to be responsive to that market. And the major areas, the areas that have in fact been done in the private sector, can be done non-governmentally and done well if there is supervision and oversight exercised.

You were right on target, Mr. Moran. We had historic difficulties, and that's what led the issues. The chart we showed you, those are the areas that that supervision is being done. You identify that, you identify where the problems are, and you can take corrective action.

Mr. MORAN. OK.

Mr. KING. But it takes a much, much smaller unit to do that than the non-governmental side.

Mr. MORAN. I understand that. But we've taken two major steps that were obvious steps, have been achieved. The consolidation was already there. But that's the first thing you would do. The second is to figure out a business plan, how to get it to pay for itself. Then the third thing, it seems, is to scrub all the requirements in the first place. I mean, you read all these management manuals and so on, and they say the first thing you do is to figure out whether the—not whether you can reach the top rung of the ladder, but whether the ladder is actually leaning against the right house.

And I'm not sure that we have taken that step, first, to determine how much investigation background checking do we need to do; whether the taxpayers really need to pay for all that is currently being done? Have we done that analysis?

Ms. LATTIMORE. We have looked at whether or not the manner in which we conduct investigations is the most cost effective. And that was part of the formulation of our business plan. We have not done a programmatic or policy scrub of whether or not we need to do less investigation, because that determination is usually left to the agency with the national security or the public trust position to determine whether or not they need an investigation and what level of investigation they need.

Mr. MORAN. Yes. I have a suspicion that the agencies haven't really done that—that kind of scrubbing analysis.

Ms. LATTIMORE. Some of that occurred, which was part of the issues that led to our last year's reduction with the precipitous drop in workload. Not all of it, but a lot of it was budget driven. Because

as agencies pay for these, and the tighter their budgets become, the closer look they take at what level of investigation and at what price of investigation they want.

Mr. MORAN. So some of them have done it, some haven't.

Ms. LATTIMORE. I don't believe it's been a widespread look-see.

Mr. MORAN. OK, so——

Mr. KING. But we do have a menu they pick from, Mr. Moran, of what you get and what it costs.

Mr. MORAN. What level of intensity of background check you get? And it varies in price.

Mr. KING. That's correct. There is a computer check that you're familiar with.

Mr. MORAN. Yes.

Mr. KING. And you can get the computer check done very, very inexpensively. And then you get into the up to Q clearance, et cetera.

Mr. MORAN. Sure. And they make that determination. But it strikes me that we ought to do a department—a governmentwide analysis of whether the background checks that are currently being conducted are appropriate to the functions and necessary. Although with the downsizing, we may want to wait until we see what's left to do that. But it would seem that that's one step that might have been conducted before doing this.

The other thing that I want to ask about, if it's all right with you, Mr. Chairman, I'll bring that up either now or I can wait until a next round of questioning. But there's a vast disparity between what OPM estimates is the cost savings, what OMB estimates is the cost savings—or the expense, I should say, of ESOP. And actually, I think there's probably about three different estimates.

And although OMB has told us how they went about theirs, I think they also need to tell us why the OPM estimate of $55 million is not—well, let's see, OPM's estimate that privatization will cost $55 million, why that's not a—why you don't agree with that figure. Because I gather you don't agree with that figure. So do you want to get into that, or do you want to—let's just find that out.

Mr. DESEVE. Sure, I'd be happy to.

Mr. MORAN. Are you sure this is going to save money, what we're doing here, Mr. Deceive.

Mr. DESEVE. Mr. DeSeve. I wouldn't try to deceive you, Mr. Moran.

Mr. MORAN. DeSeve. I don't mean to be—I shouldn't be. Deceive, that's not a fair thing to say. Mr. DeSeve.

Mr. DESEVE. The people at OMB were very disturbed when they heard their new controller was going to be called Deceive. They didn't think that was good at all. The senior staff told me that I was in big trouble. Yes, I am satisfied that it's going to save money; and I want to deal with your question in two parts. One is the current problem within the revolving fund—whether we privatize, whether we ESOP, whether we continue the progress that we currently have.

The current problem is the largest segment, and I can't quote a precise number. I've heard different estimates, and we're working right now with OPM to verify what the exact amount is. But that deficit is ultimately going to have to be liquidated. It was a deficit

that came about because of the fluctuations that Mr. King talks about. And at some point, he will run back into deficit. He had to, as you may remember, RIF—reduce in force—more than 400 employees, because his employees are inherently full-time Government employees.

The competitors against which the OPM folks would compete appropriately use employees, in the communities in which they're based, who have experience in investigations, but don't have the same kind of long-term, full-time responsibility that an inherently governmental organization has. So dealing with the issue of, how do we solve the revolving fund problem that accumulated over many years is an issue that we face, regardless of whether we continue, whether we privatize, or whether we do an ESOP.

And we've been working with OPM to solve that. It's at least $30 million, and maybe more, of the $55 million you cite. The balance of the estimates that you cite are related to potential. And I use the word potential—potential severance cost, potential unemployment costs. We don't know what those will be. If in fact we were to continue to run the revolving fund like a business, it will need to shrink over time.

The size of the force is going to need to shrink. Will we do that shrinking of the force through a RIF again? Will we do it through attrition; will we do it through a buy-out? We don't know. But as you mentioned earlier, there are going to be inherently fewer background investigations because we're not hiring. So therefore, over time, there are going to need to be fewer background investigators. Again, whether we go to an ESOP, whether we go to a privatization, or whether we continue in place, there will be a need for some termination costs.

And I can't tell you what it would be, under which scenario. I also hope, and would encourage Mr. King—and I'm sure he will—that he negotiate hard in the formation of the ESOP, so that a portion of the costs may be ameliorated from the Federal Government. If someone is not truly unemployed, but in fact, there's a transition to an ESOP, that they agree that they'll move very nicely across that framework. We encourage them to do that.

But it's part of a very complicated negotiation that will have many facets. One of the—there are two questions that haven't been asked here, but I want to answer them anyway. One is, why wasn't a cost comparison done, No. 1? And No. 2, the question you asked, how do you look at savings in the out years?

What I see in the ESOP is what Mr. King has testified to, is a humane transition for the employees. That humane transition involves a period of time. OMB used a 1-year period of transition in their estimates. At the end of that 1 year, these employees will be subjected, as part of the ESOP, to the entire marketplace. I go back to your consolidation example.

We're honestly trying to move away from consolidation. We're trying to move away from the large centralization of functions. Competition is so much better; information exchange is so much better. The ability of the agencies to manage their work is so much better than it was 10 or 15 years ago, partly because of the tremendous improvements in communications technology and understanding.

So as we put in the hands of those agencies the flexibility, which we will do after the period of the sole source is over—and again, that's another element for negotiation. I don't want to comment on whether that's 3 months, 6 months, 9 months, a year. I don't know what it is; that's an element for negotiation along the way. At that point is when the big savings will kick in.

As I suspect you will hear from private sector vendors, they believe that they can significantly underbid OPM. We'd love to see them try, but I'd love to see the ESOP, on the other side, get lean and mean and find a way to compete in that same marketplace. And it's that competition over the 5-year period—again, we're not looking about today or tomorrow—we estimated no savings in the first year. But it's a 5-year framework that we look at.

And we fully believe that the things that the Chairman talks about, in terms of flexibility, in terms of long-term benefit, will kick in for the agencies in the 40 percent of the work that isn't currently in the agencies' hands now, either in-house or under contract. So that's our expectation. I believe it's consistent with what the director is trying to do.

Mr. KING. There's one other thing, Mr. Moran, I should add. The taxpayers do, in fact, underwrite the private sector that's presently out there with investigators because as you look at them, and they have so stated, they are retired Government employees, at some level of Government, who receive their health care from the taxpayer, get their retirement from the taxpayer, and get their life insurance from the taxpayer.

So virtually all of the benefits package that we see in the private sector is paid for by the taxpayer. So it is not something that is merely being passed on in costs; it's being absorbed as a secondary thing by the taxpayer. And I know that the candid testimony from the private investigators reflected that a number of those folks are really stringers, as you would, that they were on tap and on call.

And virtually all of them have a wonderful tradition of service in our Government. And therefore, they come with their entire taxpayer-paid benefit package that they carry in, and therefore can work at the level that we're talking about; because we have that extra subsidization from taxpayers.

Mr. MORAN. Well, that's very interesting. And thank you, it's very good testimony, Mr. DeSeve. Thank you, it's very knowledgeable. I just hope that we—well, let me go on to Frank at this point.

Mr. MICA. I would like to now yield to Mr. Mascara.

Mr. MASCARA. Thank you, Mr. Chairman. Permit me to be a bit parochial at this time, Mr. King. I received a letter earlier this year of a concern of the Boyers, PA, facility, wherein it was indicated that that operation would not be affected materially. Could you enlighten me what would the status be?

Mr. KING. It would be affected. By the way, there are two parts to our Boyers facility. There's our area that manages our retirement, as you know, and then the area on the security side. Ms. Lattimore, would you like to respond?

Ms. LATTIMORE. We would continue to keep the operation functional, at the Federal Investigation Processing Center in Boyers, those activities which are viewed as inherently governmental, which are suitability decisions, handling falsification fraud cases,

the ability to oversee the performance of records gathering, records filing, and the data system.

We would see that being performed, we propose, by the ESOP, with adequate Federal oversight and onsite Federal oversight and management, but with the bulk of the work force being—ultimately, the source of the work force being drawn from the ESOP.

Mr. MASCARA. I heard Mr. DeSeve mention the words communication technology. My question is, we have a major investment in technology, computer technology. And if we engage in an ESOP, or privatization, how do we utilize that communications technology that we currently have and use in the investigation process?

Ms. LATTIMORE. Our proposal is that that technology and that system, with our interfaces with FBI, with Defense, and with the Department of Energy, as well as with the network of investigators, through the laptop computers, that the system would not change. It would become, in a sense, Government-furnished equipment that the ESOP or whomever—and we're proposing it's ESOP—would use to perform the work that we need done and to transmit it to what is basically our processing hub in Boyers.

Mr. MASCARA. So the people in the private sector, or those people who would engage in an ESOP, then that technology would be made available to them from the Federal Government?

Ms. LATTIMORE. Yes. They would collect data that's fed into our basic system via a laptop system, as is currently done. And the actual data entry, files maintenance, record retention, and those types of activities would be performed by staff that we would draw from the private sector.

Mr. KING. And that's why we're a bit—I believe it was you, Mr. Mascara, mentioned that we would be—that the investigators on an ESOP would be excluded from police files, et cetera. I don't know who gave you this bit of information, but it isn't correct. Because it can be done through the supervisory and our professionals at OPM on the part that would be supervising this particular organization. Those records would be open in that network. So we would not be excluding our ESOP, if that were there.

Mr. MASCARA. Getting back to the Boyers, do you know how many people would be affected at the Boyers facility?

Ms. LATTIMORE. We have about 275 now. I would envision that we would have no more than 25 Federal employees residual staff there. And the balance of staff, we would plan to grow from the private sector, via the ESOP

Mr. KING. And obviously that means that everyone who is there would have a job.

Mr. MASCARA. So it would be a 250 person ESOP?

Mr. KING. Yes. We don't see any dramatic downsizing at this time, do you, on anything?

Ms. LATTIMORE. No, the proposal would include that all employees that were given notices of separation, if the ESOP was successful in sales, would receive an offer of employment. They get a right of first refusal.

Mr. KING. The other thing, Mr. Mascara, is that we are sensitive to a number of people who have a long-term concern about their employer. We have working literally across the cave—we work in a cave, literally—another unit that belongs to us that, and as va-

cancies are occurring, we are making the job offers to those folks, on the basis of seniority and their skills, to bring them in and keep them within the Federal family. So we're trying to minimize any disruption to them.

Mr. MASCARA. Well, the Government could not have chosen a better person to make the case, Mr. King. I have the utmost respect for you and admiration about the way you go about your job, and the sense of fairness that you have. But after 2 days of hearings, I'm still not convinced that we have sufficient data to move forward. There were so many question marks yesterday, at least. I've been in and out of here today.

There are so many question marks. Why are we moving so quickly? Why don't we get the questions answered that we need to have answered? The numbers are soft. Nobody can assure us that those numbers are hard numbers, as it relates to savings. And I'm just a little bit perplexed about why we are moving on an issue that we're not sure about, what the outcome, the final results will be. Thank you, Mr. Chairman.

Mr. MICA. Thank you, Mr. Mascara. We are trying to find some of those answers with this hearing. And just a little personal counsel to Mr. King and Ms. Lattimore. Instead of using the analogies of wallowing in the mud and the sludge, I suggest that, for Mr. Moran's benefit, you use an analogy that you are driving a little, inexpensive, American-built pick-up truck. And you have the administration breathing down your neck, telling you which path they want you to go.

And you're trying to change the tire, in fact, all the tires, while it's going down the highway at 55 miles an hour. And you're trying to provide services to these agencies in investigations to the tune of what, 3,000 a month, to get to the 39,000 of the heavy-duty kind. And then you've got almost 8,000 to 10,000 a month in the investigative side.

So I think that might be a better analogy than wallowing in the mud and the sludge.

Mr. KING. The principal difference, though—and I couldn't agree more on the day to day operation, Mr. Chairman. The principal difference, though, is that once you put new tires on the vehicle, there's a reasonable assurance you won't have to change them again, during your stay on the truck. I can assure you we're going to be flooded again on our flood plain of management in the future.

So we have both the truck, but the flood plain stays.

Mr. MICA. He's got to get back in that mud.

Mr. KING. We're trying to move it to higher ground, so we can protect everybody.

Mr. MICA. You're not only trying to change the tires, you're trying to redesign the model. But I'm going to yield, if I may, my next round of time to Congressman Phil English. I'm amazed at how many people represent Boyers Federal Investigative Processing Center, including the chairman of the full committee. But I'll yield to Mr. English for a round of questions. He may have some insight on this issue.

Mr. ENGLISH. Thank you, Mr. Chairman, and I appreciate the opportunity to appear with this subcommittee and question this panel. I have the privilege of representing, physically, the Boyers

facility. And I appreciate Mr. King being here. He has previously visited my office, and has offered me some insights into this process. As I shared with Mr. King when he appeared in my office, I have perhaps a limited background, but one that does involve privatization.

I was the chief internal auditor of the third largest city in our State. I served nationally on the privatization council as a member. And also, I worked on a number of privatization issues in city government when I was there. So, as I shared with Mr. King when he was in my office, some things about this privatization process, as it applies to OPM, really puzzled me. And I'd like to flesh those out.

First of all, I am still unclear, having reviewed this process, what the rationale is for privatization. Now, Mr. King, you've made it very clear this was not your decision. This was something that was directed by the White House. This is something that they formulated. And you're probably in a poor position to give complete insight on what their rationale was for doing it.

But is there any rationale here, beyond cost savings?

Mr. KING. Yes, indeed. We identified, and it has been identified on an ongoing basis, as an activity that can be done in a non-governmental setting.

Mr. ENGLISH. That can be done, or done better?

Mr. KING. It can be done as good as. And that is in a non-governmental setting. And we believe, to respond to that, that it can be done in that setting with minimum disruption to the customers, if the employees themselves do it.

Mr. ENGLISH. OK. Well, Mr. King, as you know, I think that any time you privatize a Government activity, you need to meet several tests. And I'd like to explore that a little bit. One of the tests is that you have to be able, in certain sensitive services, and I think the OPM investigative service is certainly a sensitive service. The Government has to be able to retain enough control to guarantee certain policy objectives.

And I'm not sure that the case has been made that you will be able to do that in the long haul. But let me jump to autonomy. Mr. Deceive—or is it DeSeve? I'm sorry.

Mr. DESEVE. It is DeSeve, Mr. English.

Mr. ENGLISH. Mr. DeSeve.

Mr. DESEVE. From Monroe County, PA.

Mr. ENGLISH. Outstanding. The other end of the State, a fine area.

Mr. KING. Gateway to Erie County.

Mr. ENGLISH. Mr. DeSeve indicated in his testimony that this would increase the autonomy of agencies that are the consumers of this service. However, I understand from your testimony that agencies already have the option of going elsewhere for these investigative services. So don't they have a measure of autonomy already? Isn't there competition already built in?

Mr. KING. Somewhat limited, but let Ms. Lattimore——

Ms. LATTIMORE. There are currently five agencies that operate under delegation from OPM to seek their investigations from the private sector. The remainder of those, with the exception of a few

who have independent investigative authority, and the Department of Defense, receive their background investigations from us.

Mr. ENGLISH. OK.

Ms. LATTIMORE. As well as their automated record checks. Those agencies that seek their background investigations in the private sector or do them themselves or secure them from Defense still pull automated records checks from OPM, through our Boyers facility.

Mr. ENGLISH. You're proposing, under this ESOP proposal, to give Newco sole source authority. Does that basically limit the autonomy anyway, of these agencies?

Ms. LATTIMORE. In dialog with the agencies we've had, it doesn't, in a sense, limit the autonomy. The agencies that we're talking about, that have so far been supportive of us in working this ESOP, understand that the ESOP does the business, as long as the ESOP lives up to the contractual performance requirements. If they're delivering the quality with the timeliness and not significantly changing their cost, then they stay with that.

They are not bound by any legal or contractual obligation to give work to the Newco, via OPM, if the Newco was not performing. It would be performance-based.

Mr. KING. And that's where the public interest rests with us, and the actions all followed from that.

Mr. ENGLISH. Yes, I understand. So it is a limited monopoly, but it is still——

Mr. KING. And for a restricted period of time, sir.

Mr. ENGLISH. OK, for a restricted period of time. And after that, what contingency plans would you have if Newco fails?

Ms. LATTIMORE. We've looked at that. The alternatives are not as acceptable to our customers. But we would have to work with them for a combination of delegation and/or OPM seeking another contract source to replicate that network.

Mr. ENGLISH. OK, Ms. Lattimore, do you have a contingency plan if Newco fails?

Ms. LATTIMORE. The contingency plan that we have worked with the agencies, and told the agencies in our work group, we would move toward is finding another contract source. We have not had a definitive plan finished, because our customers are not very anxious to work on that. But they do know that would be the approach.

Mr. ENGLISH. OK, reclaiming my time. I appreciate that. How do you plan to construct this contract in a way that will guarantee the quality and the security of investigations?

Ms. LATTIMORE. The requirements that we currently have for the gathering and packaging and transmittal and maintenance of information would be the same requirements that we would place on the new company. The methods by which the company would perform investigations for us would be the same methods that we currently employ.

We are not proposing to lower standards; we're only talking about changing the source of the staff to perform the work.

Mr. ENGLISH. Sure. But you'll in effect, though, have less control by contracting this out?

Ms. LATTIMORE. I don't think so. We do a large measure of quality control and review now, and we would propose to continue to

do that. Because our commitment to the customers is that we would ensure that the product they receive is not of a lesser quality.

Mr. ENGLISH. OK. A couple of specific points. One is, Mr. King, I kind of interpreted from your remarks that you're not pushing the ESOP vote by the employees at Boyers as particularly significant. Because, after all, wasn't it true that the employees were only given about 10 days to review a 56-page document? And the issue wasn't privatization as much as, would they prefer an ESOP to just——

Mr. KING. Yes. And by the way, Mr. English, there's two questions there. I realize it was 56 pages, but there was a summary available; people were aware of what was being done. Ten days was the time period. There were no surprises there. But the question that's come up—there's been two questions. One you asked directly, and on the other, we never once—and if I've done it, then I owe everyone an apology—never once did I want to suggest that the vote on the ESOP in any way reflected a support of privatization by our employees. I've got to make that absolutely crystal clear.

Mr. ENGLISH. I appreciate your doing that, because in our local media, it was reported in a way that intimated that. And I've talked to the employees, and I know that that was not the case. And I'm grateful to you for making that point clear.

Mr. KING. And I wanted to thank you, because you were one of the early folks who brought that to my attention, and I'm very grateful. I wanted to have the record reflect that, Mr. English. The other challenge—and you've reiterated one that's come from virtually everyone. And it's the assumption of failure on the ESOP's part. I really and truly have to reject that.

We have excellent people. One of the difficulties, the major difficulty that we're having is that we have a basically privately financed operation operating with every Government restriction, with all of the costs and the overhead, trying to function in a fluid marketplace at this moment, which makes it next to impossible to function effectively with concrete shoes in entering the Boston Marathon.

Our people have been wearing their concrete shoes and doing a heck of a good job. This is not a criticism. If we release the genius that's in this organization and put it into the private sector and give it a chance, the same as we would nurture a simple tree we were planting. If we gave them the same courtesy we'd given in horticulture, to our human beings, we will have a success that we'll point to with pride.

And the individuals in here will have a future that is not just bright, but brilliant. And that's what I'm genuinely concerned about.

Mr. ENGLISH. Mr. King, assuming the ESOP goes forward, for Newco to survive in the long term, isn't there a very strong likelihood that the Boyers facility itself will have to be eliminated? I mean, it's a single facility. Is servicing a national audience or a national constituency—won't it be very difficult to have just one facility?

Mr. KING. I would dare say that the facility is up there, but your question is excellent. If I had to lose a part of my anatomy, I might

select one of my limbs or fingers. I would not recommend my brain. The brain exists in Boyers. It is our history; it is our corporate center, as far as our intelligence goes. And everything feeds to that as a center. Am I overstating that, Ms. Lattimore?

Ms. LATTIMORE. No.

Mr. KING. So the Boyers location—everything is flexible, as you know. But we have found first, it serves its purpose. We have a staff up there that brings both intelligence and dedication that, really, if it were in the military, they would receive awards in the form of medals.

Mr. ENGLISH. That's powerful praise, sir.

Mr. KING. It's true, and by the way, it's deserved.

Mr. ENGLISH. I just have a couple more quick questions, with your indulgence. I understand, Mr. King, that there was an A–76 cost savings comparison that was done in this case.

Mr. KING. Yes, sir.

Mr. ENGLISH. And that the—what calculations were done to demonstrate that the ESOP venture saved money?

Mr. KING. I said yes, sir, but I was saying yes, sir, and looking at my colleague from OMB. Ed?

Mr. DESEVE. Right. I testified earlier, there was no cost comparison done.

Mr. ENGLISH. OK.

Mr. DESEVE. So, just to clarify.

Mr. ENGLISH. So there's really no credible argument here, based on hard data, that there is an actual cost savings as a result of doing this?

Mr. DESEVE. What OMB has tried to testify is that in our budget estimating process, and when I was told that folks at GAO called it potentially conjectural, we thought that was high praise at OMB from GAO; which doesn't happen very often. No, we did not conduct an A–76 review, and the data is based on budget estimates.

Mr. ENGLISH. OK. And again, I would make the point that in any credible privatization process that I've ever been involved in, there was a coherent and very careful estimate of whether there was actual cost savings. And the only privatization that I've seen done successfully were those which actually had demonstrated cost savings. But that's neither here nor there.

One other question I had, with regard to the ESOP, I saw that on June 9, OPM announced the award of a contract to Marine Midland, to serve as a trustee facilitating the organization of the ESOP. What are the responsibilities of the Marine Midland company?

Ms. LATTIMORE. Marine Midland, along with American Capital Strategies as a financial firm, and Arnold & Porter as a law firm, have been chartered with working to formulate, incorporate and set up the new company; to formulate benefits packages; to formulate compensation plans; to formulate a structure for the company to operate in, working in conjunction with a 12-member, plus equal number of alternates, employee liaison committee to develop the necessary enabling tools to form the company, as well as to develop a package that would be sent in behalf of the company to the potentially separated employees on which they could base the decision as to whether or not they would join the company.

The trustee serves as the trustee on behalf of the employees moving to an ESOP, if the ESOP survives, with a fiduciary responsibility.

Mr. ENGLISH. So Marine Midland has a great deal of significance, then, in this transfer.

Ms. LATTIMORE. As a trustee.

Mr. ENGLISH. And that's a very sensitive role. Now, I understand Marine Midland is a subsidiary of HSBC Group, which stands for Hong Kong Shanghai Banking Corp, Ltd., which is an international banking and financial organization, based in Hong Kong. Marine Midland, I believe, is 48 percent owned by HSBC.

Given the fact that Hong Kong is going to be turned over to China in 1997, is there any significance to that?

Mr. KING. To the best of my knowledge, in looking at the Marine Midland Bank Inc.'s information sheet, they're a New York based holding company, and a wholly owned and indirect subsidiary, as you've suggested. It's located in Buffalo, NY, and it seems to have 320, I believe, branches in New York, and another 300 ATM's, which become your friendly automated teller.

From what we were led to understand by all of the parties involved, they'd bring talent and skill. I don't believe that their parent holding company was to play any particular role in this. Are you aware of that?

Ms. LATTIMORE. No.

Mr. KING. And I believe they don't necessarily, as we understand the 300 banks in New York, and the commercial loans that they make that go into the billions across America. So I didn't see them being any more compromised in this particular business than they would have in, say, something far more delicate, like in working with one of the electric boat companies in Groton, CT, where we build the Trident submarine, which is probably the most secret of all of our operations.

Mr. ENGLISH. Well, Mr. King, that's most reassuring. And I appreciate your testimony here today. Let me simply say for the record, Mr. Chairman, that I continue to be deeply skeptical of this process. There has been no demonstrated savings from this spin-off. I believe there are major questions remaining about this ESOP. I believe the people who have testified here today have done their best to defend this proposition.

But unfortunately, I am concerned that this service, in being spun off and being contracted out, could, under certain circumstances, not be guaranteed in the future. And I believe that is a very serious public policy issue that the administration did not take into account in pushing this privatization. Thank you, Mr. Chairman.

Mr. MICA. Well, we thank you, Mr. English, both for your interest and also for sharing with us your experience and knowledge on this issue. Mr. King, you're getting better. I like the analogy with the limbs and the brain; the seedlings were very good, too. I would like to yield, at this time, to the ranking member.

Mr. MORAN. Thanks, Mr. Chairman. Boy, that's a new twist that you brought up, Mr. English. Since Hong Kong is going to be taken over by the Chinese Communist government shortly, you're suggesting we might have the Chinese Communist government over-

seeing the security background checks of Federal Government personnel?

Mr. ENGLISH. No, but I thought we ought to be reassured on that point, Mr. Moran.

Mr. MORAN. Controller DeSeve, let me get back to the question I had asked. Two things—in your answer about the differences in cost, you suggested that there will be one-time costs for termination and so on. There was an implication that all those one-time costs might not have been included in your analysis that this privatization would save $30 million at OPM.

Are we comparing apples and oranges? OPM's estimate of the $93 million in costs versus $30 million savings that OMB has—you may not include those one-time costs in your savings analysis.

Mr. DESEVE. Sir, again, let me just separate the costs, and it might answer the question. The $30 million of some costs, as far as the revolving fund's history, I don't believe is the cost of the transaction. It simply represents an historic cost that we'll have to deal with regardless. In selecting a 4 percent privatization savings, we believe we were recognizing, on a very conservative basis, what the savings would be, including termination costs; changeover costs for agencies moving into new contracts, potentially overlapping contracts; training for the agency employees.

A whole host of factors led to the judgment to take a 4 percent, rather than some higher number. So while we didn't sit down and do a big spread sheet that had all the analyses, it was the result of knowing that those costs would exist. We weren't ignorant of those costs, but we didn't sit down and do the exact math that led to that.

Mr. MORAN. So you're not necessarily disagreeing with OPM's analysis?

Mr. DESEVE. No, we're not disagreeing with OPM's analysis at all.

Mr. MORAN. They may check, they just may not be comparable figures.

Mr. DESEVE. They are what caused us—those costs are what caused us to take a very conservative, rather than a more liberal projection of the ultimate cost savings, because we knew they had to be recognized.

Mr. MORAN. Now, let me ask you, Mr. DeSeve, how much profit margin did you figure that, if it was contracted out, not ESOP, but if it was contracted out, how much money would go into the profit for the firms that would actually be doing it?

Mr. DESEVE. That's something we really can't know in a sense of, if you were a contractor—and as I understand it, there are many contractors who do this business, and we would expect other contractors, potentially, to come into the marketplace, who aren't in the marketplace now. What we are hoping for is very low profit margins by those contractors——

Mr. MORAN. Sure.

Mr. DESEVE [continuing]. As they bid aggressively to gain a foothold in a market that's newly opening. We didn't make any specific estimate of what their profit margin might be. But we, again, want them to be lean and mean, as they bid on the Government's business. In fact, we hope they would lose money.

Mr. MORAN. I understand that, Mr. DeSeve, and I suspect that they would be willing to lose money in the initial years to put OPM out of business. Because then, the Federal Government becomes dependent upon those firms in the private sector who have the capacity to do these background checks. But after they put OPM out of the business at doing these checks, and they have all the business, then they can make up for the loss in the initial years.

The Japanese Government does that all the time to us. We have that in many——

Mr. DESEVE. We would have to——

Mr. MORAN [continuing]. Of these privatization efforts, that is done. What?

Mr. DESEVE. We would have to call the Justice Department at that point, because it would be acting in restraint of trade. We hope that an open, free, competitive market would produce a good result for the Government, as opposed to a bad result.

Mr. MORAN. But, you know, there's nothing illegal about that. If I were going to do this, that's just what I would do. I'd underbid, as they have done so, to make sure that they force this policy decision their way—to privatize. Because we can look at these initial numbers and achieve substantial savings in the initial years. They would be willing, if they've got some large firms bankrolling them, to take a big loss in the initial years, to capture a substantial share of the market.

And then they more than make up for it in the out years, because we're dependent upon them. I think that's a legitimate concern.

Mr. DESEVE. It could be. I hate to sound like a Republican, but what we try to see is——

Mr. MORAN. Are you a Republican?

Mr. DESEVE. No, sir, I'm not a Republican, and therefore, I hate to sound like one. Mr. Mascara knows some of my political antecedents.

Mr. MORAN. That wasn't appropriate, I know.

Mr. DESEVE. I apologize for being at all partisan, Mr. Chairman, but I think the argument here is that free and open competition with many providers—this is not a business that has, like an automobile manufacturing company, very high entry. It's possible, with appropriate capitalization and an appropriate skill mix, to begin in a fairly small area, providing, in that geographic area, an investigation service.

So we believe that capitalism will work very much to the Federal Government's advantage in this circumstance. And we think that's both a Democratic and a Republican notion.

Mr. MORAN. No, I understand that. But I just hope that some of these assumptions are not Pollyanna-ish. We're really playing hard ball when we let people go, disrupt their entire lives. And we give up an important function of the Federal Government on the assumption that the private sector will take it over.

And I just hope we don't get ourselves in a situation where we become dependent upon firms that don't have the commitment that Federal employees have, getting the job done; really whose principal objective is making profit, it is not performing the function.

And that's the basic difference. And that is a profound difference issue, really, in the whole privatization effort.

And the one other question that I've had throughout this is, if there is a successful effort to stop ESOP—and I think there will be an effort, I know there will be an effort to stop ESOP, to say it's illegal to sole source. If that is successful, which it may very well be, are you going to force privatization of the investigation's function?

Mr. DESEVE. I think we're going to sit and talk with Mr. King about what all the options are at that point. But I certainly hope we won't be faced with it.

Mr. MORAN. Well, I think it's a very real possibility, and I think we need to be prepared for that. And I'd like to know what you would do if that happens. Thank you, Mr. DeSeve.

Mr. MICA. It may be "Mr. Deceive;" he said he was not a Republican. Mr. Mascara.

Mr. MORAN. You know, he does do a very good job. We shouldn't be giving them all that flack, you've been very articulate and professional.

Mr. DESEVE. Thanks, Mr. Moran.

Mr. MASCARA. Mr. DeSeve is a very honorable person. I've known him for a number of years, and very capable. I have one more question. Is it part of the responsibility of OPM to look at investigations that are done by other agencies that are contracted out, and to evaluate those investigations?

Ms. LATTIMORE. Yes, we do appraisals and assessments.

Mr. MASCARA. And if you do, do you have a number or a percentage of those investigations that were deficient?

Ms. LATTIMORE. I do not have a current number, but I can certainly get you the results of the most recent year's appraisals that we've done, and share them with you, sir. I don't have it off the top of my head.

[The information referred to follows:]

For the period June 1, 1994, to June 9, 1995, OPM review of investigations performed or contracted out by other agencies under authority delegated by OPM showed the following:

Number of investigations reviewed: 822
Number deemed deficient: 548 (67%)

Mr. MASCARA. I appreciate it, Ms. Lattimore. Is there a concern about potential litigation in the event that the investigations were improper somehow, or information was not correct, and that litigation could result as a result of a faulty investigation? Is that a possibility? Would the Government, or the private agency doing the investigation be subject to litigation?

Ms. LATTIMORE. If the private agency were performing investigations for us, OPM could be liable, because they would be acting as our agent in that regard.

Mr. MASCARA. Well, does that somehow make them immune to a lawsuit for liable——

Ms. LATTIMORE. Counsel?

Mr. KING. I love getting counsel to make a spontaneous response, Mr. Mascara; I hope you're more successful than I've been.

Ms. LEWIS. Mr. Mascara, because the investigations are being performed on behalf of the Government, either directly by Govern-

ment employees or through the contractor employees, the party that would be sued and looked to be held responsible would be the Government. And in OPM's case, we would turn to the Department of Justice to represent us, whether that suit took place in State court or Federal court.

Mr. MASCARA. So then the private agency then has immunity from prosecution or from being sued, because they're working at the behest of the Federal Government?

Ms. LEWIS. Well, there is also an examination of—frankly, it ends up, as in many legal matters, perhaps being fact-specific. It may very well depend on exactly what is the conduct that is being alleged to be unlawful. One of the examinations the Justice Department clearly would do, is whether the contractor is acting within the scope of the contract, basically being alleged to act unlawfully while performing the business of the Government.

So if the conduct being alleged is outside that scope, then perhaps, again, it would be a fact-specific matter, the contractor would ultimately be the liable party.

Mr. MASCARA. I have a son that's a lawyer, and that was the exact answer he would have given me had I asked him the question. So I see what you mean, Mr. King, about you didn't know what answer you were going to get to an impromptu question. Getting back to Ms. Lattimore, you can get that information?

Ms. LATTIMORE. I will certainly get it to you.

Mr. MASCARA. I think we should have some sense of the number that are deficient, the number of cases.

Ms. LATTIMORE. I will get that to you today.

Mr. MASCARA. Thank you. Thank you, Mr. Chairman.

Mr. MICA. Just a couple of final questions. I think GAO is testifying shortly that the ESOP feasibility study cost was $108,000; is that correct?

Mr. KING. That's correct. That's averaging it up. But for $260, actually $259 and I think about 92 cents.

Mr. MICA. What's the cost of the contract awarded to Marine Midland?

Mr. KING. The cost on that would be—it was $250, wasn't it?

Ms. LATTIMORE. It's capped at $250 cost, and the expenses would——

Mr. MICA. $250,000?

Ms. LATTIMORE. Yes.

Mr. MICA. And what about for Arnold & Porter?

Ms. LATTIMORE. No, see, the——

Mr. MICA. Is that included?

Ms. LATTIMORE. The trustee costs are capped at $250,000. The total cost of the contract, with travel expenses and working with our employees will not exceed a half a million, will not exceed $500,000 capped.

Mr. MICA. $500,000?

Mr. KING. Yes.

Ms. LATTIMORE. Right.

Mr. MICA. And that includes Arnold & Porter's fees, and Marine Midland's fees, and there was another firm?

Mr. KING. Right.

Ms. LATTIMORE. American Capital Strategies.

Mr. MICA. OK, and that's capped at a half a million dollars?

Ms. LATTIMORE. That's right.

Mr. KING. And that's probably, as you know, Mr.Chairman, that's the bargain of the year.

Mr. MICA. And then we have $108,000 for the feasibility study on top?

Ms. LATTIMORE. That's correct.

Mr. MICA. Those are the costs to date. We've got a lot of money invested in this, and I'm not ready to have it all go down the tubes. I know you've been handed a not very tasteful task, and you're trying to find a humane solution. You've already RIF'd 500 people, and I think you're trying to give an option of employment within the Government, with a sole source ESOP plan.

Actually, if this doesn't work, and if it turns out that this is going to cost us more, I can tell you, we're going to be right back here and look toward some other, what I consider, true privatization. The investigators need to get with you all, and come up with some agreement on how to make this thing work in a cost-effective manner.

And then if you're going to have an ESOP, it better be very lean and mean and cost effective, because I'll figure out a way to get some true competition from the private sector, or eliminate the program. So I'm not here to pull the rug out from underneath you, but there are still many unanswered questions. We've got a big investment in this, and a lot of people are hanging out there.

There are more questions, and we've already had you here for 2½ hours. And we will submit additional questions and ask for written response both from the minority and the majority. So at this time, I will excuse the panel. Thank you for your participation.

Mr. DESEVE. Thank you, Mr. Chairman.

Mr. KING. Thank you, Mr. Chairman.

Mr. MICA. I look forward to working with you.

Mr. KING. Mr. Chairman, we look forward, also, in keeping the committee advised and the subcommittee advised as anything additional occurs. We'd like to just keep you advised on an ongoing basis.

Mr. MICA. We need that communication, and we'll work with you. I will excuse the panel, and call our next panel. Panelist Mr. Timothy Bowling, who's the Associate Director of the Federal Human Resource Management Issues for the General Accounting Office. Mr. Bowling was with us yesterday. Do you have anyone accompanying you, Mr. Bowling?

Mr. BOWLING. Yes, I do. I'll be accompanied by Alan Belkin of our General Counsel's office, and Deborah Taylor, of our Accounting Division.

Mr. MICA. All right. And if you could remain standing, and I'll swear you in. Raise your right hand.

[Witness sworn.]

Mr. MICA. Welcome back, Mr. Bowling, and thank you for your patience. And we now open the floor to your testimony.

STATEMENT OF TIMOTHY P. BOWLING, ASSOCIATE DIRECTOR OF THE FEDERAL HUMAN RESOURCE MANAGEMENT ISSUES, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ALAN BELKIN, OFFICE OF GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE, AND DEBORAH TAYLOR, ACCOUNTING DIVISION, GENERAL ACCOUNTING OFFICE

Mr. BOWLING. Thank you, Mr. Chairman. With your permission, I'll read a shortened version of my statement, and submit the full text for the record.

Mr. MICA. And we will submit, without objection, your full statement for the record. Thank you.

Mr. BOWLING. Thank you. I'm pleased to be here today to discuss the Office of Personnel Management's privatization of the investigation service, through the establishment of the employee stock ownership plan. The stated purposes of OPM's privatization initiative are to permit agencies more autonomy in meeting their investigations needs, and achieve cost savings to increase competition among providers of investigative services.

Thus far, an OPM contractor has completed a feasibility study, as you pointed out, at a cost of $108,000, which indicated that this type of activity could be converted to a private sector operation. However, the contractor study said that the potential for future success of this proposed new company could only be assessed after the preparation and analysis of a detailed business plan.

OPM has recently awarded a contract for the services of a trustee who, among other things, is responsible for developing this business plan. There are two basic questions to be addressed with regard to OPM's privatization initiative. First, should the investigative function be considered inherently governmental, or can it be appropriately performed by a non-Federal organization.

And second, if it is determined that this function can be appropriately performed by a non-Federal organization, is conversion to an ESOP feasible? The Federal Acquisition Regulation, which is the primary Federal procurement regulation governing the acquisition of supplies and services, provides that a contract may not be awarded for the performance of an inherently governmental function.

In September 1992, OMB issued guidance supplementing OMB Circular A–76 to assist agencies in determining what functions fall within the category of inherently governmental functions. This guidance states that gathering information for, or providing recommendations to an agency are not normally inherently governmental functions.

It also includes an illustrative list of functions that are considered to be inherently governmental, and states that activities that commit an agency to a particular decision or a course of action are inherently governmental. The guidance specifically identifies the selection of individuals for Federal Government employment as an example of a function that would be considered inherently governmental.

Based on the OMB guidance and our analysis, it appears that investigative functions confined to the gathering and reporting of information to Federal agencies could legitimately be privatized. However, decisions regarding an individual's suitability for employ-

ment, or eligibility for clearances should be made by Federal officials.

Concerning the feasibility of the proposed ESOP, the ESOP advisor's feasibility study makes the point that a business plan describing the implementation of the ESOP has not yet been developed. As a result, several issues regarding the feasibility of the ESOP have not been fully addressed. Although OMB estimated a $30 million savings by privatizing OPM's investigative and training functions, it is uncertain whether the proposed ESOP would achieve greater financial stability and cost savings for the Government than OPM's current method of providing investigative services.

Also, based on OPM Inspector General reports and our analysis, the deficit that has been attributed to the investigation service revolving fund, about $30 million, is questionable. Previous IG reports have noted several deficiencies in the management of OPM's investigative activities. For instance, the IG reported that OPM has not been able to accurately forecast its investigative workload and adjust staffing levels accordingly.

Also, the IG noted that OPM's investigative services have been burdened with an excessive share of OPM's overhead charges. The amount of overhead allocated to the investigations function has a considerable effect on the fund's financial position; and in all likelihood, has contributed to the fact that, with the exception of Fiscal Year 1991, OPM has consistently reported a deficit for investigative services every year since 1986.

Because of issues such as the above, it is difficult to determine whether greater cost savings could result from privatizing this activity than would result from improved management, with the application of a more realistic overhead charge. Also, care needs to be taken to be sure that OMB's savings estimate is clearly understood. OMB's estimate is not based on an analysis of how costs could be reduced or revenues could be increased by privatizing the investigative function.

Rather, the $30 million figure was derived by estimating the savings from privatizing both OPM's investigative and training functions. According to OPM, this figure was arrived at by assuming that annual savings would be 4 percent of OPM's investigative and training expenses, including overhead, over a 4-year period. OMB said the 4 percent figure was based on rates of savings found in earlier studies, as they've testified earlier today.

Using Fiscal Year 1994's investigations operating expenses of $88 million as the base in applying the 4 percent annual savings figure, we estimated that the investigation's portion of the savings would be about $14 million, over a 4-year period. Additionally, this reported savings could be inflated, since the $88 million would have included some amount of questionable overhead charges.

We also noted that OMB's methodology did not include estimated conversion costs of approximately $54 million; contract costs of $108 million, and now the trustees fee to complete the feasibility study and prepare the management plan; and contract costs that would be incurred by the trustee in developing the business plan.

Another unanswered question concerns the willingness of State and local law enforcement agencies to share data with a private organization, such as the proposed ESOP. We have been told by all

three State law enforcement agencies we have contacted so far that if the function is privatized, they would be reluctant to provide ESOP investigators access to the criminal history records of persons who are under investigation. According to these officials, they were concerned that they would have no control over what a private organization would do with such information once it had been obtained.

Similarly, at the Federal levels, officials from the Departments of Justice and Treasury expressed some unwillingness and reluctance to share sensitive data with private contractors. The success of an ESOP would be adversely affected if employees from OPM's investigation services do not participate in the new organization to the extent that OPM anticipates.

The contractor that performed the feasibility study has stated that a "substantial portion" of OPM's investigative staff would be needed to participate in the ESOP if it is to function effectively. And we've heard earlier today that they are estimating that 50 percent would be needed. However, we have found no clear evidence that sufficient OPM employees would be willing to participate in such an endeavor.

In fact, over 200 employees have contacted us thus far to express their opposition to privatization. Also, we are not aware of any work that has been done to determine whether the physical location of the employees who elect to join the ESOP would be compatible with the investigative workload the ESOP is expected to have. Currently, OPM investigators work either out of OPM regional offices or their homes. If only a small number of investigators elect to stay in an area where there is a large investigative workload, or vice versa, persons from other areas might be asked to relocate.

No information is available on whether this scenario might occur, or on whether these employees would be willing to move. In summary, Mr. Chairman, sufficient work to support the position that the ESOP proposal is a good one has not yet been done. In this regard, I will also point out that present plans do not appear to us to offer alternatives to the ESOP proposal, or provide satisfactory analysis of the potential effect of an unsuccessful ESOP.

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

[The prepared statement of Mr. Bowling follows:]

Privatizing OPM Investigations: Implementation Issues

Summary Statement by
Timothy P. Bowling, Associate Director
Federal Human Resource Management Issues

As requested by the House Committee on Government Reform and Oversight's Subcommittee on Civil Service, GAO is reviewing OPM's proposal to privatize its investigative function. OPM is giving consideration to the establishment of a private corporation owned by former employees of its Investigations Service through an Employee Stock Ownership Plan (ESOP).

OPM's privatization initiative raises two basic questions. Should the investigative function be considered "inherently governmental", or can it be appropriately performed by a non-federal organization? If it is determined that this function can be appropriately performed by a non-federal organization, is conversion to an ESOP feasible?

With regard to the first question, certain aspects of the investigative function do not appear to be inherently governmental and, therefore, could be legitimately privatized. However, decisions regarding an individual's suitability for employment or eligibility for security clearances should be made by federal officials.

A business plan describing the implementation of the ESOP has not yet been developed. Therefore, several issues pertaining to the feasibility of the proposed ESOP have not yet been addressed. First, it is unclear whether there would be cost savings as a result of this privatization effort. Second, it is unclear whether ESOP employees would have the same access to sensitive data maintained by federal, state, or local law enforcement agencies as is currently available to OPM investigators. Third, while employees have indicated a willingness for OPM to obtain additional information about forming an ESOP, there is no information available on whether they would be willing to eventually become a part of the proposed organization. In short, sufficient work to fully demonstrate that the ESOP proposal is a good one has not yet been done.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the Office of Personnel Management's (OPM) proposed privatization of its Investigations Service, which was formerly known as the Office of Federal Investigations. As you know, OPM is considering privatizing this function through the establishment of a private corporation to be owned by former Investigations Service employees through an Employee Stock Ownership Plan (ESOP). The stated purposes of OPM's privatization initiative are to (1) permit agencies more autonomy in meeting their investigations needs, and (2) achieve cost savings through increased competition among providers of investigative services.

As you requested in mid-April, we are reviewing this proposal in order to assist the Subcommittee in its deliberations on OPM's plans. Both the proposal and our review of it are preliminary, and my remarks today are based on work we have been able to do in the past 6 weeks.

Thus far, an OPM contractor has completed a feasibility study, at a cost of about $108,000, which indicated that this type of activity could be converted to a private sector operation. However, the contractor's study said that the potential for future success of this proposed new company could only be assessed after the preparation and analysis of a detailed

business plan. OPM has recently awarded a contract for the services of a trustee who, among other things, is responsible for developing this business plan.

There are two basic questions to be addressed with regard to OPM's privatization initiative. First, should the investigative function be considered "inherently governmental" or can it be appropriately performed by a non-federal organization? Second, if it is determined that this function can be appropriately performed by a non-federal organization, is conversion to an ESOP feasible?

IS THE INVESTIGATIVE FUNCTION INHERENTLY GOVERNMENTAL?

The Federal Acquisition Regulation, which is the primary federal procurement regulation governing the acquisition of supplies and services, provides that a contract may not be awarded for the performance of an inherently governmental function (FAR 37.102(b)).

In November 1991, we issued a report on our evaluation of whether service contractors were performing inherently governmental functions.[1] We recommended that the Director, Office of Management and Budget (OMB), clarify OMB's guidance to agencies

[1]Government Contractors: Are Service Contractors Performing Inherently Governmental Functions? (GAO/GGD-92-11, November 18, 1991.)

on what constitutes an inherently governmental function. Following our report, OMB issued guidance in September 1992 supplementing OMB Circular A-76 to assist agencies in determining what functions fall within that category.[2] This guidance defines an inherently governmental function as an activity "that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgements in making decisions for the Government."

The guidance states that gathering information for or providing recommendations to an agency are not normally inherently governmental functions. It also includes an illustrative list of functions that are considered to be inherently governmental and states that activities that commit an agency to a particular decision or course of action are inherently governmental. The guidance specifically identifies the selection of individuals for federal government employment as an example of a function that would be considered inherently governmental.

Based on the OMB guidance and our analysis, it appears that investigative functions confined to the gathering and reporting of information to federal agencies could legitimately be

---

[2]OMB Policy Letter 92-1, "Inherently Governmental Functions," September 23, 1992.

privatized. However, decisions regarding an individual's suitability for employment or eligibility for clearances should be made by federal officials.

IS CONVERSION TO AN ESOP FEASIBLE?

A business plan describing the implementation of the proposed ESOP has not yet been developed. As a result, several issues regarding the feasibility of an ESOP have not yet been fully addressed.

Cost Savings Are Uncertain

Although OMB estimated a $30 million savings by privatizing OPM's investigative and training functions, it is uncertain whether the proposed ESOP would achieve greater financial stability and cost savings for the government than OPM's current method of providing investigative services. Also, based on OPM Inspector General (IG) reports and our analysis, the deficit that has been attributed to the Investigations Service revolving fund--about $30 million--is questionable.

Previous IG reports have noted several deficiencies in the management of OPM's investigative activities. For instance, the IG reported that OPM has not been able to accurately forecast its investigative workload and adjust staffing levels accordingly.

Also, the IG noted that OPM's investigative services had been burdened with an excessive share of OPM's overhead charges.

Our work confirmed the IG's finding that OPM appeared to be charging an excessive share of overhead to investigative services. Although this activity requires a low level of oversight and is intended to be self supporting, we found that the cost of common OPM services such as staff support were charged to investigative services based on a flat rate rather than on the actual cost of the services provided. To illustrate, under OPM's current methodology, the overhead allocation rate is determined based on the Investigation Service's total expenses as a percent of OPM's total budgetary obligations. During fiscal year 1994, this calculation yielded a rate of 19 percent for total overhead charges--a percentage that we consider to be high in view of the low level of common services and oversight attention required for this activity.

The amount of overhead allocated to the investigations function has a considerable effect on the fund's financial position and, in all likelihood, has contributed to the fact that with the exception of fiscal year 1991, OPM has consistently reported a deficit for investigative services every year since fiscal year 1986. During fiscal year 1994, for example, the fund reportedly incurred an $11.8 million deficit. However, before overhead

charges of $18.3 million were applied, the fund's revenues exceeded expenses by $6.5 million.

Because of issues such as the above, it is difficult to determine whether greater cost savings could result from privatizing this activity than would result from improved management or the application of a more realistic overhead charge. Also, care needs to be taken to be sure that OMB's savings estimate is clearly understood. OMB's estimate is not based on an analysis of how costs could be reduced or revenues could be increased by privatizing the investigative function. Rather, the $30 million figure was derived by estimating the savings from privatizing both OPM's investigative and training functions. According to OMB, this figure was arrived at by assuming that annual savings would be 4 percent of OPM's investigations and training expenses, including overhead, over a 4-year period. OMB said the 4 percent figure was based on rates of savings found in earlier studies on the results of contracting out other federal functions.

Using fiscal year 1994's investigations operating expenses of $88 million as the base and applying the 4 percent annual savings figure, we estimated that the investigations' portion of the savings would be about $14 million over a 4-year period. Additionally, this reported savings could be inflated since the $88 million would have included some amount of questionable overhead charges.

6

We also noted that OMB's methodology did not include:

- estimated conversion costs of approximately $54 million comprised primarily of the deficit ($30 million), severance pay and unemployment assistance for terminated employees ($9.8 million), and the cost of completing work in process ($11 million);

- contract costs of $108,000 to complete the feasibility study; and

- contract costs that will be incurred by the trustee in developing the business plan.

Access to certain data could pose a problem for private investigators

Another unanswered question concerns the willingness of state and local law enforcement agencies to share data with a private organization such as the proposed ESOP. We have been told by all three state law enforcement agencies we have contacted so far that if the function is privatized, they would be reluctant to provide ESOP investigators access to the criminal history records of persons who are under investigation. According to these officials, they were concerned that they would have no control over what a private organization would do with such information once it had been obtained. Similarly, at the federal level,

officials from the Departments of Justice and the Treasury said they would be reluctant to share sensitive data with private contractors.

Although we have not yet had the time to do extensive work in this area, we thought it was important to call this matter to your attention during these oversight hearings. To provide a definitive answer to this question, it would be useful to evaluate the experiences of agencies, such as the Customs Service and the Drug Enforcement Administration, that have contracted out for investigative services.

Employee interest in an ESOP is uncertain

The success of an ESOP could be adversely affected if employees from OPM's Investigations Service do not participate in the new organization to the extent OPM anticipates. The contractor that performed the feasibility study has stated that a substantial portion of OPM's investigative staff would need to participate in the ESOP if it is to function effectively. However, we have found no clear evidence that sufficient OPM employees would be willing to participate in such an endeavor. In this regard, the OPM feasibility study pointed out that, historically, the process of transferring commercial functions performed by federal employees to the private sector has been slowed by strong resistance from federal employees.

To date, OPM Investigations Service employees have expressed an interest in having OPM obtain more information about the ESOP, but nothing more. The positive expression of interest about exploring the ESOP idea is not surprising, given the fact that OPM's Associate Director for Investigations, in a memorandum to investigations staff dated April 20, 1995, stated that this function would be spun off to the private sector by the end of 1995. The memorandum also said that if there was not enough interest in exploring the ESOP privatization option, privatization by some other means would occur.

There is no information available on whether staff who indicated a willingness to have OPM explore the ESOP idea would have that same willingness to become a part of it. In fact, over 200 employees have contacted us to express their opposition to privatization.

Also, we are not aware of any work that has been done to determine whether the physical location of the employees who elect to join the ESOP would be compatible with the investigative workload the ESOP is expected to have. Currently, OPM investigators work either out of OPM regional offices or their homes. If only a small number of investigators elect to stay in an area where there is a large investigative workload or vice versa, persons from other areas may be asked to relocate. No

information is available on whether this scenario might occur or on whether the ESOP employees would be willing to move.

- - - - -

In summary, Mr. Chairman, sufficient work to support the position that the ESOP proposal is a good one has not yet been done. In this regard, I will also point out that present plans do not appear to us to offer alternatives to the ESOP proposal or provide satisfactory analysis of the potential effect of an unsuccessful ESOP.

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

(966666)

10

Mr. MICA. Thank you, Mr. Bowling, and welcome back. A couple of questions in the area of cost justification. First of all, do the cost estimating procedures—that you described OMB using for ESOP—conform to your understanding of generally accepted government accounting principles?

Mr. BOWLING. It is common, at least relatively common, for OMB to use the sort of principles that they have employed in this case in estimating cost savings for budgetary purposes. Obviously, it falls far short of what an A–76 study would supply, in terms of analysis.

Mr. MICA. You have described the estimated costs of a transition to an ESOP as $54.5 million. Have you developed, or are you aware of any cost comparisons for transitions to any other approaches to contracting for investigation services?

Mr. BOWLING. We are not aware of any other studies of that sort.

Mr. MICA. From what you've seen, do OPM investigators have enough information to make an informed decision about this proposal now?

Mr. BOWLING. As far as knowing or having a very high level of confidence that the ESOP proposal would be likely to be successful at the end of 3 years, I would say sufficient information is not available at this time for people to be comfortable that there's a high level of confidence that would happen. Certainly, it could succeed. It's not by any means obviously doomed. But on the other hand, the analysis that one would prefer to see, in terms of the costs and the pricing and customer base and so forth, hasn't been performed yet.

And without that, it's really something of a step into the dark.

Ms. TAYLOR. Mr. Chairman.

Mr. MICA. Yes.

Ms. TAYLOR. If there's one thing I could add to that. The feasibility study that was performed said that the current work force knowing how to do these background investigations, how to do it, would be vital to an ESOP succeeding. This was the reason for the sole source agreement, so that these people would have a customer base. If that sole source agreement falls through, I think there are questions of whether an ESOP would have viability.

Mr. MICA. OPM has indicated that it would need commitment from their investigators by August. Could the information that they will need be completed in that time, in your judgment?

Mr. BOWLING. I suppose it could be. I am not aware that they're working under that schedule. I understand that they have every intention of completing a business plan before the decision is finally made—or the actual privatization decision would be made at the end of the year. But I also understand that if people are asked to commit in August, it may be quite possible that that information would not be available to them.

Mr. MICA. I want to discuss some of the deficiencies in previous contracts. You testified yesterday that OPM had difficulties in its administration of contract investigation programs 10 years ago. And we heard comments about that today from some of the other members. Have you seen any indication of procedures adopted in planning for this transition, that would address some of the difficulties they experienced then, or are you familiar with them?

Mr. BOWLING. Well, I think one of the reasons for sticking with the current investigative work force would be to rely on seasoned Federal employees who have performed these functions satisfactorily by all accounts over the years, and continue to have them performing them. To the extent that they would be performing them, I think that would probably ameliorate some of the risks that you might have by going to someone who has not performed that function before.

Mr. MICA. Just a quick question or two on the impact of private markets. Private investigative firms will testify today that OPM's proposal to withhold delegation of authority to contract for investigations would devastate their business. Is that an accurate assessment of what you think the impact would be on the private markets?

Mr. BOWLING. We haven't actually looked at the potential impact on private markets. It's an interesting question and I'd look forward to hearing their answers. But we have not looked into that issue.

Mr. MICA. OPM's current investigative work force, as you know, is about 750 to 800 persons, and we know that some private firms are much larger. If OPM wanted to conduct competitive contracts for these investigations, could these employees find appropriate openings, do you believe, in other private firms?

Mr. BOWLING. That's a very good question. Again, that's one of the unanswered questions that makes one a little concerned as to exactly what level of work force will be available to OPM when it contracts for the ESOP. Certainly, there's some indication that many of the employees are seeking employment elsewhere in the Federal Government or the private sector.

Mr. MICA. Well, you've heard comments today that some people either want to block the ESOP, or some people think the ESOP will fail. What do you think our alternatives are?

Mr. BOWLING. Well, I think that's probably one of the most important questions that's been asked today. Given that there isn't an enormously high level of assurance that it will succeed, there's a real question, both in the point of view of what happens to the Federal workers, and also what happens to the contracting of this workload, and whether it will be done to OPM standards and so forth.

Those questions would need to be resolved earlier in the process rather than later, if one wanted to have a sense of confidence that something wouldn't slip through the cracks in the event of a failed ESOP proposal.

Mr. MICA. I'm going to yield now to the vice chairman of our subcommittee, and ask him also to take the chair. I've got another obligation, and I hope to return shortly. Mr. Bass, do you want to assume the chair and the questioning? Thank you.

Mr. BOWLING. Thank you, Mr. Chairman.

Mr. BASS [presiding]. Thank you very much, Mr. Bowling, for appearing here today. And obviously, as you know, just because the entire committee is not present doesn't mean that we're not going to be studying with great care the answers and information that's presented to us today. I just have a couple of questions. This is an

issue that I have not had an opportunity to study in as great a depth as I would like, but I plan to.

I'd just like to ask you, in its feasibility study, the ESOP advisors counseled one of the first things that the ESOP would have to do would be to hire a marketing professional to diversify the client base served by this investigative work force. Is it consistent with your projections of a declining workload relating to the reductions in Federal employment? Is this consistent?

Mr. BOWLING. I would say that it's important, for that reason, that a business plan be put together that would provide that sort of customer base analysis through the future. GAO has not done that, but I would think that this would be an important component of the business plan that the trustees are supposed to be putting together.

Mr. BASS. All right. If this business were diversified, wouldn't it be an expenditure of tax funds to capitalize a new competitor in the private market that provides background investigation?

Mr. BOWLING. It's an interesting issue. I don't know that I have an answer to that. I think that's one of those questions that would have to be resolved by OPM and I understand that a number of those questions are under review there.

Mr. BASS. OK. I have one last question, dealing with sole source contracting. OPM has indicated, in response to our questions, that it would notify Congress of an exception from competitive requirements of the competition and contracting act to accomplish its sole source contract. Are you aware of any such exceptions being filed previously? And if so, under what conditions?

Mr. BOWLING. Well, in discussions with our general counsel's office, it appears that they are rarely filed, but have been in the past. We have only run across a very small number, in polling the general counsel's office at GAO, that we've even been aware of. So it can be done, certainly. It is, however, quite rare.

Mr. BASS. Under what conditions would it occur?

Mr. BOWLING. If none of the other of the seven possible justifications are appropriate then the general interest provision could be applied. The criteria for what constitutes the general interest is somewhat vague. I'll ask my attorney to correct me if I'm wrong on that. That's the reason they asked for that justification to be provided by the head of the agency, and then sent to the Congress for the 30-day waiting period.

Mr. BELKIN. Right. As Mr. Bowling has said, the public interest exception is, I think, our experience is that it's rarely used. There are some added protections when it is going to be exercised. There's a requirement—this is the only of the seven bases for sole source procurement, the only one that requires determination by the head of the agency, as well as advanced notification to Congress, is the public interest exception.

I think, generally speaking, it would be something that is a matter of discretion for the agency head. But the determination has to be made by him, cannot be delegated, and an explanation of that must be provided to the Congress.

Mr. BASS. And last, under the current situation, under current conditions, would GAO be in a position to recommend that granting of a waiver?

Mr. BOWLING. No, we would not be in the position of doing that.

Mr. BELKIN. And what I would add to that, we certainly are not in a position now to take a position with respect to that. We haven't seen the basis for the determination. And perhaps more importantly, if a sole source procurement is exercised on that basis, it's something that could be the basis for a protest that would be filed with us that we would be ruling on in due time. And we certainly couldn't take a position on that now.

Mr. BASS. OK, fine. That's all I have. There being nobody else here to ask any questions, I will thank all three of you very much for appearing here today. We appreciate your testimony, and take it all under consideration.

Mr. BOWLING. Thank you very much.

Mr. BASS. You're very welcome. Our next panel, the third panel, will be Michael Clark, from the Federal Investigators Association; Arthur Cordova, from ADC Ltd., Albuquerque, NM; and Herbert Saunders, from Varicon in Falls Church, VA. As is customary in testifying before House committees, I would like you to take a quick oath. Please raise your right hands.

[Witnesses sworn.]

Mr. BASS. Thank you. We'll start by recognizing Mr. Clark.

STATEMENTS OF MICHAEL CLARK, FEDERAL INVESTIGATORS ASSOCIATION; ARTHUR CORDOVA, ADC LTD.; AND HERBERT SAUNDERS, VARICON

Mr. CLARK. Thank you, Mr. Chairman. I have submitted a complete statement for the record, and I would now like to issue just a brief summary.

Mr. BASS. Thank you.

Mr. CLARK. I wish to thank the subcommittee for allowing me to come here today and speak to you on this very important matter. I am presently a member of the Federal Investigators Association. I have 20 years' experience working as an investigator, supervisory investigator, and adjudications officer. During OPM's contracting efforts in the mid-1980's, I served as technical administrator, responsible for oversight and integrity control over these contracts. And I saw firsthand the kinds of problems inherent in contracting out this vital function.

I am here as a representative of the Federal Investigators Association to speak on behalf of many investigators and supervisors of the investigations program who are concerned with the privatization plan. I have come here today to express concern about OPM's goals of privatizing its investigative function.

Whether this is attempted by way of the proposed ESOP or by simply shutting down the program and farming the work out to individual contractors, the result will be the same—taxpayers' dollars will be wasted, a necessary Government quality entity will be obliterated, and the general integrity and security of the Government will be weakened.

I do not come here today to denigrate any person or company desiring to do business with the Government, or that has done business with the Government in the past; nor do I seek to imply that having the Government contract out some of its work is, by definition, a bad idea. However, I believe that time and events have

shown in several different ways that contracting out security investigations simply does not work.

Members of this subcommittee are aware of OPM's efforts to contract out several thousand investigations in the mid-1980's, and the serious problems associated with that effort. While this past experience does not necessarily guarantee that the same abuses will occur should the contracting of investigations again be done on a large scale, it shows that the risk is there.

I would like to bring to the committee's attention that OPM reviews contractor completed reports as part of its overall quality control effort. Profiles of the contractors' record of quality exist within the Office of Personnel Management, and show that the deficiency rate of contractor completed reports is higher than those of OPM investigators.

The committee should also consider the issue of contractor access to certain sources of information. In recent months, investigators have been informed by law enforcement agencies, State and local governments, and organizations that they have policies of not providing information to private contractors. This problem alone will compromise a contractor's ability to develop serious issue information relevant to agencies.

We also believe there will be public concern about the security of the information provided to contract investigators. Simply put, we have found that individuals would feel more comfortable discussing sensitive information with the Federal Government. It would seem, then, that if history teaches us anything about this issue, it is that security investigations are done best and most reliably when they are done by Federal employees.

Threats to national security today come not only from the defense and intelligence areas, but also from areas such as economics, technology, industry and energy research. The executive branch agencies that deal with these issues are exactly the ones for which OPM provides investigative services. In the wake of the Aldrich Ames scandal, several top level U.S. officials expressed the opinion that Americans should not be surprised that the spy game still continues, even after the end of the cold war.

Recently, the President called for the hiring of over 1,000 new border patrol agents to protect our borders. Their background investigations are done by OPM. We've also been informed that in the wake of the Oklahoma City bombing, new Federal protective service officers will be hired nationwide to increase security at Federal buildings. Even despite a decrease in Federal hiring, investigative field offices around the country now have on hand a very high workload.

I come before you today to voice the heartfelt concerns and convictions of OPM's dedicated investigative work force. It stands today as a model of quality and cost efficiency. Its work force is hailed by Director King as among the best and the brightest. In the interest of our nation's security, and the interest of the Federal Government, I ask this committee to exercise its oversight role by sending a clear message that although we realize the Government needs to be reformed and reinvented, it is the mission of this Congress to ensure that our national security and public trust interests are not jeopardized.

I wish to thank the subcommittee for allowing me to come here today to speak on these important issues. And I would be happy, now, to answer any questions the subcommittee might have.

[The prepared statement of Mr. Clark follows:]

TESTIMONY OF MICHAEL CLARK
FORMER SUPERVISORY INVESTIGATOR
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

FEDERAL INVESTIGATORS ASSOCIATION

GIVEN BEFORE THE HOUSE SUBCOMMITTEE ON THE CIVIL SERVICE

THURSDAY, JUNE 15TH, 1995

I wish to thank the Subcommittee for allowing me to come here today and speak to you on this very important matter. I am presently a member of the Federal Investigators Association. I have twenty years experience working as an investigator, supervisory investigator, adjudications officer, and program analyst. I have worked both at headquarters and in the field. During OPM's contracting efforts in the mid-1980s, I served as technical administrator, responsible for oversight and integrity control. I am here as a representative of FIA to speak on behalf of many investigators and supervisors of the investigations program who are concerned with the privatization plan.

I have come here today to express grave concern about OPM's stated goal of privatizing its investigative function. Whether this is attempted by way of the proposed ESOP or by simply shutting down the program and farming the work out to individual contractors, the result will be the same: taxpayers' dollars will be wasted, a necessary, quality government entity will be obliterated, and the general integrity and security of the government will be weakened.

Patricia Lattimore, Associate Director for Investigations, has stated openly in the Federal Times that the attempt to privatize is not motivated by cost. Of course it isn't. There would be no way to defend it on that level. By OPM's own figures, it will cost $55 million to privatize by way of ESOP, and $93 million to privatize by shutting down the program. The only estimated cost savings that OPM has ever suggested will be realized by doing this is $30 million over five years. When you consider that the investigations group is currently working its way out of its revolving fund deficit at the rate of about $1 million each month, and that the remainder of that deficit will more than likely have to be written off if privatization occurs, the disparity between the estimated savings and the total cost becomes even more alarming. At a time when Americans are demanding that the government use the same fiscal common sense and restraint that all citizens must in their personal affairs, how does OPM propose to explain to them that they intend to eliminate a function, currently a model of cost-efficiency, and in so doing will spend at least $25 million dollars

over their own projected savings?

OPM recently spent $100,000 on a study which determined that it would be feasible to move the current investigative function into a private, employee-owned company (ESOP). Is it really feasible, though? This Subcommittee should already have in its possession a copy of the feasibility study. It is a vague document which makes bold assumptions about legal and legislative matters for which it offers no reasoning. But what I am particularly concerned about is the recent vote OFI staff members were asked to partake in, and the manner in which the results of that vote are being manipulated. Staff members were asked to vote "yes" if they wanted OPM to continue to pursue privatization via an ESOP, or to vote "no" if it was their desire that privatization should occur by simply going out of business. While it is true that about 85% of those responding said "yes", this should not be taken as anything resembling an endorsement of the idea by the employees. From talking to investigators around the country, it is clear that many of those who voted in the affirmative wrote qualifying statements on their ballots. Let there be no doubt that there is virtually no support among program employees for this privatization proposal.

This is important because OPM has been continuously reassuring the agencies that because of this favorable vote, on January 1, 1996, there will be an ESOP staffed by some 700 or so former OPM investigators and staff ready to provide them with a "seamless" transition from public to private sector investigations. In reality, it is unlikely that this will occur. From talking to investigators in the field, it is apparent that a significant number are waiting for the outcome of these hearings, in anticipation that in their wake, they will finally know whether or not privatization will occur. If it appears that it will occur, many who have not already done so will start looking for new work. They will do so for financial concerns as well as for philosophical ones. As people leave, deadline dates on cases will be missed, and the revolving fund could well reverse its current trend and start spiraling downward into deeper debt. If this occurs, agencies will be forced to contract out their investigations on very short notice, utilizing whatever resources are available with out regard to the caliber of the contractor.

This brings me to contractors. I did not come here today to denigrate any person or company desiring to do business with the government, or that has done business with the government in the past. Nor do I seek to imply that having the government contract out some of its work is by definition a bad idea. However, I believe that time and events have shown in several different ways that contracting out security investigations simply does not work.

I am sure that the members of this Subcommittee are aware of OPM's efforts to contract out several thousand investigations in the mid-1980s. At that time, OPM had a significant backlog, and it was determined contractors were necessary to help alleviate it. OPM granted contracts to four private sector companies to conduct

these investigations. The results of this contracting experience were disastrous. The companies estimated that they would be able to complete over 40,000 cases in the specified time-frame, but were only able to produce 3,330. All four companies submitted reports which were rated deficient by OPM at the overall rate of 44%, while during that same year OPM investigators had a deficiency rate of under 1%. Each company submitted reports found later to have been partially or entirely falsified. A total of 135 such reports were found. In the end, this fiasco cost the tax-payer $1.3 million, and actually increased OPM's backlog due to time spent reinvestigating contractor reports.

While this past experience does not necessarily guarantee that the same abuses will occur should the contracting of investigations again occur on a large scale, it shows that the risk is there.

What of contractor performance since the late 1980s? As a matter of policy, many of the agencies which have been granted delegations by OPM to conduct their own background investigations routinely send the finished reports to the Federal Investigations Processing Center (FIPC) for microfilming. At FIPC, they are subject to review to see if, as is mandated by the delegation agreements, they meet OPM standards for quality (these are the same standards that must be met by OPM investigators). When a report is found not to be up to these standards, it receives a deficient rating and is sent back to the agency to be redone. OPM keeps records of these deficient reports, and from time to time compiles profiles of how agencies/contractors are performing over specified time periods. I have brought with me today some of these profiles. For the sake of brevity, I will summarize only one in my testimony. In the interest of fairness, I will not mention either the agency involved or its contractor by name. However, their identities will be provided to this Subcommittee upon request.

OPM reviewed 208 background investigations done at a particular agency from 9/27/93 to 4/20/94. Of those 208 reports, 106 were rated deficient by OPM standards. Of those 106, 76 had been completed by one contracting company, 4 by another, and 28 by agency personnel. Of the 80 deficient reports done by contractors, only 22 were rated that way due to incomplete National Agency Check items, or other inquiries which contractors cannot do. The remainder were deficient due to incomplete or inadequate field work on the part of the investigator doing the case. Upon the Subcommittee's request, further profiles such as this one can be made available, and they will also show high rates of deficiencies in contractor reports. I think that before any thought is given to allowing the wholesale contracting out of this sort of work, issues such as this must be fully addressed.

One final example of how privatizing investigations has not worked as well as we may have hoped is OPM's PICS (Personnel Investigations Contracting Support) program. Occasionally, during times of heavy workloads, OPM has hired individual persons to

conduct investigations on a contractual basis. Most of these individuals are retired government employees with experience in the investigative field. Many have had distinguished federal careers. Their activities are monitored by local supervisory investigators, and it has been their experience that deficiency rates among these investigators, although not as high as the figures mentioned previously for company contractors, outweigh that of OPM investigators significantly. I have personally worked with some of these contractors. I believe the higher frequency of such conduct in the contractor workforce is attributable directly to the temptations offered by going to a system where one is paid piecemeal.

One final concern I have about the use of contractors is their access, or potential lack thereof, to certain sources of information. In recent months, investigators have been informed by many law enforcement agencies, state and local governments, and other organizations that they have policies of not providing any information whatsoever to anyone other than law enforcement officials and OPM investigators. Those who say they would often indicate that there would be a fee charged for the information which OPM investigators are not required to pay. How then would this vital information be obtained? We do not know. Recently, one of OPM's supervisory investigators was told by one of his former investigators, now working as a contractor that he obtains these records (forbidden to him as a private contractor) by simply waving his contractor credentials quickly past the gaze of record custodians and assuming the authoritative air of a federal investigator. We certainly hope this conduct is not wide-spread, but how are we to know?

In addition to record sources, investigators have been learning of late that persons are reluctant to speak to private contractors about personal matters concerning themselves, their friends or their relatives. They worry about the security of the information they are providing as well as the integrity of the investigator and his/her firm. Simply put, we have found that individuals would feel more comfortable discussing potentially sensitive information with representatives of the federal government than of private firms. There may or may not be any grounds for feeling this way, but the fact remains that the feeling is out there. And, as any investigator knows, without the cooperation of the public, investigations can become almost impossible to complete.

It would seem, then, that if history teaches us anything about this issue, it is that security investigations are done best and most reliably when they are done by federal employees.

It is significant for the Subcommittee to bear in mind that the vast majority of personnel security professionals who have weighed in on this issue are opposed to privatization. These individuals are the experts in the personnel security field and have felt compelled to write some very pointed letters to OPM

decrying this proposal. Unfortunately, there have been efforts of late to silence these views by those who are mandated to follow the Administration's lead on this issue. In a 6/7/95 memo from Director King to the President's Management Council, he said it was necessary for the "Administration to speak with one voice" on the privatization issue. It would be wrong to move forward without a complete understanding of the overwhelming concerns in the personnel security community. Although no formal surveys have been done, people have consistently told OPM investigators that they can not believe the government would seriously consider contracting out what they believe is an inherently governmental function. The Federal Investigators Association has written a letter to Representative Gingrich opposing this move, and it is clear that many on The Hill are skeptical of the idea as well.

Even faced with the groundswell of opposition from the personnel security professionals, OPM continues to press ever onward in a hurried and sometimes haphazard effort to bring this plan to fruition.

Before I conclude, let me address one final point. There appears to an attitude among some that, owing to the end of the Cold War and a decrease in federal hiring, the need for security investigations has lessened significantly. In 1993, OPM's Washington area investigators received a briefing by a counter-intelligence expert from the Department of Energy. He presented information showing that the need for such activities has not lessened, and has even perhaps increased. Threats to national security today come not only from the defense and intelligence areas, but also from areas such as economics, technology, industry, and energy research. The Executive Branch agencies that deal with these issues are exactly the ones for which OPM provides investigative services. In the wake of the Aldrich Ames scandal, several top level U.S. officials expressed the opinion that Americans should not be surprised that the spy game still continues even after the end of the Cold War. Recently, the President called for the hiring of over one thousand new border patrol agents to protect our borders. Their background investigations are done by OPM. We have also been informed that, in the wake of the Oklahoma City bombing, many new Federal Protective Service officers will be hired nationwide to increase security at federal buildings. OPM also investigates them. And, despite a decrease in federal hiring, investigative field offices around the country now have on hand a very high workload.

In concluding, let me touch on one point I alluded to earlier. Investigations staff around the country can see the writing on the wall. They realize that this series of hearings will go a long way in determining their fate, if they do not decide it outright. I can not stress strongly enough the fact that should this Subcommittee send anything less than a strong statement that it intends to oppose the privatization plan and to work to stop it, I fear that within a short period of time, the organization will implode as staff members take jobs elsewhere. The result will be

the immediate need for wholesale and total contracting efforts by the agencies. The result of this, as I said earlier, could be devastating within the government's personnel security offices. Personnel security officials will need to quickly find contractors who can handle the workload OPM had been doing for them. The pressure to find an alternative investigative source could cause these decisions to be made in a haphazard manner. Currently, OPM conducts about 40% of all background investigations, and contractors do about 5%. Will these companies be able to fill this void? Additionally, agencies may need to hire more employees to act as contract administrators, and they will need to develop their own systems for monitoring the investigative process. This will, no doubt, cost even more tax-payer dollars.

I come before you today to voice the heartfelt concerns and convictions of OPM's dedicated investigative workforce. It stands today as a model of quality and cost-efficiency. Its workforce is one of the finest anywhere in government service, and has been hailed by Director King as among the "best and the brightest". Yet Mr. King, despite all objections, insists on going through with the privatization plan. In the interest of our Nation's security and the integrity of the Federal Government, I implore you to stop this plan in any way you can, and in so doing send a clear message that although we all realize that government needs to be reformed and reinvented, it is the mission of this Congress to ensure that our national security and public trust interests are not jeopardized.

I wish to thank the Subcommittee for allowing me to come here today to speak on these important issues, and I would be happy now to answer any questions the Subcommittee might have.

Mr. BASS. Thank you very much, Mr. Clark. Let's proceed with Mr. Cordova. Before you proceed, sir, I'd just like to thank you for coming so far. You hail from Albuquerque, NM.

Mr. CORDOVA. Thank you, sir.

Mr. BASS. And we just want the record to show that we're most grateful for the sacrifice that you've made to present important testimony here today. So with that, you are recognized to proceed.

Mr. CORDOVA. Thank you, Mr. Chairman. It's quite an honor for us to be here. However, we do have an office at Falls Church to serve the needs of the District of Columbia. However, I did fly to Baltimore on Southwest, Saturday night. It's a pleasure, and I want to thank you for allowing the private sector to tell our story. And I'm going to read to you, sir, a letter that we have sent to the chairman, Mr. Mica:

> Dear Congressman Mica, ADC, Ltd.'s perspective on the creation of an ESOP to conduct background investigations, as proposed by the Office of Personnel Management under the auspices of a new corporation called Newco, would have and has the same impact on the U.S. taxpayer as Congress would do in endorsing a new $3 bill with the value of the present $1 bill. Ladies and gentlemen, this OPM so-called Newco is nothing but a false economy. It doesn't make sense. ADC, Ltd. has provided these same services to the Department of Commerce at a 30 percent to 40 percent savings to the U.S. Treasury, which belongs to the taxpayers, on a 35-day turnaround. ADC investigators are all experienced former OPM, FBI, DIS, Customs and INS investigators, with an average of 20 years' experience in their careers. They are all cleared by DIS. These investigators that ADC, Ltd., has, and our competition has, are all loyal Americans who have and are performing the same identical services for OPM and other Federal agencies.

Mr. Chairman, we did not invent the wheel at ADC or our competition. We just lubricated it and became more efficient, after we learned from OPM and the FBI and the other agencies that were contracting out for services. We just expanded on it. We then went on to such things as UPS and Fed Ex to be more efficient, instead of moving people around.

Vice President Gore has discussed the need to privatize many governmental functions, which include this one. We in the private sector can offer opportunities to those OPM investigators desiring employment with us or the other firms. OPM has handicapped this industry with their reluctance to give authority to Federal agencies. When the authority has been given to some agencies, the private sector has performed satisfactorily at a saving to taxpayers.

I realize that in the 1980's, there were some problems. It was a wholesale, fire sale procurement to relieve a backlog. I happened to have a firm in Albuquerque. We were very involved with the Office of the Inspector General with research and development at Sandia, Los Alamos, and Livermore. And I realize what the gentleman, Mr. Clark, has mentioned.

I was one that turned them in—these other firms that were doing shabby work. Let's not paint the new firms, that are doing the work right, with the same brush. It's not fair for us. It is un-American for a Federal agency such as OPM to sole source and blackmail the rest of the Federal agencies' needs to one firm as proposed by OPM officials. Why should all the Federal agencies be at the mercy of ESOP?

With no competition, this will drive up the prices that OPM is charging the agencies for this service. It would be like a monopoly where this so-called Newco would be untouchable and unaccount-

able. It would be, ladies and gentlemen, like having only one general merchandise store to serve all the needs of the residents of the District of Columbia.

ADC is a small business; it takes the common sense approach to doing business. We have over 700 cleared, experienced investigators under contract. They are located in every State of our great Nation and its possessions. With this ADC staff can meet and exceed the needs for background investigations in an efficient, economical manner, along with firms such as Varicon, MSM, MVM and others.

The supply and demand will result in a savings for the overburdened taxpayer. We want to help you Members of Congress to cut the waste in taxpayers' dollars. Competition brings out the best price and service. That's the American way. It's the only way that makes sense. I hope that this committee does not deprive the private sector of our dream of doing business the American way.

OPM's effort to establish an ESOP is really only a change in name. Newco will have the same staff, give them the same seniority, wages and fringe benefits, and maintain the same wasteful, administrative structure. Without a new, creative cost effective management approach, ladies and gentlemen, Newco is the same old wolf in sheep's clothing. With value added, let's let the private sector use their expertise and also strengthen our economy.

Small business and private enterprise are what make America strong. You can rest assured that Federal agencies will be able to meet their background investigation requirements with the best business approach from the private sector. We at ADC, Ltd. know all about national security. We're very involved in the national labs, and involved in research and development.

It amazes me, Mr. Chairman, that there is so much being raised on this OPM issue. What about the Marines, the Air Force, the Navy, the U.S. Army—people that are being downsized? Those people are really in national security, your honor. And I really want to thank the news media, on behalf of ADC, Ltd., for bringing this thing and keeping it alive. Little businesses like ADC, Ltd., we don't have the resources of all the people that OPM has, as they had here today.

The GAO talked about overhead and G/A—General Administrative costs. Believe me, our G/A is dirt cheap, compared to OPM's. Thank you, your honor.

[The prepared statement of Mr. Cordova follows:]

ADC, LTD.

1919 San Mateo NE • Albuquerque, New Mexico 87110
505-265-5800 • FAX 505-265-4876

June 12, 1995

The Honorable John L. Mica, Chairman
Committee on Intergovernmental Affairs
336 Cannon House Office Building
Washington, DC 20515

RE: Privatization of OPM Investigative Functions

Dear Congressman Mica:

ADC, Ltd.'s perspective on the creation of an ESOP to conduct background investigations as proposed by the Office of Personnel Management under the auspices of a new corporation called Newco has the same impact on the U.S. taxpayer as Congress endorsing a new $3 bill with the value of the present $1 bill. Ladies and gentlemen, this OPM so-called Newco is a false economy. It doesn't make common sense. ADC has provided these same services to the Department of Commerce at a 30 - 40% savings to the U.S. Treasury, on a 35-day turnaround. ADC Investigators are all experienced former OPM, FBI, DIS, Customs, and INS investigators with an average of 20 years in their careers. They are all cleared by DIS. These are loyal Americans who have and are performing the same identical services for OPM and other federal agencies.

Vice-President Gore has discussed the need to privatize many government functions, including this one. We in the private sector can offer opportunities to those OPM investigators desiring employment with us. OPM has handicapped this industry with their reluctance to give authority to federal agencies. When the authority has been given to some agencies, the private sector has performed satisfactorily at a saving to the taxpayers. With the commendable efforts by the U.S. Congress to reduce the cost of government, let the private sector save 30 to 40% of federal funds and assist you members of Congress in reducing the deficit, not create another expensive bureaucracy such as exists today. It is un-American for a federal agency such as OPM to sole source and blackmail the rest of the federal agencies' needs to one firm as proposed by OPM officials. Why should all the federal agencies be at the mercy of ESOP (Newco)? With no competition, this will drive up the prices that OPM is charging the agencies for this service. It would be like a monopoly where this so-called Newco would be untouchable

and unaccountable. It's like having only one general merchandise store to serve all the needs of the residents of DC.

ADC, a small business, takes the common sense approach to doing business. We have over 700 cleared, experienced investigators under contract; they are located in every state of our great nation and its possessions, and this ADC staff can meet and exceed the needs for background investigations in an efficient, economical manner, along with firms such as Varicon, MSM, MVM, and others. The supply and demand will result in a savings for the overburdened taxpayer. Competition brings out the best price and service. That's the American way; it's the only way that makes sense!

OPM's effort to establish an ESOP is really only a change in name; Newco will have the same staff; give them the same seniority, wages and fringe benefits; and maintain the same wasteful, costly administrative structure. Without a new, creative, cost-effective management approach, Ladies and Gentlemen, Newco is the same old wolf in sheep's clothing. With value-added, let's let the private sector use their expertise and also strengthen our economy; small business and private enterprise are what make America strong. You can rest assured that federal agencies will be able to meet their background investigation requirements with the best business approach from the private sector.

Sincerely,

Arthur D. Cordova, Jr.
President

ADC/lmq

In response to the House Committee on Government Reform and Oversight's Subcommittee on Civil Service's request, ADC, Ltd. is pleased to provide our perspective and views on the proposal by the Office of Personnel Management (OPM) to create an employee stock ownership program (ESOP) company (referred to as Newco) to perform background investigations of Federal employees.

Is this practice consistent with your understanding of Federal Acquisition Regulations?

ADC, Ltd. is a proponent of the competitive process for awarding contracts and welcomes the establishment of private organizations to compete with us on an equal basis. However, the methods proposed to create and sustain Newco do not meet the requirement for separation of Government from the private sector.

ADC, Ltd.'s understanding of Federal Acquisition Regulations is that by sole-sourcing to a newly privatized company (the former Office of Federal Investigations), OPM is violating the mandate of the Competition in Contracting Act of 1984, since "full and open competition" is being denied. Furthermore, ADC, Ltd. disagrees on OPM's basis for sole-sourcing this contract, the premise that "the agency's need for the services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids". ADC and many other private companies are fully qualified to perform the same background investigations conducted by OPM and are currently providing these services to many Governmental agencies.

OMB Circular A-76 (revised August 4, 1983) states that "in the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs."

ADC, Ltd.'s attorneys advise that "there exists no statutory nor executive authority granting OPM sole and exclusive jurisdiction over competitive service personnel investigations". It has long been recognized that Government Agencies have their own obligations with respect to hiring and review of personnel. (See Jason v. Summerfield 214 F.2d 273 (1954)).

OPM's own feasibility study of the ESOP also points out some serious legal questions. On page 29, task 4, number 3, the authors of the study admitted that "individuals we interviewed in the OPM general counsel's office expressed the concern that it may not be possible to issue such a contract under the

counsel's office expressed the concern that it may not be possible to issue such a contract under the existing provisions of CICA (competition in Contracting Act) , which requires a full competitive bidding process for all government contracts, with a few relative narrow exceptions".

It is known that General Counsels in the Office of Management and Budget and the Government Accounting Office have their own questions of legality concerning the creation of the ESOP with a sole-source contract. These agencies should be contracted directly for their own perspectives.

Is the number of firms currently conducting background investigations such that a restricted market is necessary?

ADC, Ltd. does not believe that restricting this market is necessary or desirable. ADC is one of many private companies that conducts investigative work and performs the same background investigations provided by OPM. Some of the companies currently providing background investigations are ADC, Ltd., Varicon International, MSM, and MVM. The ESOP study revealed that OPM has 440 investigators, assuming all of them are available and willing to work for Newco. ADC has over 700 experienced Associate Investigators, and Varicon has over 500; that's over 1200 investigators, plus others who may be available because they will no longer be employed by OPM. Furthermore, many other firms are interested in this work, as demonstrated by bidder's lists and submissions for recent solicitations for background investigation support. With approximately 3,000 experienced and credentialed investigators already providing services in the U.S., ADC, Ltd. cannot understand the feasibility study's contention that there is not sufficient time for private sector firms to expand their investigative staffs to handle federal background requirements once OPM is no longer available. In addition, the Association Of Former Intelligence Officers has 2,900 members and other potential sources for investigative staff are the Association of Former Agents of Naval Investigation Service and the Association of Former Agents of the U.S. Secret Service. Since all the firms performing background investigations have cleared, credentialed investigators already providing these services it is clear that national security is not a valid issue.

The suggestion that Federal background investigations be turned over to a private company created by OPM with sole-sourcing is also disturbing, considering the fact that numerous viable and proven companies specializing in Federal background investigations already exist. If a true free-market place is allowed to exist, this number will, in all likelihood, continue to increase.

Are private firms able to meet the standards established for federal background investigations?

The concept of using private companies to perform official government background investigations is not new. ADC, Ltd. has successfully provided hundreds of background investigations under a contract with the Department of Commerce since October of 1991. During that time, ADC has also provided contract investigations for the U.S. Small Business Administration and the National Labor Relations Board. The work we perform for these agencies meets or exceeds the investigative requirements set forth in the contracts with these agencies. Our work has been praised as being more timely than OPM's, more responsive to the client agency's needs, and consistently less expensive. We have performed this work at up to half the cost charged by OPM to each agency under the OPM revolving fund. Other private background investigation firms have similar success stories going back to the early 1980s and continuing through today.

A big reason for these success stories is that private companies not only meet standards established for Federal background investigations, they often exceed them. ADC, Ltd. and other companies must meet all the requirements contained in National Security Directive 63 and each Governmental agency's Statement of Work, which explains what is expected of the contractor performing the work. Private firms are governed by the same standards for Federal background investigations and followed by OPM. ADC and other private companies have proven that they are able to meet and exceed the standards established for federal background investigations. Our investigators are as well-trained and experienced as OPM's investigators. ADC only hires investigators who have at least five years of federal investigative experience with agencies such as OPM, the Secret Service, the FBI, and the DEA. Our investigators are required to have the same Secret clearances as OPM Personnel. The credentials carried by our staff are the same as those issued to OPM's investigators and are provided by the agency which holds the contract. These credentials allow ADC's investigators access to the same files and records as OPM's staff, including all federal and private personnel folders, police record depositories, security files, Bureau of Vital Statistics and Division of Motor Vehicles records. Furthermore, ADC's investigators follow the same manuals and directive (National Security Directive 63) as OPM.

OPM defines the standards that are followed by ADC and other private companies. OPM has always been closely involved with private contractors by reviewing the Reports of Investigations (ROIs) that are submitted by the private companies, ensuring that the reports are completed based on OPM guidelines and meet OPM standards.

Furthermore, Federal agencies have been satisfied with the work performed and completed by the private

companies. For example, in a Washington Times article dated July 8, 1994 (see attached), the Secretary of Commerce stated that he was satisfied with ADC's services and had hoped to extend DOC's contract with ADC. However, without authority from OPM to use private companies to do its background investigations, Commerce was forced to rely on OPM investigators.

A list of Government agencies that have been or are currently being supported by private background investigation firms include:

Customs Service
Drug Enforcement Agency
Government Accounting Office
Small Business Administration
Air Force
National Labor Relations Board
*Peace Corps
*State Department
*Federal Bureau of Investigations
*Agency for International Development
*Central Intelligence Agency
*Office of Personnel Management

(* These agencies currently contract directly with private investigators)

Would existing firms be able to perform the amount of work that is currently performed by the Office of Federal Investigations?

ADC, Ltd. and the aforementioned private companies can perform the amount of work that is currently being performed by the Office of Federal Investigations. ADC, Ltd. has proven this by having met the needs of specific agencies such as the Department of Commerce and the National Labor Relations Board. ADC, Ltd. provided these agencies with quality ROI's in a cost-effective and timely manner. ADC, Ltd. has more than 700 investigators currently under contract. These contractors have at least five years Federal investigative experience. Some are former OPM investigators; other are former FBI, CIA, Drug Enforcement Agency, Treasury, and other Government agency investigators. They are highly trained and geographically located in every state and territory in the Union. There are over 3,000 experienced and credentialed investigators already providing background investigation services for private firms in the U.S.

One reason as to why ADC, Ltd. has so many investigators under contract is that we have already begun staffing up to handle an expected increase in Federal investigative contracts. The Vice President of the United States said in his 1993 National Performance Review that "By January 1994, OPM should repeal relevant sections of the regulation and issue appropriate implementing instructions... Federal departments and agencies would have full and complete authority to conduct or otherwise accomplish background investigations, for example, through contractors, using criteria established by OPM; 5CFR 736.201(a) and (b)26 would be repealed... OPM would be required to compete with other providers of investigative services to conduct investigations".

President Clinton endorsed the National Performance Review. However, for some unknown reason, OPM not only did not comply, but actually began to 'circle its own wagons' and pull back existing contracts... as well as to tell Government agencies they no longer were permitted to contract out background investigations. OPM expressed that it was afraid too much work previously assigned to the OFI would be going to private contractors if agencies were permitted a choice in the matter. OPM stated that it did not want to have to cut back on its workload or its personnel and that as a consequence it would no longer permit agencies to make competitive bids for their background investigative work.

As a consequence, OPM withdrew its "delegation of authority to conduct background investigations" from the Department of Commerce. ADC, Ltd. lost the contract as well as the ability to compete for more Federal investigative contracts. (OPM called a meeting with all Federal agencies and told them they were no longer allowed to use contractors to do their investigative work.) Other private investigation firms have similar stories. Some have managed to fight OPM to keep existing contracts, but the entire industry is in danger of extinction if the delegation of authority continues to be denied or if ESOP is granted a sole-source contract by OPM.

The OPM ESOP Feasibility Study suggested that ESOP should be granted sole source because no one else could handle such a workload of background cases and that agencies expressed concern about the uncompleted background investigations at the time OFI would "go out of business". ADC, Ltd. contends that there are sufficient private firms to pick up the new case load and finish the incomplete investigations in an orderly transition. The most extensive investigations are required to be completed in 35 days.

What effects would this measure have on your company and others in the investigations industry?

ADC and other companies in the investigations industry would be seriously affected if OPM restricts or eliminates our ability to provide background investigation support to Governmental agencies. ADC, Ltd. already operates with a handicap in today's marketplace because it is a small business and is minority - owned. Forbidding competition for background investigations contracts is not only unfair, but it would cripple us to near the point of destruction. ADC would be forced to scale back or eliminate this entire sector of our business. Newco would thrive and expand with Governmental financing at the expense of the private investigation companies. ADC, Ltd. and other firms would not be able to stay in the background investigation business for the ESOP three to five sole source period without any contracting possibilities.

The 700 investigators ADC, Ltd. has under contract would also be denied work. Additionally, there would be no practical way for ADC, Ltd. or any other business to come back in three to five years and be competitive again with ESOP. Their three to five year monopoly would leave them firmly entrenched in the marketplace. Furthermore, since OPM would maintain the final say on contracts, it is possible some type of favoritism would be given to a "company" comprised of former OPM investigators who fled unemployment to form that very company.

On a broader front, the American Way and the American taxpayers would be the biggest losers. Entrepreneurship and business competition would suffer a major setback. Government agencies would be forced to continue paying higher rates for the same services that could be provided by the private sector.

Are there any other concerns of which the Congress should be aware in evaluating this proposal?

ADC, Ltd. and the other private companies have demonstrated that they are capable of performing the investigations per OPM standards and guidelines. These companies have delivered the same or better service as OPM and have provided a 30-40% savings compared to OPM's costs. ADC, Ltd. and the other firms have amply demonstrated our ability to provide excellent, cost-effective background investigations services by using investigators who are former OPM, DIS, or FBI employees. We have performed the work at no risk to the national security and at a reasonable, competitive cost to the taxpayer.

The OPM ESOP employees are being given a golden parachute at taxpayer's expense. Although we sympathize with the massive lobbying effort the potentially displaced OFI investigators and their families have been staging, we ask that you not be swayed by their numbers and their sometimes inaccurate flurry

of paperwork. It is indeed painful to be faced with the prospect of losing a federal job and being forced to compete for employment in the private workplace.

We do feel, however, that the other side of the matter must be considered. One reason that we feel the ESOP feasibility study, financed by OPM, is so flawed is that it never addressed the private enterprise side. The authors of the study did not contact ADC, Ltd.. or to our knowledge, any of our competitors. We were not asked for information on the numbers of investigators we have under contract, the number cases we have done, nor for any other type of information or input we could have provided. Indeed, we were not informed such a study was even being conducted until after it was completed.

Another point we hope this Subcommittee addresses is the wisdom of allowing the wolf to own the chicken coop. It is, after all, OPM's OFI that created the huge deficits that led the Vice President to the conclusion that the investigations could be handled more economically by outside contractors. If ADC, Ltd. and other background investigations companies are put out of business by an ESOP sole-source guarantee, who will then be around to help ESOP out if it cannot do the job, or falls hopelessly behind in the workload, or in any number of other ways runs into problems?

If ESOP is guaranteed a sole-source monopoly, how will price and quality be controlled? Our understanding of the American free market system is that competition drives prices down and quality up. Without competition, how will the Government be assured of high quality and reasonable prices? We have only ESOP's word that it will try to keep the prices as low as possible. But those prices at their best will still be much higher than what the free marketplace can provide. If ESOP is not able to meet all of its financial obligations, what recourse does it have but to keep raising its prices? It won't be allowed to go out of business because it will have eliminated all the competition that would have been able to bail them out.

As a taxpayer, why do we have to foot the bill for a Government set-up such as this. Think about it. We are all paying for the Federal Government to finance a feasibility study, do a business plan, arrange for cheap financing for a new business that puts existing firms that can do the work cheaper ... out of business. Then we pay to give this new "private" company free furniture, office equipment, and computers. We arrange for the cheapest rates for office space. We then "hire" the very people who put the plan together. We guarantee them that their salaries and benefits will stay virtually the same as in the previous government jobs. We arrange it so their customers will have to pay before the service is provided so as to keep the cash flowing. And to top it off, we guarantee that we will squelch any and all possible competition for up to five years.

We ask you: What business would not want to and could not operate under these conditions?

In conclusion, We wish to say that we strongly feel the American free enterprise and open competitive system is the finest in the world. We are a part of this system and ask you not to force us out of business by forbidding us to compete. We have no fear of competing fairly with ESOP. We wonder, however, why ESOP feels it must have every unfair advantage to compete with us. We ask you to deny ESOP sole-source and to treat this "New Company" that the OPM ESOP feasibility study envisions, as the private company it purports itself to be. We cannot help but believe that the American taxpayer will benefit from this choice.

The Washington Times

OPM fights to keep its investigators busy

Private firms lose work in turf war

By Ruth Larson
THE WASHINGTON TIMES

Commerce Secretary Ron Brown said he would like to renew his department's contract with a private background investigations company, but the Office of Personnel Management won't let him.

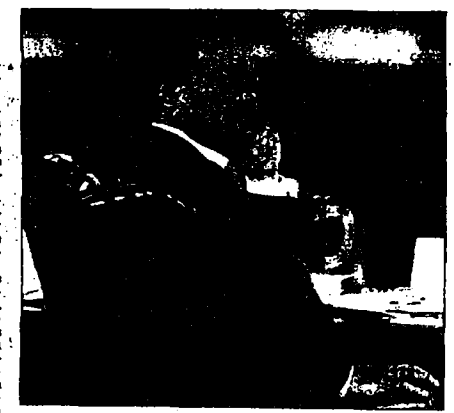
Mr. Brown's remarks apparently contradict those of OPM officials, who last week denied they are trying to force agencies to use OPM investigators instead of private contractors.

In a letter obtained by The Washington Times, Mr. Brown responded to an inquiry from Rep. Bill Richardson, New Mexico Democrat, about his department's contract with ADC Ltd., an Albuquerque-based private investigations firm. ADC has performed background investigations on would-be Commerce employees since October 1991, under a special delegation of authority granted by the OPM.

"That delegation expires on September 30, 1994 and OPM has informed us they do not intend to extend it," Mr. Brown wrote.

Mr. Brown's letter marks the latest twist in an ongoing turf battle between the OPM and private investigators, with both sides trying to keep their teams of investigators productively employed.

Mr. Brown said he was satisfied with ADC's services and had hoped to extend the contract beyond Sept. 30, when the current contract ends. But without authority from the OPM to use private companies to do its background investigations, Commerce would be forced to rely on OPM investigators.



AP

Commerce Secretary Ron Brown must use OPM for background checks.

The Commerce Department had asked the OPM to extend that authority, Mr. Brown wrote. But after extensive negotiations with the OPM, "the request to OPM was denied, due mostly to a diminishing workload situation and reduction in force at OPM."

OPM spokeswoman Rosalie Cameron at first denied that a decision had been made regarding the Commerce Department. But later, when faxed a copy of Mr. Brown's letter, she acknowledged that the OPM would not extend the department's delegation authority.

"Delegations are only given when we [the OPM] cannot handle the workload," Ms. Cameron said. She said delegation authorities are granted with specific time limits, to allow periodic reviews. Authority to use outside contractors is renewed only when the OPM believes it cannot support the agency's needs.

Asked about the administration's National Performance Review, which encouraged agencies to conduct their own background investigations, Ms. Cameron said, "Circumstances change."

The OPM intends to maintain its cadre of experienced investigators, trained at taxpayer expense, Ms. Cameron said. "It would be a waste of taxpayers' money to lose such highly trained people."

A spokesman for Mr. Richardson said the congressman intends to pursue the matter next week, when he returns to Washington.

OPM officials have already been forced to lay off 443 investigators — about a third of its investigations force — because of shrinking workloads. To drum up business for its remaining 915 investigators, the OPM recently unveiled a new marketing brochure, advertising its services to federal, state and local agencies.

In his letter, Mr. Brown noted: "The OPM delegation of authority was made at a time when they were unable to meet our needs."

"Now, OPM assures us that they can and will meet those needs, due in great part to automation and streamlining of operations," he wrote.

Private investigative companies counter that the OPM is trying to put them out of business through unfair competition.

20622

THE WHITE HOUSE

WASHINGTON

October 21, 1991

NATIONAL SECURITY DIRECTIVE 63

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF COMMERCE
THE SECRETARY OF ENERGY
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
CHIEF OF STAFF TO THE PRESIDENT
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
DIRECTOR OF CENTRAL INTELLIGENCE
CHAIRMAN, JOINT CHIEFS OF STAFF
DIRECTOR, FEDERAL EMERGENCY MANAGEMENT AGENCY
DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT
DIRECTOR, INFORMATION SECURITY OVERSIGHT OFFICE

SUBJECT: Single Scope Background Investigations

To eliminate redundant and costly investigative practices currently employed throughout the Executive branch, I direct that the following minimum investigative scope and standards be adopted by all agencies and departments for access for Collateral Top Secret/National Security Information and Sensitive Compartmented Information:

Scope

Past ten (10) years or to age 18, whichever is less.

Expansion of Investigation

The investigation may be expanded as necessary, to resolve issues and/or address employment standards unique to individual agencies.

National Agency Check

Checks on subject and spouse/cohabitant of investigative and criminal history files of the Federal Bureau of Investigation, including submission of fingerprint records on the subject, and such other national agencies (DCII, INS, OPM, CIA, etc.) as appropriate to the individual's background.

91/45630
W32723

Subject Interview

Required in all cases and shall be conducted by trained security, investigative, or counterintelligence personnel to ensure full investigative coverage.

An additional personal interview shall be conducted when necessary to resolve any significant information and/or inconsistencies developed during the investigation. In departments or agencies with policies sanctioning the use of the polygraph for personnel security purposes, the personal interview may include a polygraph examination, conducted by a qualified polygraph examiner.

Birth

Independent certification of date and place of birth received directly from appropriate registration authority.

Citizenship

Subject must be a U.S. citizen. Independent verification of citizenship received directly from appropriate registration authority. For foreign-born immediate family members, verification of citizenship or legal status is also required.

Education

Independent verification of most recent or most significant claimed attendance and/or degree/diploma within the scope of investigation via sealed transcript received directly from the institution. If all education is outside of the investigative scope, the last education above high school level will be verified.

Employment

Direct verification through records of all periods of employment within scope but in any event the most recent two (2) years. Personal interviews of two sources (supervisor/coworkers) for each employment of six months or more shall be attempted. In the event that no employment exceeds six months, interviews of supervisor/coworkers shall be attempted. All periods of unemployment in excess of sixty (60) days shall be verified through records and/or sources. All prior federal/military service and type of discharge(s) shall be verified.

References

Four required (at least three of which are developed). To the extent practical, all should have social knowledge of subject and collectively span the entire scope of the investigation.

As appropriate, additional interviews may include cohabitant(s), ex-spouses, and relative(s). Interviews with psychological/ medical personnel are to be accomplished as required to resolve issues.

Neighborhood

Interviews with neighbors for last five years if residence exceeds six months. Confirmation of current residence shall be accomplished regardless of length to include review of rental records if necessary. In the event no residence exceeds six months, interview of neighbors should be undertaken.

Credit

Verification of the subject's financial status and credit habits of all locations where subject has resided, been employed, or attended school for six months or more for the last seven (7) years.

Local Agency Checks

A check of appropriate Police records covering all locations where subject has resided, been employed, or attended school for six months or more during the scope of investigation, to include current residence regardless of duration. In the event that no residence, employment, or education exceeds six months, local agency checks should be performed.

Public Records

Verification of divorce(s), bankruptcy, etc., and any other court (civil or criminal) actions to which subject has been or is a party within the scope of investigation, when known or developed.

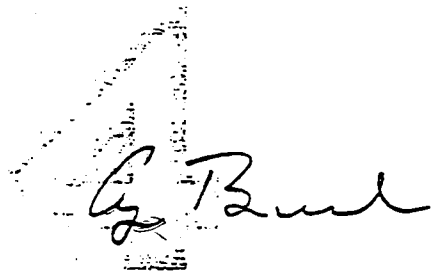
Transferability

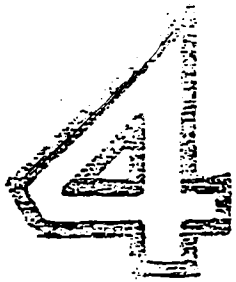
Investigations satisfying the scope and standards specified above are transferable between agencies and shall be deemed to meet the investigative standards for access to collateral Top Secret/

National Security Information and Sensitive Compartmented Information. No further investigation or reinvestigation prior to revalidation every five years will be undertaken unless the agency has substantial information indicating that the transferring individual may not satisfy eligibility standards for clearance or the agency head determines in writing that to accept the investigation would not be in the national security interest of the United States.

Notes

Immediate family -- spouse, parents, brothers, sisters, children, and cohabitant of the individual requiring access.





Mr. BASS. Thank you very much, and I appreciate your testimony. It's significant, and I think may have required some deliberation on your part as to whether or not you wanted to be as strong in your testimony as you have been. And I appreciate your candor and your honesty in presenting the position of your business in what might be a relatively sensitive situation, with respect to your relationship with the Federal Government—the fact that you do work for them.

Now, we have about 9 minutes left, before I need to vote in the House. Mr. Saunders, do you think you can do your testimony in 4 minutes? Or should we recess and wait until after——

Mr. SAUNDERS. I'll go as far as I can and see what happens.

Mr. BASS. OK, thank you very much. We'll recognize you, sir.

Mr. SAUNDERS. Thank you very much. My name is Herb Saunders. I am President and CEO of Varicon International, a Falls Church, VA, security firm whose primary business is providing personnel investigative or background investigations to U.S. Government clients. I have more than 40 years of experience in this business—30 with Government; since my retirement in 1984, another 11 with Varicon.

Our company has been conducting all of the Drug Enforcement Administration's BI's for the past 4 years, and last Fall, won a competitive award to do the same for the General Accounting Office. Additionally, over the past 8 years, we have conducted BI's for the U.S. Customs Service; the Bureau of Census, its parent organization, the Department of Commerce; and the Small Business Administration.

I greatly appreciate the opportunity to express my views on the OPM proposal to create an ESOP. To begin with, let me make a couple of points. Let me say that those of us who do this kind of work within the private sector welcome additional, legitimate competition. It keeps prices in line, and keeps us on our toes, professionally. Second, the feasibility study, conducted at taxpayer expense, for OPM by ESOP Advisors Incorporated, is grossly flawed. While the contractor spoke to everybody at OPM from the gardeners to top management, they spoke to none of us in private industry; nor did they present evidence of any interviews with our Government clients. Despite this major flaw, the contractor cavalierly concluded that private industry is not professionally capable of meeting the standards that OPM meets, and that we cannot cope with a high volume of cases.

Let's look at both of these points. The ESOP report states that only OPM can handle the considerable volume of BI's generated by the Government. They note that OPM has a grand total of 440 agents. Varicon has about 1,000 agents, distributed throughout the United States. The mathematics of this seem relatively simple, and Varicon is just one local small company.

Three of our closest local competitors have agent networks of comparable or greater size; that's just in this area. There are companies like us scattered throughout the United States. Typically, a request for proposal from the Government for investigative services draws responses from 40 to 50 companies.

On occasion, OPM has referred to us in industry as rent-a-cops. In an analysis of 712 of our investigators, in response to an RFP

submitted a while ago, we noted that among them were 323 retired professional investigators—meaning a minimum of 20 years of experience—from the Army, Air Force, and Navy; 143 retired FBI agents; 132 retired DEA agents; 63 from Customs; 45 retired DIS; 30 Secret Service; 18 Department of State; and among those scattered throughout a variety of other agencies, 5 from OPM. I should say that lately we have been receiving lots of OPM applications, most of them do not meet our requirements, failing to have at least five recent years of Federal experience conducting BI's on the streets.

Among this group of 712, 361 have B.A. or B.S. degrees; 84 have M.A., M.S.; there are 33 A.A. degrees; 13 law degrees; and 5 Ph.D.s. Fluency in 24 foreign languages is found within our investigative corps. Does this sound like a rent-a-cop program to you?

The scope of coverage to be conducted in a BI is not up for grabs. OPM does not operate under very specific guidelines while private industry plays with a Ouija board. The scope of investigative coverage is dictated by the extent of access required to classified material, and is mandated by Federal statutes, Executive orders, and national directives. Thanks to National Security Directive 63, promulgated several years ago by the Bush administration, the same standards now apply throughout the Government. For example, the bread and butter clearance for access to top secret is a single scope BI—SSBI, a 10-year investigation with specific coverage clearly identified. This coverage applies to each SSBI, governmentwide. In its contracts with private industry, the Government enumerates precisely what investigative coverage is required for each category of case. Failure to meet requirements puts the contractor at major risk, since the contract is written for a base year and up to four option years, and can be terminated for cause by the Government at any of the option renewal points.

In testimony on the Hill several years ago, OPM stated that it had reviewed several hundred of Varicon's DEA cases and all were found to be deficient in coverage. What they did not mention was that the "deficiency" in each case was a lack of a credit check and a national agency check, an NAC. This was simple dissembling, for they knew full well that our contract with DEA specifically states that we are not to do credit or NAC's; that DEA would handle them internally. It is quite common that an agency will do one or more preliminary checks before assigning field coverage, to eliminate those who obviously should not be processed.

Mr. BASS. Mr. Saunders?

Mr. SAUNDERS. Yes.

Mr. BASS. We're going to recess now for 20 minutes. I have 4 minutes to get to the House floor for my vote. We will recess now for 20 minutes, and we'll reconvene at that time. The subcommittee stands in recess.

[A brief recess was taken.]

Mr. MICA. Again, I want to take this opportunity to apologize to our witnesses. As you know, there have been some changes in the Congress, and we eliminated proxy voting and other things that now require us to be in two places at once. We appreciate your patience, and I also wanted to thank my colleague, and the vice chairman of the subcommittee, for his assistance and indulgence.

I believe Mr. Saunders was testifying. And if you could continue, sir, we'd appreciate it.

Mr. SAUNDERS. OK, I'll pick up where I left off, which is about halfway through my testimony. OPM has two other consistent themes. An experiment in the mid-1980's with private industry was a fiasco, and private industry does not have the access to various data bases that OPM enjoys. The fiasco was 10 or more years ago. It's time to put it to bed. Private investigative services have come a long way since then.

On the second point, the suggestion seems to be that we conduct our investigations on some kind of Mickey Mouse credential, not recognized by data custodians. In fact, our Government clients provide us with suitable credentials, identifying our agent as performing official duties on their behalf. For example, we have more than 450 field agents who carry a picture credential, identifying them as investigators under contract to the Department of Justice, authorized specifically to conduct BI's for DEA.

We have access to all local and State police records, various Federal repositories, the Federal Records Center in St. Louis, and all of the repositories with one exception, to which OPM has access. The one exception is the FBI's National Criminal Indices, NCIC. However, Government agencies are or can be electronically on-line with NCIC, and they like to do this simple check themselves, as one of their preliminary screening checks. Our local police checks are an excellent back-up or double check, complementing the NCIC, because neither one of them is an infallible source.

For some years now, going back to the Civil Service Commission, OPM has been operating on a "charter" that requires the Government to employ OPM to conduct its BI's. There are many who think that charter is not very clear, and in any event, was not intended to establish a monopoly for OPM. In fact, a lot of agencies simply elect not to use OPM. These include the State Department, the FBI, Department of Defense including NSA, the CIA, and others. In addition, DEA, Small Business Administration, National Labor Relations Board, Commerce, FBI, Customs and others are contracted or have been contracted out for their BI's. OPM reluctantly granted waivers permitting contracting out on petition by these agencies.

Why did these agencies want to contract out? Because OPM did not meet their timeliness needs. Now OPM is stating that under ESOP, these waivers will be rescinded. Never mind that the average SSBI price in the private sector is less than half of that which OPM charges. Varicon has consulted legal counsel on both OPM's alleged charter and the sole source aspect of ESOP. As noted above, the legal opinion on the charter is that it is shaky at best.

As for the sole source, legal counsel opines that it is a clear violations of the FARS, and is therefore illegal. If it flies, it will surely be tested in court. In its study, the ESOP contractor states quite emphatically that OPM is the only entity capable of coping with the Government's BI case load, but that it cannot and will not survive without a sole source arrangement that requires the Government to employ them.

Is this what privatized means? This sounds like the same old game being played in a different uniform. If OPM, or Newco, as

they plan to call themselves, is so exclusively capable, why do they need a sole source to survive? Given a monopoly, what incentives will Newco have to cut its unreasonable costs and meet specific agency timeliness deadlines. Quite casually, the ESOP feasibility states that after 3 years or 5, if Newco so determines, the ESOP will be prepared to enter the marketplace on a truly competitive basis.

The facts are that none of us can sit out there for 3 years, never mind 5, watching Newco feed itself on the work it takes away from us. When Newco is ready to compete fairly, we will long since have been buried, and there will be no competition of any sort—a fact surely not lost on Newco.

And finally, having alluded only briefly to costs, we should note that in a May 1993 letter to Senator Robb—one of many letters generated by an abortive OPM attempt to rescind DEA's waiver to permit contracting out—Judge Bonner, then DEA's administrator, stated that Varicon, my company, should be allowed—and these are quotes—"should be allowed to continue conducting DEA's BI's" and concluded "any action other than that would not be in the best interest of DEA, the Department of Justice, or the taxpayer." Judge Bonner noted in the same letter that Varicon had saved DEA, at that point in the contract, over $4.7 million in BI expenditures, compared to the cost of OPM services. I might add that we were then 2 years into the contract. We are now 4 years into the contract. It would appear that we have saved DEA, over a 4-year period, somewhere in the vicinity of $8 million or $9 million, in comparison with that which would be expended with OPM.

Individual agencies in the U.S. Government should have the right to choose the entity, whether it be Newco or somebody else who best meets their BI needs, in terms of professional capability, ability to meet timeliness, and cost. There are many private sector investigative companies who are meeting standards, who collectively can cope with a case load in a timely manner, and whose costs are reasonable.

What, then, is the basis for a sole source? As stated in the beginning, if Newco wishes to join the marketplace and compete for work with the rest of us, we welcome them. There seems to be enough to go around. Once again, thank you for the opportunity to express my views.

Mr. MICA. We thank you, again, for your participation, and especially for your patience, all of our panelists today. I have several questions. First of all, Mr. Clark, could you tell me the process by which OPM has consulted the Federal investigators that remain in your association, as they've implemented this ESOP plan and the change that's being proposed?

Mr. CLARK. There has been no consultation in terms of whether or not the employees are in favor of the ESOP proposal, versus remaining a Federal entity. We have been told that the function will be transformed to an ESOP, and that our options, or their options, now, are to either go along with the concept or simply have no alternative.

Mr. MICA. As that was developed, you were just told that this is the case and that you go along? Have you been consulted at any

point in whether there should be any input from your organization or your current investigators as to how this activity is structured?

Mr. CLARK. To the best of my knowledge, there has not.

Mr. MICA. There has not. Let me ask you this, also previous to the ESOP plan, there were about 500 investigators that were RIF'd. Has OPM established any type of a transitional arrangement to help or assist these individuals who have been RIF'd to find other employment or to find other positions in the Federal Government?

Mr. CLARK. There was such an effort. Sixty days prior to the effective date of the reduction in force, employees were allowed to job seek on official time. And they were given some assistance in identifying Federal vacancies that might exist, and there were job counselors designated. Some employees did find employment through that assistance; most did not.

Mr. MICA. Most did not. What percentage of those who were RIF'd have now gone into private investigative work; do you have any idea?

Mr. CLARK. I have no idea.

Mr. MICA. What percentage have gone into other types of Government employment; do you have any idea?

Mr. CLARK. A certain number have found employment at other Federal agencies.

Mr. MICA. Twenty-five, 50 percent?

Mr. CLARK. I don't have the data, sir.

Mr. MICA. The ESOP plan that has been proposed, right now that's really the only proposal on the table. If you have this edict from on high and you have an agency implementing it, what other alternative did the investigators see other than to join this new entity that's been created or being proposed to be created here?

Mr. CLARK. Frankly, there really is no other alternative. I believe, as the Director, himself, testified earlier, that the decision is to go with the ESOP or nothing. The investigative work force believes very strongly that the decision to privatize this function has been made in haste and without due deliberation.

We would hope that the Congress would take a second look at this issue, and determine whether or not this should, in fact, be an inherently governmental function.

Mr. MICA. Did you see the chart that Mr. King held up? He said some of these activities we view as being able to contract out, and others he felt were inherently governmental. Do you see any activities that can be contracted out? Do you agree with his conclusions? And what do you see as inherently governmental in this type of Federal investigations function?

Mr. CLARK. Well, I do strongly believe that conducting background investigations for sensitive Government jobs is, in fact, an inherently governmental function. I would ask what the general perception of the committee would be that if the next time a Supreme Court vacancy takes place that this be conducted by a private company? I doubt there would be much support for that.

By the same token, the next Secretary of State, I think, will probably be investigated by the FBI, a Federal entity. By the same token, if you have someone who has direct access to our Nation's

most precious nuclear secrets, should that individual not also be investigated by a Federal entity? Is not the risk just as great?

Mr. MICA. But the vast bulk of Federal employees are not dealing with nuclear secrets. Even the Department of Defense testified that they contract—and they do deal with national security—but they contract out 5 percent of their activities. Do you see a role for private contracting of certain services? Or are you all, your organization, opposed to any contracting of these services?

Mr. CLARK. Private contracting has played a supportive role in the overall Federal effort in conducting background investigations. For example, the Office of Personnel Management has had a personnel investigations contract support program in place for a number of years. And this is similar in nature to the type of work that the gentlemen on either side of me do.

We hire retired Federal employees, specifically investigators, FBI agents, and others of similar qualifications, to do these investigations. We have found that the level of success with these investigators is less than what we see with our own federally employed people.

Mr. MICA. How do you measure success? I mean, if we looked at some of the activities that have been farmed out by DOD to private contractors, is there any record to state in a factual manner that, in fact, these investigations are conducted in a less comprehensive fashion or that they've had problems with the employees? Is there some record of this?

Mr. CLARK. I can't speak to the Department of Defense's experience, but I can speak to the experience I've seen myself. And that is that I know personally of situations of people that I have supervised who completed long and distinguished Federal careers, and once they became contractors, they were susceptible to the temptations offered by being paid on a piece meal basis.

Mr. MICA. Well, you heard my charge to the Director, Mr. King, that if this doesn't work—Well, first of all, I think we spent so much money on this effort and the administration is trying to do this in a way that they consider humane, with those that they haven't fired. We will do our best to try to see that they include you in the process. But if this doesn't work, the alternative may not be as desirable for your group. Because as Mr. Moran said, and Mr. King, everyone is doing things in a different fashion today. Some of the activities that we took for granted years ago aren't there anymore. And job security isn't there anymore as we once knew it.

So the Federal Government is changing too, and will be a part of that change. Two gentlemen are here who advocate the private sector really taking a larger role in investigations. What role, Mr. Cordova and Mr. Saunders, do you see OPM evolving into in this process—because there will be certain functions by a governmental entity, and then there will be certain oversight and managerial and professional responsibilities, and some inherently governmental responsibilities?

But what do you see as the proper role of OPM in this, Mr. Saunders? And then Mr. Cordova.

Mr. SAUNDERS. I see a couple of roles for OPM. One is to continue to be paramount in the setting of policy, the standards that apply to the coverage for background investigations. I see no reason

why OPM should not continue to review, in an oversight capacity, the work that is done by private contractors. They do that now. I might say that they do it with an excessively fine-tooth comb, for quite apparent reasons at the moment.

But nevertheless, we can live with that. So I see them continuing to set policy and reviewing the work of the private contractors. At random, select 25 cases or 125 cases from an agency that is contracting out, and take a look at them and see whether they meet standards. And if they don't, decide what to do about it. And third, I see OPM continuing to stay in the business at Boyers, which is at least a national agency check business.

That's an efficient product. I believe it's done quite cheaply; it's done in one location. And I think it would be a good opportunity for all Government agencies to decide that they could work with OPM at Boyers for the national agency check; and then if they chose to, to contract out with private industry, whether that be Newco without a sole source contract, or me or him or whoever—there's lots of us out there.

Mr. MICA. Mr. Cordova.

Mr. CORDOVA. Mr. Chairman, the way we look at it, from ADC Ltd., is very similar to Varicon. We know that there is a need for OPM in the policy and the oversight. And to make sure, OPM, being that we're so involved with research and development from the great State of New Mexico, I measure OPM as being more or less like DOE would be in a field operations office—overseeing the laboratories.

We're talking about national security here, your honor. And I feel that OPM could very well be benchmarking the work that the firms, such as ADC Ltd., Varicon, and Newco—they're welcome to go on the street and compete against us; we'd welcome it, so we all can compete against MVM. They are competing against us.

But there has to be a benchmark. And I believe that OPM could very well be in the policy, with the United States Code, with you elected officials in Congress, setting the policies so that there can be a benchmark. In going back to OPM, they reviewed 100 percent of our cases, your honor, that we performed at Department of Commerce. Our work was better, by their own admission, than their own investigators, where they reduced it to 10 percent of the review.

Our standards—we have to my left, my project director, Larry Smith, who is second to none in background investigation. He's truly expert. But there could be firms out there also, sir, that could need to be hit upside the head. And believe me, ADC Ltd. is not going to tarnish our reputation. But we need to be respectful to OPM's policies.

Mr. MICA. Well, thank you, and I'll yield now to Mr. Bass, the vice chairman, for questions.

Mr. BASS. Thank you very much, Mr. Chairman. And we again, are in the process of a vote, I'm going to ask two questions, in the interest of time, so that we can conclude, if possible. To Mr. Saunders and Mr. Cordova, I was wondering if you'd be good enough to give this subcommittee the benefit of your observations or response to Mr. Clark's observations concerning Mr. Mica's question on Fed-

eral Government involvement and the deficiencies in potentially private companies taking over the investigations.

Mr. SAUNDERS. Well, frankly, throughout this process—and I've been contending with this in one form or another for the past three or 4 years—I find it an appalling arrogance to suggest that only the Federal Government has the capability to conduct a background investigation. I find it appalling to suggest that a retired Federal employee, former investigator, would be prostituted by the fee for task benefit, or whatever was described to me.

I am a former Federal employee. I spent 30 years serving my U.S. Government, and I'm not prostituted by the marketplace, and I'm not incompetent all of a sudden because I'm no longer a Federal employee. Our employees exceed, as best I can tell, the experience level of virtually every investigator I have ever met from the Federal Government, specifically, the OPM.

Our people are all looking at 25 or 30 years of background experience—criminal investigation, fraud investigation, personnel background investigations—all been on the street for 30 or 35 years. And they're hard to fool. They're hard to fool, and they're capable; and they're not prostituted by the money process. It's appalling to me that I hear over and over again that only OPM is capable of doing this work.

If they're the only people capable of doing it, why do they need a sole source arrangement? It will be apparent to almost anybody that only if OPM can do this, give it to them.

Mr. BASS. Mr. Cordova, your observations.

Mr. CORDOVA. I believe that Mr. Clark has made a point. His point is that contractors are second-class citizens. Your honor, we're not second-class citizens. We're honest, loyal, hardworking Americans that can deliver a product second to none. By OPM's own admission, ADC Ltd.'s product was better.

We are very involved in national security, at least in our firm. And this would be like your committee, your honor, telling the U.S. Air Force that it's now being downsized, and forcing all the American citizens to fly the Air Force planes; and what is TWA and Continental going to say? That's what OPM is trying to tell you.

Mr. BASS. I have one last quick question for Mr. Saunders. You mentioned in your—maybe it was extemporaneously—that you thought that development of the ESOP would take business away from your industry. What is the difference between having an ESOP and having the current system? Why would you lose, necessarily, any more business under the ESOP than you would under what exists today?

Mr. SAUNDERS. That's a good question. The agencies with whom we are now contracted have been granted a waiver, under some duress, by OPM, to contract out with us. That specifically is DEA, Small Business, and GAO. Those are my three U.S. Government contracts now. Ms. Lattimore, in a meeting at OPM of all of the Government agencies, the past 2 weeks or so, was asked the question, will those Government agencies who now have waivers to contract out be permitted, under ESOP, to continue contracting out?

And the answer was, no; all waivers will be rescinded and no further waivers will be granted. So what they're saying is, when they get ESOP, they're going to say to my three customers—DEA, SBA,

and GAO—your waiver to contract out is terminated; you come back home, sweetheart, back to ESOP. And they're going to do the same to him.

Mr. BASS. OK. I have no further questions, Mr. Chairman. Thank you very much, all three of you, for your fine testimony.

Mr. MICA. Mr. Clark, did you want to respond to any of that quickly? You've got about a minute.

Mr. CLARK. Yes. In no way do I want to imply that the contractors are prostitutes. I think that's an overreaction to what I said. I do have 20 years' experience in this business myself, and I have extremely long-term experience working with contractor investigators. And I know what those problems are. And the problem is that the measure of success, in conducting a background investigation, is not the bottom dollar.

The measure of success, in conducting a background investigation, is whether or not you develop information relevant to the individual's suitability for sensitive Government employment. And contractors are paid on the basis of how many cases they complete. The more cases they complete, the more money they make. And there is no consideration given to the amount of issue information developed.

In fact, there is often times a disincentive to develop serious issues, because it takes time and it takes effort to identify and resolve issues. And that costs money.

Mr. MICA. Well, I want to thank each of our panelists. Unfortunately, again, we have another interruption. As it will be necessary to conclude the panel and this hearing at this point. First of all, I want to thank you again for your patience—particularly Mr. Clark, who's come from Colorado, and Mr. Cordova, who came from New Mexico, at private expense—to be with us and testify. We appreciate so much your participation.

This is probably one of the most in-depth hearings of this issue, at least in my memory in Congress, of this issue, and it is an important issue. We need to find some solution and work together and try to expend taxpayer dollars and resources and keep Federal public trust and inherent Government responsibilities properly attended to. But I do appreciate your participation.

We have additional questions which we will submit to you. And we would ask that you respond in writing. Your response will become part of the complete record of this hearing, and also part of the actions and procedures that are taken by Congress to resolve some of these issues. So again, on behalf of the subcommittee, we appreciate each of you and your participation in this hearing.

We will leave the record, without objection, open for 2 weeks, to entertain additional testimony. There being no further business to come before the Civil Service Subcommittee, I declare the meeting adjourned. Thank you.

[Whereupon, at 1:45 p.m., the hearing was adjourned, subject to the call of the Chair.]

[Additional material submitted for the record follows:]

STATEMENT OF THE
HONORABLE CONSTANCE A. MORELLA
HEARING ON
OPM INVESTIGATIONS: PRIVATIZATION
SUBCOMMITTEE ON CIVIL SERVICE
JUNE 15, 1995

Since the privatization of OPM's Office of Federal Investigations (OFI) will serve as a test case for coming privatization initiatives, it is important to take a critical look at the methodology and consequences of privatization at this juncture. Although I am unable to participate in this hearing because of a scheduled mark-up of a bill in my subcommittee on technology, I am very grateful to Chairman Mica for having a hearing that provides a forum for discussing the issues that surround privatization, including taxpayer costs, privatization models, and employee and customer support.

As you know, the Administration and this Congress have discussed the use of privatization as a strategy for reducing the size of government, both its programs and personnel, and for reinventing government. The National Performance Review (NPR) has issued a report that outlines various privatization options, including employee stock ownership

plans (ESOP), service contracts, and franchises. Federal agencies are using the NPR privatization flowchart and guidelines to determine what they should or should not privatize.

OFI, a privatization target of the Administration, provides a full-service investigations program to 4,800 US Government offices in 80 agencies throughout the continental US and overseas. In FY 1994, it completed about 150,000 cases. OFI conducts background investigations for two reasons: (1) to provide a basis for agencies to determine whether a person should be granted a security clearance, and (2) to provide a basis for determining a person's suitability for Federal employment.

In December of 1994, James King, Director of OPM, announced that he would privatize the organization's investigative and training functions. After preliminary research conducted by internal staff, OPM hired ESOP Advisors, Inc., to determine the feasibility of transforming the investigative function into an ESOP. In its report, ESOP

Advisors determined that the investigative function was a good candidate for becoming an ESOP, but hedged on an endorsement for the success of this entity.

In general, I am not a supporter of privatization, including the outsourcing of government functions or the ESOPing of Federal employees. For some reason, we have been induced to believe that the private sector, because it's the private sector, offers efficiency that cannot be matched by government. In the 1980's, OPM's experience with contracting out a portion of its investigative work shows the inverse. The results of this action were a decline in the quality of investigations and an increase of $1.4 million in costs.

OPM and OMB have estimated savings of $30 million over five years by privatizing OPM's investigations and training functions. Yet, the cost of privatizing the investigations function alone is estimated over at $50 million. I was once an English professor, but even I can see

something is wrong with this equation. I hope OPM and OMB are prepared to work the math for the subcommittee.

As I mentioned earlier, OPM plans to transform the investigations organization into an ESOP. The operative word in ESOP is "employee." Like many of the members of this subcommittee, I have heard from OFI employees who have expressed opposition to this action. I have serious doubts that an ESOP can survive, not to mention start, with this amount of employee dissension. In their report, ESOP Advisors, Inc., echoes this concern: "Current OPM-OFI employees do not yet support the privatization process...unless a substantial portion of the OPM-OFI workforce chooses to accept employment from Newco, Newco will not be able to provide the necessary services, and will not be a viable enterprise."

At yesterday's hearing, we heard or received written testimony from two of OFI's customer agencies. I've also received letters from other OFI customer agencies. These organizations are very satisfied with the services received

from OFI. However, they, with the possible exception of those bound by law to use the investigative services of Federal agencies, would probably use the ESOP, unless a better source were identified. Yet, there are still unresolved questions on what the privatization of OFI will mean for customers. Do the use of private contractors mean higher prices as investigations are reworked to correct mistakes? Will a private contractor's limited access to sensitive information lead to inferior investigations and potential security problems for Federal agencies and taxpayers? These questions need answering.

In addition, it is my understanding that no Federal agencies has been transformed successfully into an employee stock ownership plan (ESOP). Investment bankers and other experts suggest that to perform a solid analysis of the viability of an ESOP and then create it takes considerable time -- in some cases, years. I feel OPM may be rushing this privatization to the detriment of its employees and its client agencies who depend on quality investigative services.

I do want to be clear that I support privatization when there are clear and proven cost savings and efficiencies achieved. I cosponsored a bill, introduced by Congresswoman Eleanor Holmes Norton, that would require agencies to perform cost-benefit analyses before contracting out services and that would prohibit any agency from entering into an outside service contract if the services could be performed at a lower cost by agency employees. It is my wish that OPM apply these standards in privatizing its investigative service.

Mr. Chairman, I would hate for us to find out that the ESOP created is indeed a fable -- a "RIF" in sheep's clothing. This would serve no one. This concludes my remarks. Again, thank you, Mr. Chairman, for calling this hearing.

July 7, 1995

The Honorable John L. Mica
Chairman
Subcommittee on Civil Service
House Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Mr. Chairman:

Thank you for your June 23, 1995 letter requesting information additional to that provided in my testimony at the June 15 subcommittee hearing.. On behalf of the OPM Investigators, we sincerely appreciate the opportunity to express our serious reservations over the administration's plans to privatize this important function.

The issue of privatizing background investigations is one of serious import to our nation since any miscalculation could have negative repercussions impacting national security and the overall integrity of the Federal civilian workforce. The subcommittee hearings clearly established that OPM's decision to privatize background investigations was made without the kind of study and deliberation required before enacting such a profound policy decision.

Specifically, there was no A-76 review conducted to establish whether privatization would result in savings to the government. There was no prior consultation between OPM and its customer agencies about this proposal which has obvious and serious repercussions on their personnel security operations. No analysis was done to determine whether private industry has the expertise and qualified staff to assume responsibility over a program requiring a nationwide network of trained investigators. Additionally, the decision was made without consideration to the history of quality and integrity problems that have plagued privatization efforts, both past and present.

At this point, I would like to address your specific questions and concerns. To assure responsiveness to your areas of inquiry, I will first quote from your letter to me and follow with my response.

"We were especially troubled by reports of deficient investigations submitted by private contractors. These deficiency rates do not appear to be consistent with the Administration's testimony that agencies sustain adequate programs to provide for the security, suitability, and public trust determinations associated with federal employment. How do agencies rectify the deficiencies that they find?"

The deficiency rates provided in my testimony to the subcommittee come from historical data maintained within OPM's Office of Federal Investigations. That information should still be available from OPM.

Agencies that have utilized OPM's investigative services have relied on OPM to take the appropriate measures to assure the integrity and quality of the investigative product. Thus, agencies have had no need to establish their own controls. While I have no survey to report concerning integrity and quality control measures undertaken by agencies utilizing the services of contract investigations companies, my sense tells me that there are very few such controls in place. Establishing and operating an effective quality and integrity control operation for background investigations is a function requiring ongoing vigilance.

Deficiencies in conducting background investigations can take several forms. There can be deficiencies in the areas of integrity, issue development and resolution, and investigative coverage. The Office of Federal Investigations at OPM has earned its reputation among the personnel security community for the integrity and caliber of its investigative reports. The investigators and managers of this program are very proud that in its history of conducting literally hundreds of thousands of investigations, there has not been even a single spy scandal involving an OPM-investigated individual. This has been true even though OPM has been the sole provider of background investigations for the Department of Energy's nuclear weapons program for many decades.

The reason OPM has been able to maintain a sterling reputation for the quality and integrity of its investigative products is due to its unswerving commitment to quality and integrity control. Integrity control has been assured by means of effective supervision of investigators. Supervisory Investigators regularly re-contact individuals to assure: (a) the investigator interviewed the source, (b) that the investigators were professional in appearance and demeanor, and (c) that the substance of what they were told during the interview was accurately reported. Supervisory Investigators also conduct Comprehensive Work Performance Analyses of investigators. This entails taking a representative period of work and comparing the investigator's notes and work claims against reports of investigation and other reporting documents to assure accuracy and integrity. Supervisory Investigators also will accompany investigators into the field to personally observe their interviews.

The quality of work is assured by close review of investigative reports. These reviews are conducted both by the first line supervisor as well as by a central review function. All of these monitoring tools are conducted for the purpose of assuring that investigative reports produced by OPM meet the highest quality and integrity standards.

I feel confident that no private contractor comes close to matching the internal integrity and quality controls used by OPM. The contracting companies generally maintain a central office with no close supervisory relationship to the investigators. They rely on recruiting former Federal investigators to conduct their work, pay them on the basis of how many cases they produce, and hope that they do not succumb to the lure of making money at the expense of completing quality investigations.

As I stated in my June 15 testimony, I have many years of service as an OPM Supervisory Investigator and supervised about 100 Investigators. During those years, none of my Investigators was ever found to have falsified investigative reports, suppressed derogatory information, or to have engaged in any other conduct that would lead me to question the integrity of their investigative work.

During these same years, I had first line monitoring responsibility over about 20 investigators working as private contractors under OPM's Personnel Investigations Contracting Support (PICS) program. These individuals were most often retired OPM, FBI, and other Federal agency Investigators who

completed their Federal careers with honorable reputations. Even though the contractual nature of their employment precluded me from supervising them with the same scrutiny given to my regular employees, I found two of these individuals to have falsified numerous reports of investigation. Both individuals were immediately terminated, but the government incurred tens of thousands of dollars in extra costs by reinvestigating their cases. I also found the general quality of work completed by the contractors to be notably inferior to that of my regular investigative staff.

My experience working with contractors is not unique. I know of other Supervisory Investigators who had experiences similar to mine. Those involved in OPM's Quality Control program likewise have similar experiences to share over the dangers inherent in working with contractor investigators.

I believe there is a common thread that links the historical problems seen with contractor investigators. Regular employees are paid a salary and earn the same amount of money regardless of the number of cases they complete. Contractor investigators are paid on the basis of how many cases they submit.

It is beyond dispute that it takes more investigative time (and therefore more money) to develop and resolve issues and to provide the kind of overall coverage that results in a quality investigative report. OPM ingrains in its investigators that their primary focus must always be on producing a quality investigative product which provides all the information necessary for the customer agency to make an informed adjudicative decision. Regardless of any other pressures of the job, quality must be their paramount concern.

Compare this to the working conditions of the contract investigators who are paid solely on the basis of the number of cases completed. It does not take them long to understand that completing cases without issues and with minimal coverage is more profitable to them than developing and resolving serious issues. Most of them are honest and honorable individuals who do not allow the profit motive to interfere with their professional responsibilities. Nevertheless, a system that is structured to provide greater financial reward to those who churn out the most work is fundamentally flawed.

The decision on whether this function should be performed by Government or business can be examined by drawing a distinction between the ultimate goals of each. The ultimate goal of a Government operated background

investigations program is to assure national security and the integrity of the Federal workforce. The ultimate goal of business is to make a profit. Even though it may be possible to make a profit and still do a good job, greater profits can be realized by cutting corners in areas where the risk of detection is small. Therein lies the risk.

"Additionally, do you believe that any measures could be taken to reduce the number of deficiencies detected in investigations conducted by private contractors? If OPM pursues the Administration's decision to privatize this function, what remedial measures would be necessary to reduce such deficiencies?"

Unfortunately, I foresee no measures that can be taken to reduce the number of deficiencies in contractor completed cases. As outlined above, I believe there is compelling evidence that the very structure of contracting this work provides the fundamental explanation for the increased number of deficiencies and integrity issues.

During the hearing I was especially troubled by the testimony offered by several of the witnesses in favor of contracting out background investigations. These individuals expressed the conviction that if background investigations were to become totally privatized, the Government would ultimately benefit by having companies competing for work by offering lower prices than their competitors.

I fear these witnesses may be right insofar as competition is concerned. One of the surest ways to get a Government contract is to be the low bidder. Introducing cutthroat price competition to an area as sensitive as conducting background investigations is an invitation to scandal. Contractors will be forced to cut as many corners as possible to reduce their costs. Cutting costs in conducting background investigations most often involves making compromises in the quality of the investigative product. This will almost assuredly lead to practices such as: contacting sources by telephone rather than in person, deciding that following up on certain issues "really is not that important", not sending an Investigator to an area requiring travel expenses, and equally dangerous practices.

In conclusion, I reiterate there is a history of failure in contracting out background investigations. The Administration, OPM, involved agencies, and investigations companies have failed to articulate why any future

wholesale contracting out of backgrounds will be any more successful than past efforts. They have also been unable to establish any cost savings to the Government as a whole. I fear further trips down this path will lead to even greater abuses than those already experienced. The ultimate cost will be compromising our national security and diminishing the integrity of the Federal civil service.

Thank you once again for providing this opportunity to express the views of the OPM investigative workforce in this critical public policy issue. We would be pleased to provide any other information the Subcommittee might need.

Sincerely,

Michael G. Clark

Michael G. Clark
Federal Investigators Association
10546 W. Glasgow Ave
Littleton, CO 80127

GAO United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-261751

August 22, 1995

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
House of Representatives

Dear Mr. Chairman:

This letter responds to your June 23,1995, request for additional information as a follow-on to our recent testimonies regarding OPM's plan to privatize its investigations function.

As we note in the accompanying enclosure, we are working with the Federal Data Procurement System to determine how often, and under what conditions, the public interest exception to full and open competition has been used. As agreed upon with your office, we will provide this information under separate cover once it is obtained.

If you have any additional questions concerning OPM's planned privatization effort, please call me on (202) 512-7680.

Sincerely yours,

Timothy P. Bowling
Associate Director, Federal Management
and Workforce Issues

Enclosure

ENCLOSURE ENCLOSURE

1. **The Department of Energy testified that the Atomic Energy Act requires that its background investigations be conducted by either the FBI or OPM. Would an amendment of the Atomic Energy Act be required to enable conduct of these background investigations by an organization operating under contract?**

   The pertinent provisions of the Atomic Energy Act, found at 42 U.S.C. 2165, state that OPM is to conduct background investigations of employees and contractors or licensees, and that OPM is to refer any investigation which reveals that an individual is of questionable loyalty to the FBI. (See sections 2165(a), 2165(b) and 2165(d).) A literal reading of these statutory provisions suggests that the background investigations are to be conducted only by OPM personnel. Unfortunately, the legislative history of these provisions does not provide guidance as to whether the conduct of background investigations by a contractor would satisfy the purposes of those provisions.

   In these circumstances, we believe that in order to eliminate uncertainty regarding this matter and to reduce the possibility that the authority of contractor personnel to conduct these investigations could be challenged, a preferable course of action would be for Congress to amend the statute to provide expressly that the investigations may be done by contractor personnel.

2. **It has been asserted that federal, state, and local law enforcement agencies and bureaus of vital statistics might be reluctant to provide records to investigators conducting investigations under contract to federal agencies, even though they currently provide such records to investigators employed by federal agencies. Private firms testified that they are currently able to gain credentials from federal agencies that provide access to the relevant records, and that similar credentials could be made available to other investigators working under contract to provide background services. From your research, do investigators working under contract have serious difficulties gaining access to relevant records? Is there anything about the proposal to privatize OPM's Office of Federal Investigations that might jeopardize this access?**

   Certain agencies such as DOD, FBI, and the INS have computerized information systems that are queried during the background investigation process. These are referred to as national agency checks (NACs). For example, the FBI's National Criminal Information Center can provide a record of

a subject's federal and/or state offenses, arrests, and dispositions.

Private investigators working under contract, however, generally do not have access to such systems. Individual agencies contracting for investigative services must secure their own NACs. In some instances arrangements have been made for OPM to conduct the requested NACs. Significant findings from the NACs are generally shared with the private investigators, who are instructed to perform the fieldwork necessary to verify or confirm any significant leads developed.

We do not have information on the extent to which contractor investigators have experienced difficulties obtaining records from state and local law enforcement agencies, bureaus of vital statistics, etc. However, we do note that some agencies (e.g., the Department of State and the Drug Enforcement Administration) provide contractors with credentials that identify them as special investigators, but do not expressly identify them as contract personnel.

OPM currently has agreements with several states to provide OPM investigators with data from their information systems. Generally these agreements are entered into pursuant to 5 USC 9101, which provides that upon request by OPM (or other identified federal agencies) federal, state, and local criminal justice agencies shall make available information regarding the criminal histories of individuals whom OPM is investigating. From our reading of this section it is not clear whether these agreements would be transferrable.

3. **Investigators have reported that both private contractors and other agencies fail to meet OPM's standards for background investigations, requiring substantial reworking of investigative reports. By what measures are these other investigations deficient? Do these deficiencies result in material shortcomings in the security, suitability, and/or public trust adjudications affecting federal employees? If no, is there cause for concern about these reported deficiencies? If material shortcomings do result from these deficiencies, are there difficulties in OPM's testimony that agencies are complying with overall standards for such adjudications?**

OPM reviews investigations for adherence to standards that are incorporated in the OPM Investigator Handbook. For example, the fieldwork portion of an investigation might be deemed deficient if it did not cover a specified period or did not resolve questions that arose. NAC searches might be deemed deficient if the agency did not request all appropriate searches.

The following table summarizes the results of OPM's review of investigations that were prepared in part or entirety by contractors for five agencies. These investigations were reviewed by OPM during the period June 1, 1994, to June 9, 1995. It should be noted that deficient investigations could be the result of contractor and/or agency performance.

Total investigations reviewed	Investigations found adequate	Investigations found deficient
822	274	548

According to officials from OPM's Office of Federal Investigations, investigations deemed deficient are returned to the agency to be corrected. To the extent that deficiencies were noted and corrected by agencies prior to adjudication, such deficiencies should not have resulted in shortcomings in the adjudications affecting employees. This may have been the basis for OPM's testimony that agencies are complying with overall standards for adjudications. According to OPM officials, OPM has and will continue to review all investigations that are prepared in part or entirely by contractors.

4. **As a major element of its strategy to privatize, the Office of Personnel Management proposed to notify Congress of a "public interest" exemption from the "full and open competition" requirements of the Competition in Contracting Act. How frequently has this notification procedure been used? Under what conditions have such "public interest" exceptions been permitted? If the Congress disapproves of the sole source procedure, what avenues are available to stop such a contract award after due notice? Your response should specifically address the limitations upon a "legislative veto" established by the Supreme Court in INS v. Chada (1983).**

We are in the process of working with the Federal Procurement Data System to determine how often the public interest exception to full and open competition has been used and under what conditions. As agreed upon with your office we will provide that information under separate cover once it is obtained.

The information available to us thus far indicates that the public interest exception is rarely used. First, unlike the other exceptions to full and open competition which may be

approved by lower level employees or officials, 41 USC 253 (c) provides that the public interest exception may only be used when the head of the agency responsible for the procurement makes a determination that full and open competition is not in the public interest in the particular acquisition concerned. The authority may not be delegated. Moreover, Congress must be notified in writing of this determination no less than 30 days before award of the contract. In addition, the Federal Acquisition Regulation states that the public interest exception may be used only when none of the other exceptions to full and open competition applies.

The public interest exception was in neither the House nor Senate versions of the Deficit Reduction Act of 1984, which contained the Competition in Contracting Act of 1984 (CICA). It was added by the Conference Committee, which emphasized that it viewed the exception as a tool to be used only in rare cases.

With respect to avenues available to Congress to prevent the award of a contract based upon the public interest exception, the only certain action, in our view, would be the passage of a law precluding the agency from making the award. The requirement that Congress be notified in advance of the planned use of the public interest exception to justify a contract award is a type of "report and wait" provision that is permissible under Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 935, f.n. 9 (1983). Here, the "report and wait" provision prevents OPM from awarding a contract until it reports to Congress and waits the required period of time. Once the 30-day period has elapsed OPM would have authority to award the contract unless a law precluding OPM from doing so had been passed in the interim.

Such a statute might take several forms. For example, a provision could be enacted prohibiting OPM from contracting these services out. Alternatively, Congress could enact an appropriation restriction prohibiting OPM from making any payments on a contract with any private contractor. One House of the Congress, however, could not prevent OPM's action as the Supreme Court has declared the use of the one-House veto unconstitutional (Chadha, supra). In Chadha, the Supreme Court addressed the constitutionality of the one-House veto after the House of Representatives passed a resolution overruling the Attorney General and mandating the deportation of an immigrant. The Court found that neither the House nor the Senate, on its own or together with the other, could exercise legislative power unless the standards in Article I of the Constitution were followed. These standards require that in exercising legislative power, both the Houses have to pass a bill which then must be presented to the

PREPARED STATEMENT OF RONALD A. REAMS, DIRECTOR OF INVESTIGATIONS AND COUNTERINTELLIGENCE, BUREAU OF DIPLOMATIC SECURITY, U.S. DEPARTMENT OF STATE

Mr. Chairman and Subcommittee Members:

I am pleased to have the opportunity to present the perspective of the Department of State on the subject of personnel security and suitability determinations related to federal employment. It is absolutely essential to our national security and to the conduct of good government that federal agencies have in place effective mechanisms to determine the reliability and trustworthiness of their employees.

The Department of State's background investigation program serves two needs: suitability and security. Investigations performed by the Bureau of Diplomatic Security (DS) provide the Department a basis for determining both an individual's suitability for employment and eligibility for access to classified information.

The foreign policy and national security mission of the Department requires that very high standards be met for suitability for employment. The standards are set out in the Foreign Affairs Manual (3 FAM 100), which incorporates the requirements of pertinent executive orders and statutes. They require that candidates for employment be of excellent character and professionally qualified. National security also

requires that access to classified information be restricted to employees who can be relied upon to protect that information. The latter determination is based on security factors contained in the Foreign Affairs Manual (12 FAM 230) and common adjudicative guidelines now in use throughout most of the Federal government.

The standards for suitability and security derive in large part from EO 10450, which was originally issued in 1953. Although amended several times since, EO 10450 has been a remarkably stable platform on which the Department's and indeed the entire Federal Government's personnel security and suitability policies have been based. The executive order provides minimum standards and procedures governing the employment and retention in employment of persons in the federal service. It requires that persons employed in federal service be reliable, trustworthy, of sound judgment and not the subject of derogatory information that would be inconsistent with national security.

Fundamental to both security and suitability determinations is a process which incorporates personnel background investigations of all employees. This investigative process must be completed within a reasonable period of time and be of sufficient scope to provide a basis for both suitability and security determinations.

The process begins with, and to a great extent relies on, the accurate self-reporting of biographical information presented by the candidate for employment or continued security clearance eligibility. (We update an employee's security clearance every five years using the same standards applied to candidates for employment.) This information is transmitted to specialists in the Bureau of Diplomatic Security's Personnel Security and Suitability Division, who are responsible for reviewing the initial submission and tasking leads for investigation to agents in the field.

The investigative process is carried out by both contractors and Special Agents of the Bureau's Diplomatic Security Service (DSS) in the United States and abroad. Because we are a foreign affairs agency, a large number of applicants and employees have lived and traveled overseas as well as domestically. The combination of Regional Security Officers (RSOs) abroad and special agents and contractors domestically is an efficient and cost-effective mechanism for performing background investigations. Our RSOs also perform a significant portion of the investigative checks overseas for candidates for employment by other federal agencies. Field offices supervise 250 contractors who are hired on an individual basis to work exclusively on such investigations. In addition, the approximately 160 DS special agents who are assigned to the field offices primarily for conducting criminal

investigations and protective security functions also spend a relatively small portion of their time on background investigations.

All DS agents are formally trained in the conduct of personnel investigations. Anyone applying for a position with DS as a contract investigator must have had prior federal service in the conduct of personnel investigations. We ensure the integrity of our program by regularly auditing the performance of our investigative personnel.

The contractors are predominately former FBI agents familiar with the specialized requirements of personnel investigations. They do not make policy decisions, determine the scope of investigations, or adjudicate the completed investigations. They receive their taskings from the Special Agent in Charge (SAC) of one of our eight field offices. The SAC is responsible for providing oversight and ensuring quality and timeliness. This arrangement has been extremely cost effective allowing the Department to purchase services virtually anywhere in the country (often miles from any field office) and to pay only for the time spent providing that service (with virtually no overhead). We are routinely able to deliver a full field background investigation of the scope specified in NSD 63 within 90 days.

When the investigation has been completed, it is reviewed by the SAC and submitted to our Personnel Security and Suitability Division for evaluation. Any adverse issues are referred to the personnel officials who make final suitability determinations. Once an applicant or employee has been found to meet our suitability standards, the case is returned to the Bureau of Diplomatic Security for a clearance eligibility determination. In addition to its primary function, the thoroughness of our suitability screening process is undoubtedly an important reason why the Department has had to take few adverse security clearance actions.

During the security clearance process, all final determinations and policy decisions are made by government employees ultimately responsible to the Assistant Secretary for Diplomatic Security.

The Department is generally not prevented by statute, federal policy, or judicial precedent from collecting background information sufficient to make suitability and security determinations. However, many private corporations have policies or practices that preclude their responding to personnel related inquiries. For sensitive positions, it is not enough that there be an absence of disqualifying information; there must be enough known positively about an individual to allow a reasonable determination that the

individual can be entrusted with sensitive information. Thus, missing information preventing the Department from establishing either continuity of identity or character can be grounds on which to deny suitability or a security clearance.

Former employers have expressed concerns to us about potentially being held liable if a subject of an investigation discovers through a Privacy Act request that derogatory information in the subject's file was provided by the former employer. Confidentiality can be provided to anyone providing derogatory information, and our investigators routinely ask sources if they would like to avail themselves of such confidentiality. Similarly, financial, medical and travel arrangement businesses or institutions occasionally prohibit access to their records absent receiving a specific liability release. However, the effect of such a release is to delay rather than impede our ability to investigate.

In conclusion, the main objectives of personnel suitability and security investigations are to establish an individual's general character, integrity, and trustworthiness, as demonstrated by past conduct and their acceptance of responsibility. This process permits the Department to assess the probability that the individual will perform his or her duties faithfully and responsibly, and will hold in confidence,

even under adverse circumstance, matters of official business which require discretion and affect national security.

I appreciate having an opportunity to outline briefly how we at the Department of State seek to meet those important objectives, as well as to address specific issues being examined by the Subcommittee.

Questions for the Record Submitted to Ronald A. Reams
by Chairman John L. Mica
Subcommittee on Civil Service
Committee on Government Reform and Oversight
June 23, 1995

QUESTION 1

Would you prefer to see OPM privatize its Investigative Services Program through creation of an ESOP, or would you prefer that OPM retain this program in-house with its current operating structure?

ANSWER

The Department of State supports National Performance Review (NPR) efforts, and we are working closely with the Office of Personnel Management to ensure that proposed reforms regarding the Office of Federal Investigation are implemented in a manner consistent with the Department's responsibilities and procedures.

Questions for the Record Submitted to Ronald A. Reams
by Chairman John L. Mica
Subcommittee on Civil Service
Committee on Government Reform and Oversight
June 23, 1995

QUESTION 2

Does your agency have delegated authority to utilize private contractors for background investigations? If so,

a. When and why did you request the delegation?

ANSWER

Yes, the Department of State has been delegated authority to utilize private contractors for background investigations. The original delegation was requested in 1981 and the request is resubmitted annually.

b. What is your level of satisfaction with the timeliness, quality, and cost of the investigative reports you have received from private contractors?

ANSWER

The Department of State is very pleased with the performance of its contract investigators and believes the contractor contribution is the most efficacious use of Federal funds. We are confident of the integrity of our program because the Bureau of Diplomatic Security periodically audits the performance and conduct of its investigators.



ADC, LTD.

1919 San Mateo NE • Albuquerque, New Mexico 87110
505-265-5800 • FAX 505-265-4876

Tuesday, June 20, 1995

The Honorable John L. Mica, Chairman
Subcommittee on Civil Service
Committee on Intergovernmental Affairs
2157 Rayburn House Office Building
Washington, DC 20515-6143

RE: Privatization of OPM Investigative Functions

Dear Congressman Mica:

Congressman Mica, we at ADC, Ltd. want to take this opportunity to thank you personally for giving us the opportunity to participate in your committee hearing. We would like to convey our utmost respect to your hard-working and dedicated staff that represents you in looking after the welfare of all Americans. They have been friendly, knowledgeable, accommodating, and most of all pleasant to deal with. Those of us from the private sector who have had experience in Washington interfacing with various government functionaries have occasionally gone home feeling that their reception was less than friendly.

I would like to comment on some observations, statements, and concerns related to your recent hearings on the above-referenced topic, as follows:

1. OPM officials keep bringing up the shoddy work that was performed by some private contractors in 1985. This, however, is totally irrelevant to the current situation, for two reasons. Few if any of the contractors presently providing these services to federal agencies were involved in the 1985 contracts; and the situation today differs vastly from what it was ten years ago (there are many more qualified contractors now with experienced investigative staffs and excellent track records, including ADC, which began doing this kind of work in 1991). OPM itself contracts with a number of our Associate Investigators for background work!

2. OMB and GAO both reported to your committee that they anticipated a savings of from $14 to $30 million over five years with the new ESOP. However, if contractors such as ADC, Ltd. are given the opportunity, you can be assured that the taxpayers will realize a much larger saving. As another respected politician once said, "A million saved here and a million there and pretty soon we're talking **real money!**" I suspect that if OMB and GAO had a little more time to crunch their numbers, they would reveal an even higher savings if the work was **accomplished through true privatization**, without support from government funding to get the contractor started. They haven't compared their ESOP cost estimates with ADC's cost proposals submitted to GAO, SBA, the NLRB, U.S. Customs, and the State Department.

3. I get the distinct impression that the whole concept of an OPM ESOP, as outlined by OPM's officials, is rather like the tail wagging the dog. By the officials' own admission, most of OPM's field investigators don't believe in the ESOP plan or trust that Newco will solve the government's problems. My idol,

President Lincoln once said that a divided house cannot stand. This applies to the ESOP. Newco is like a thief at night, hoping to go unnoticed. I wonder if OPM's Inspector General approves of the OPM staff being on the federal payroll for lobbying. I thought that OPM's mission was performing background investigations, not lobbying! No wonder their Overhead/G&A is so high, with so many employees putting in non-productive hours.

4. When asked at the hearing why he had originally looked at Newco to provide privatized investigative services, OPM's Director, Mr. King, said he believed it (the ESOP) was the humane thing to do, presumably as an alternative to laying off his entire investigative staff. It seems to have escaped his notice that existing private sector firms employ investigators with the same persistent habit of eating and providing for their families as OPM's investigators.

5. It is also quite apparent that OPM has not yet gotten the message about a leaner and more accountable and productive government. They have spent over half a million dollars of the taxpayers' money to reinvent the wheel. I wonder how many background investigations could have been performed with the man-hours and funds spent, which were in effect unauthorized expenditures. There is another old New Mexico proverb which, translated into English, says "The chicken that eats eggs will continue eating eggs even if you cut off its beak." Once an agency acquires bad spending habits, it is unrealistic to expect it to change just because it changes its name -- **you have to get rid of it!** OPM is constitutionally incapable of being truly cost-effective, their pattern is to spend, spend, and spend some more. They are very liberal with the taxpayers' money, unlike most private sector firms, which have to be frugal in order to be competitive and turn a respectable profit.

I have great respect for those elected officials who really look out for the taxpayer and try to get the most public benefit out of the federal expenditures they authorize. Congressman Mica, you and your Committee can rest assured that we at ADC will continue to maintain our excellent record for providing quality services, as cost-effective as we can make them. We and our professional background investigations staff will never do anything to embarrass you, your Committee, or any government agency. All we ask is to be allowed to compete on the same level field with other private sector firms and Newco. That's the American Way and the only ethical way. **Please give us the opportunity to prove our ability!**

Again, thanks for honoring ADC by allowing us to participate in the democratic process. This was the first time I have been able to do so at that level. I hope you will allow us to provide any additional information you might need or do anything else that will help you carry out your job. Congressman Mica, our congratulations to you and your staff for the way you handled everything -- I know you have the right recipe!

Sincerely,

Arthur D. Cordova, Jr.
President

ADC/lmq

VARICON INTERNATIONAL
THREE SKYLINE PLACE, SUITE 200 • 5201 LEESBURG PIKE • FALLS CHURCH, VA 22041
TELEPHONE (703) 998-0800
FACSIMILE (703) 845-2871

June 26, 1995

John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Mica:

As I was departing the OPM hearing on June 15, 1995, two incidents occurred that bothered me. After reflecting on both of them for a few days, I concluded that I should document these events with the Subcommittee.

The first occurred just as I was preparing to exit the hearing. An OPM officer, whom I had observed was supporting the OPM team, approached and quite firmly advised me that I had lied in response to a question from Mr. Bass, that Ms. Lattimore of OPM had not recently stated in a meeting with OPM's Government clients that under ESOP, those agencies with current waivers to contract out would not be granted waiver renewals, and that no new waivers will be granted.

The specific meeting I was referring to was held at OPM on May 15, 1995 to brief OPM's Government clients on where OPM is heading with ESOP and what the future portends. Two of these clients, unknown to each other, reported to us after the meeting that in response to a specific question, OPM stated that no additional requests to contract out would be approved. Those with a current contract would be allowed to run the contract out until completion, but after that, all contracts would be awarded to the new ESOP "Newco" for a five year period. This, of course, is not inconsistent with OPM's continuous theme articulated in the ESOP feasibility study that Newco will require a sole source climate to be successful.

In rechecking my sources, I find that OPM is technically correct. Ms. Lattimore did not make the statement because she wasn't there. The senior OPM people who were present, ran the meeting and answered questions were John Lafferty, Phil Gasiewicz of Boyers, John Crandall and an unidentified female. I am assured that one of them made the statement above, presumably speaking on behalf of supervisor Lattimore.

The other incident occurred just after I left the hearing room, when a young OPM officer approached and quite belligerently and vociferously stated that he or his people review our work and it is indeed mostly deficient, despite my statement to the contrary in my testimony. I commented that DEA's analysis of OPM's allegations of Varicon's deficiencies was not

supportive of OPM's charges. He then made a disparaging comment about DEA.

I have noticed in recent months, and especially in the week since the hearing, that OPM seems to be paying an inordinate amount of attention to reviewing our cases. They are nit picking them to death and sending them back to our clients with observations that for the most part lack any substance or common sense.

All of this is reminiscent of tactics that OPM has displayed consistently over the past several years - arrogance and intimidation. It was in evidence the other day at the hearing with the supporting cast of OPM investigators, who would serve us better on the street, rather than sniggering and sneering behind the witnesses.

I hesitate to burden the Subcommittee with this stuff, but I must admit that the two encounters after the hearing have weighed heavily on my mind.

I am including two documents, one written by Varicon in 1992 and the other by OPM in 1993, which shed some light on past allegations of deficiencies in our work by OPM. I'm also sending along a couple of news articles, one of which clearly contradicts OPM's position at the hearing on the competence of private industry.

Sincerely,

Herbert F. Saunders
President

November 5, 1992

Mr. John F. Ryan
Special Agent
Chief, Personnel Security Unit
Drug Enforcement Administration
Washington, D.C. 20537

Dear Mr. Ryan:

During early August, 1992, Varicon International (VI) was verbally advised by the Drug Enforcement Administration, Office of Security Programs (PSR), that they had received the results of a case review conducted by the Office of Personnel Management (OPM) staff on Varicon completed cases under Contract No. 91-C-0040.

OPM cited alleged discrepancies that had been noted in VI completed background investigations beginning with DEA Case Number 91-3106, (returned completed to DEA on November 13, 1991), through Case Number 92-0390, (returned completed to DEA on March 23, 1992). By that date, March 23, 1992, a total of 730 background investigations had been completed and returned to DEA by Varicon.

The total number of investigations with noted discrepancies was 49, with the number of aggregate discrepancies totaling 87.

Approximately three weeks later (August 26, 1992), Varicon staff personnel were given access to peruse and copy the noted discrepancies at DEA Headquarters and review the completed investigations. A separate response was promptly prepared by Varicon for each investigation and discrepancy and submitted to DEA to assist in their response to OPM.

A total of ten of the cited investigations were returned to Varicon on 9/16/92 for additional investigation. All were completed, at no charge to the Government, within the mandated time requirement. (See attachment)

In the review of the remaining 39 investigations the following discrepancies were cited by OPM.

* *Eighteen (18) investigations, requested police checks in Maryland and New York City.* ***These two jurisdictions will not conduct record checks for contract investigators.***

* *In thirteen (13) investigations,* ***the reported discrepancies were in fact completed.***

* *In six (6) investigations,* ***company, school or governmental policy would not allow interviews or records to be obtained.***

* *In five (5) investigations, the discrepancy noted by OPM* ***did, in fact, comply with DEA guidelines.***

* *In four (4) investigations, the required information* ***was obtainable only through verification of available records.***

* *In four (4) investigations,* ***the most recent significant education was reported as required rather than all education as cited.***

* *In two (2) cases,* ***the cited discrepancy was not required by DEA.***

* *In two (2) cases,* ***the required information was obtained but inadvertently left off of the report.***

Varicon has been told that a recent OPM letter to DEA stated that this OPM review revealed that OPM had found a significant number of investigations with major deficiencies and that the vast majority of Varicon cases did not meet OPM standards. OPM has stated that they will continue to monitor all of Varicon's background investigations during the remainder of the year.

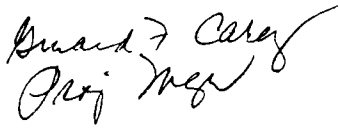
Two independent sources have stated that OPM has put DEA on notice that they intend to cancel DEA's background investigation contracting authorization effective September 30, 1993. (Copy attached).

Between October 28, 1991, and September 30, 1992, VI has completed a total of 1542 investigations with an average turn around time of 26 days for SSBI's and 19 days for PRI's.

Based upon a review of the investigations cited for discrepancies by OPM and the actual number of investigations returned to VI for further investigation, i.e., 10 out of 1542 (.0065) it would not appear "the vast majority of Varicon International investigations did not meet OPM standards".

Varicon believes that the representations made by OPM regarding the management and administration of the contract by Varicon are unjust, grossly exaggerated and border on libel.

Signature



INVESTIGATIONS RETURNED TO VARICON

Case Number	*Date Originally Returned to DEA*	*Date of OPM Review*	*Date Received By Varicon*	*Date Returned to DEA*
91-3123	*11-13-91*	*02-20-92*	*09-16-92*	*09-28-92*
91-3255	*11-25-91*	*02-07-92*	*09-24-92*	*10-15-92*
91-3319	*11-13-91*	*03-11-92*	*09-17-92*	*10-05-92*
92-0014	*12-11-91*	*03-25-92*	*09-17-92*	*09-28-92*
92-0090	*12-10-91*	*03-09-92*	*09-23-92*	*09-29-92*
92-0101	*12-24-91*	*05-14-92*	*09-17-92*	*10-28-92*
92-0125	*01-14-92*	*no date*	*09-24-92*	*10-05-92*
92-0216	*01-31-92*	*05-12-92*	*09-15-92*	*10-15-92*
92-0223	*01-10-92*	*03-18-92*	*09-17-92*	*10-15-92*
92-0390	*03-20-92*	*05-13-92*	*09-24-92*	*10-05-92*



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

INVESTIGATIONS GROUP

JAN 27 1993

Honorable Frank R. Wolf
Member, United States
House of Representatives
1651 Old Meadow Road
Suite 115
McLean, Virginia 22102

Dear Representative Wolf:

This is in response to your recent letter on behalf of your constituent, Herbert F. Saunders, who is President of Varicon International.

Since 1953, the United States Office of Personnel Management (OPM) and its predecessor, the United States Civil Service Commission (USCSC), have had the authority and responsibility for the Federal civilian personnel security program established by E.O. 10450. In that order, the President gave OPM the primary responsibility for investigating persons entering or employed in the competitive service, which includes most Government positions. Each department or agency is responsible for investigations for other positions, but all departments and agencies may use OPM investigative services by agreement.

In practice, most agencies obtain their investigations from OPM because they lack an investigative staff. Those that have competitive service positions and conduct their own investigations, such as the Departments of State and Defense, do so under delegated OPM authority. Since November 1965, when the President directed USCSC to formulate and issue standards of acceptable investigative coverage for Federal civilian employment, we have set these standards.

Pursuant to E.O. 10450, OPM also has Governmentwide oversight responsibility for the Federal civilian personnel security program. In this regard, OPM evaluates agency personnel security programs, including investigative programs, and reports its findings to the agency concerned. Agencies need OPM authorization to contract with the private sector for competitive service investigations. As part of its oversight function, OPM evaluates contractor-conducted investigations to ensure that established standards are met.

OPM is not a party to any contracts between other Federal agencies and private sector entities for investigative services. We have no relationship or dealings with such entities, including Varicon International. We work exclusively with the Federal agency involved.

In the past, OPM has approved agency requests to contract for investigations because OPM itself was unable to provide timely investigative services to the agency. Given the sensitive nature of this work, OPM never intended to allow agencies to contract for investigations permanently. Our authorizations have been short-term, generally for a period of one year, although we did renew them when warranted.

OPM is now meeting its timeliness standards for completing investigations and expects to do so for the forseeable future. We continuously monitor our own performance and, depending on our workload and staffing situation, may decide not to renew agency contracting authorizations beyond the end of Fiscal Year 1993. On September 17, 1992, when we renewed DEA's contracting authorization through the end of Fiscal Year 1993, we advised DEA that we planned to cancel agency authorizations to contract for investigations effective September 30, 1993.

OPM conducts investigations for other agencies on a reimbursable basis. In 5 U.S.C. 1304, Congress established a revolving fund for OPM to finance investigations and certain other functions OPM performs reimbursably for other agencies. The statute requires OPM to conduct these activities, to the maximum extent feasible, on an actual cost basis over a reasonable period of time. Monies appropriated to other Federal agencies for investigations are paid into the revolving fund as the agency requests OPM investigations. OPM draws against this fund to pay salaries and other expenses incurred in performing our investigative function. The statute requires us to set rates adequate to recover the expense of operations.

We received no Department of Justice request in October 1992 for OPM approval to send cases on the Department's attorneys to Varicon International. However, in June 1991, we did receive a request from the Department's Executive Office for United States Attorneys (EOUSA) to contract out using DEA's contractor. At that time, DEA was in the process of selecting a contractor and, in July 1991, contracted with Varicon International. On September 3, 1991, we denied EOUSA's request because we were able to handle its projected workload in a timely manner. We have provided investigative services to EOUSA since then.

As stated, we have had no contact with Varicon International. We cannot account for any information provided Varicon International about our review of Varicon's investigations conducted for DEA. We also have no independent knowledge of the total number of cases Varicon has completed for DEA. We do not review Varicon cases until DEA has accepted them as complete from Varicon. By written agreement with OPM, DEA is required to send us, within 30 days of completion, a copy of each case conducted by Varicon. Thus, we rely on DEA to send us completed Varicon cases for review, and any information we have conveyed to DEA about Varicon cases is based entirely on the actual number of cases we have reviewed.

In addition, our oversight of DEA's investigations program is not limited to cases conducted for DEA by Varicon, but encompasses cases completed by other contractors and DEA itself. Regardless of whether DEA itself or a contractor has completed a case, our review focuses on the case file DEA sends us, and we report our findings to DEA to identify any problems with the overall operation of DEA's investigative program.

We began receiving completed Varicon cases from DEA for review in January 1992. On July 9, 1992, we provided DEA the results of our review of 91 cases, including 46 completed by Varicon International. The other 45 cases were completed by DEA's prior contractor, Sahlen and Associates, a successor company to Sahlen known as SGS, and by DEA itself. All the cases were clearly marked to show whether a specific contractor, or DEA, conducted the investigation. At no time did OPM represent to DEA that Varicon International conducted all these cases. We found deficiencies in 45 of the 46 Varicon cases.

We found 21 of the 45 cases to be deficient because certain required national agency checks were not conducted. Although these omissions caused the cases to be deficient, DEA, not Varicon International, was responsible for obtaining these checks.

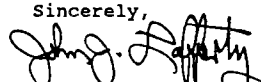
Another 10 deficient cases did not contain the results of required law enforcement agency checks. On August 14, 1992, DEA notified us that it had not provided sufficient documentation of State and local law enforcement agency checks that DEA had conducted in the cases provided to us.

The remaining 14 cases required additional work by Varicon International to meet OPM standards. We provided DEA a written analysis of each case we returned as deficient.

We have not provided DEA the results of any case reviews since July 9, 1992. We find it more useful to report periodically on the results of our review of a significant number of cases to enable meaningful interpretation of the data. Since January 1992, DEA has sent us a total of 364 cases for review, including cases conducted by Varicon, other contractors, and DEA itself. This number does not approximate the total number of cases, about 1500, that Varicon states it had completed for DEA by mid-September 1992 when, according to Varicon, DEA reported that OPM had reviewed all of Varicon's cases, and that the vast majority of them did not meet OPM standards. In fact, at that time, we had reported a total of 45 deficient Varicon cases to DEA. In July 1992, we also concluded our review of 67 DEA cases that we found to be acceptable. We do not have readily available data that shows how many of these 67 cases were Varicon cases.

We hope this information is helpful to you. Should you need additional information, or if there are any questions, please contact Charlene Luskey, Acting Director of our Office of Congressional Relations.

Sincerely,



John J. Lafferty
Deputy Associate Director
for Investigations

WASH POST 6 SEPT 94

The Fiasco at OPM

By Mike Causey
Washington Post Staff Writer

The cash crunch that triggered the firing of 500 top federal investigators came from a long-festering "systemic failure" to communicate and manage workloads, according to a report on the Office of Personnel Management.

Compounding the problem were the end of the Cold War and changes by the Clinton administration that drastically reduced government recruiting, the report by the OPM inspector general said.

Although the inspector general's report deals with one of the smallest and least sexy agencies, officials say it could have been written about dozens of larger operations that get part of their operating funds for performing special services for other U.S. agencies.

The layoffs—including some effective today—came on the watch of OPM Director **Jim King**. He's worked hard to project the image of a union-label, pro-little-fellow boss who would rather die than see his troops pushed into the unemployment line. But OPM fired nearly 20 percent of its employees while other agencies were paying people as much as $25,000 to retire.

Critics of King will, by and large, be disappointed by the report. Some critics had hoped it would portray him as either a bungling or fiendishly clever politician trying to score brownie points with his boss by reducing his bureaucracy to a skeletal organization.

King has shaken up OPM's top staff, reassigning nearly half the senior executives. Many executives complain that he spends too much time courting—or conning—OPM's union and often berates career managers or leaves them twisting in the wind.

But the report says OPM's problems began long ago. It cites the big buildup of investigators and support personnel during the Reagan years to handle investigations of workers and contractors involved in nuclear weapons. OPM investigated new hires, rechecked employees on the payroll and looked at backgrounds of contract employees. It provides the service for federal agencies on a "revolving fund" basis with the money supposedly being plowed back into the operation.

As agencies' need for OPM services declined or they hired private contractors, OPM ran out of cash customers to support its big staff.

Investigators said King, a veteran of both the executive branch and Capitol Hill, became increasingly concerned about violating a law that bars agencies from spending money they don't have.

Revolving fund agencies have trouble controlling workload and income. Their customers have little incentive to provide accurate information. Congress makes the problem worse by habitually missing budget deadlines so agencies don't know whether they must hire, fire, beef up or slim down.

Although this is hardly steamy reading, agencies that must hustle for business to stay in business would do well to lay hands on a copy of this inspector general's report.

Lead Poisoning

It is supposed to be almost impossible to fire a government employee unless he shoots somebody at the office. But in a recent case reported by the Federal Labor Management and Employee Relations Consultant, the threat of mass murder—and the use of a racial slur—helped dislodge a Department of Transportation mechanic from his job.

The employee allegedly made threats against supervisors that were reported by a co-worker. The mechanic said that he had a "hot piece of lead" for the bosses and that they would get the same treatment as "the [enemy] in Vietnam." He had a history of threats, and once he put a gun to his son's head.

The Merit Systems Protection Board upheld the firing, saying that the department had tried to help the worker in the past and that he clearly presented a danger to co-workers.

WASH TIMES 11 MAR 94

U.S. agencies asked to dismiss private eyes

By Greg Pierce
THE WASHINGTON TIMES

The Office of Personnel Management has asked federal agencies that use private investigators to voluntarily return the business to OPM, the agency's deputy director said yesterday.

Lorraine Green, testifying before the House Post Office and Civil Service subcommittee on compensation and employee benefits, said the voluntary action is one of "three or four options" the agency is considering to protect the jobs of its remaining personnel investigators.

Last week, OPM sent layoff notices to 443 workers who do background checks — more than half of such employees — as well as 80 members of its training division.

"We're still having ongoing discussions" with the agencies, but OPM expects the talks to bear fruit soon, Mrs. Green said.

OPM Director James B. King is personally involved in the discussions, she said.

But under questioning from D.C. Delegate Eleanor Holmes Norton, a Democrat and chairman of the subcommittee, Mrs. Green said there is no hope of saving any of the jobs marked for extinction last week.

"We won't even have enough work for those who don't have RIF [reduction in force] notices," she said. "We just don't have enough work coming in."

Another option, Mrs. Green said, would involve the agencies hiring excess OPM investigators and doing background checks in-house.

Agencies using private investigators include the Drug Enforcement Administration, NASA, the U.S. Customs Service, the FBI, the CIA, and offices within the departments of Education, Commerce and Defense, Mrs. Green said.

The private investigators "by and large" have "a very good record," Mrs. Green said.

Mrs. Norton asked if it was true that the private firm that does background checks for the DEA failed OPM guidelines 95 percent of the time.

Mrs. Green said she did not know but would find out.

But the president of the firm, Varicon International, told The Washington Times last week that OPM had falsely accused his company of mishandling all 153 monitored cases in 1992.

Herbert Saunders said OPM found that none of the cases included a credit check or a check of other federal agencies. As it turned out, his company's contract with DEA specifically forbade such checks, he said.

"Later they denied they said it," Mr. Saunders said.

Vice President Al Gore's National Performance Review stepped in and forced OPM to back down from ousting the firm, according to Mr. Saunders.

VARICON INTERNATIONAL
THREE SKYLINE PLACE, SUITE 200 • 5201 LEESBURG PIKE • FALLS CHURCH, VA 22041
TELEPHONE (703) 998-0800
FACSIMILE (703) 845-2871

June 27, 1995

John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Mica:

Subsequent to preparing my memorandum of 26 June, I received yours of 23 June posing two specific questions.

My earlier memorandum addresses one of these questions, i.e. OPM intentions regarding delegations of authority to contract out for background investigations. If indeed OPM has no current plans to terminate contracting delegations of authority as they expire, nor to cease issuing new waivers to permit contracting, then this is presumably a policy adopted after May 15, 1995 when applicable statements were made by OPM, albeit not by Ms. Lattimore.

I should also note that page 8 of the feasibility study supporting "Newco" states that "market conditions are positive" for ESOP, that "Customer demand surveys indicate that this increase in demand may continue for at least two years, as certain agencies and functions such as the Drug Enforcement Administration (DEA) and Immigration and Naturalization Service expand employment." You may recall that our company presently conducts DEA's background investigations and we are in the final option year of that contract.

As for the "public interest" exception to the Competition in Contracting Act, I believe that OPM's proposed use of this exception is inappropriate, if not illegal. In fact, page 29 of the feasibility study states that the OPM General Counsel's office "expressed the concern that it may not be possible to issue a sole source contract under the existing provisions of CICA."

As I noted in my testimony, our access to informal legal advice has suggested to us that the OPM ESOP may very likely not qualify for the "public interest" exception to the Competition in Contracting Act. The consensus seems to be that the required justification by OPM will have trouble addressing/proving, among other things; the description of efforts made to ensure that offers were solicited from as many sources as practicable, a listing of the sources that expressed an interest in the procurement, and most difficult, an assurance that cost will be fair and reasonable.

As was illustrated in the hearings, there are many private companies who are capable of professionally conducting the government's background investigations. Historically, OPM's prices have been two to three times that charged by private industry. With no competition in the past, OPM has consistently escalated prices. "Newco," with what promises to be a large overhead, is not likely to cut costs either, without competition.

We think that "public interest" is best served when government agencies are permitted to contract for services through the competitive process. As stated at the hearing, we welcome "Newco" as a fully competitive partner in the market place. It will be good for business and good for the government. And if OPM is as good as it purports to be, and we are as incompetent as they portray us, they are likely to win the lion's share of the competition anyway.

As for your final question regarding litigation, if OPM pursues the sole source route for "Newco," Varicon intends to team with another local competitor to bring a legal challenge against OPM.

Thank you for the opportunity to present additional data.

Sincerely,



Herbert F. Saunders
President

○