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Oversight of Government Management, the Federal Workforce
And the District of Columbia
of the
Committee on Homeland Security and Government Affairs

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Management Challenges Facing the Federal Protective Service: What is at Risk

Chairman Akaka, Ranking Member Voinovich, Members of the Subcommittee:

My name is David Wright. I am President of AFGE Local 918, the Federal Protective Service Union. I have been an FPS Law Enforcement Officer for the past twenty-two years. In the seven years since the September 11 attacks, I have watched with growing frustration and outrage, as the Federal Protective Service, has been allowed to deteriorate and drift like a rudderless, sinking ship.

Mr. Chairman, every American should be shocked and frightened by the GAO testimony we heard here today. The sole Federal agency charged with the critical mission of protecting thousands of federal buildings and millions of people from terrorist and criminal attack has had its core mission challenged, its funding cut by $700 million since 9/11, its employee pay reduced by ten percent, and its law enforcement ranks almost depleted.

If one of our local unions had performed in such a manner with respect to carrying out its mission and responsibilities, it would have been put into trusteeship. It is clear to us that we need Congress to act as a trustee for the Federal Protective Service.

It has only been through the intervention of this, and other committees of Congress, that we have stopped this dangerous and irresponsible trend. Meanwhile, in FY 2008 FPS is projected to have 1,200 personnel and approximately $238 million nationwide, while there are over 1,600 Capitol Police with $281 million, to protect the Capitol and Congressional Offices in a 12 block area of Washington DC. The Secret Service has over 1,300 officers in its Uniformed Division, to protect its assigned facilities in Washington DC. The Veterans Health Administration has over 2,500 Police Officers to protect their 154 medical centers nationwide.

I should also add that all these agencies use extensive proactive patrol by police officers to detect and deter attack – the very critical activities GAO found missing in FPS.

The questions we need to answer today are: Why was this allowed to happen to FPS and what needs to be done? My written testimony answers both of these questions in detail, so I would ask that it be submitted for the record. I just want to make four key points here this afternoon:

1. Regardless of why this agency has been allowed to "twist in the wind" as the Senate DHS Appropriations Committee Report put it last year, we need to continue to rapidly

rebuild the FPS. A comprehensive review and assessment of manpower needs and a request for sufficient personnel to perform the mission must be produced by the agency as quickly as possible. In the interim, Local 918 is asking Congress to increase the current level of 1200 personnel by about 400 in the FY' 09 DHS Appropriations bill.

2. The GAO pointed to the importance of a uniformed, Federal law enforcement presence surrounding federal buildings as an essential security requirement to detect and deter attack. It is an approach embraced by virtually all law enforcement agencies across the country. Yet it is precisely this component of FPS activity that DHS and ICE have worked so hard to eliminate. The union believes that eliminating police officers and maintaining a depleted 'all-inspector' work force is a dangerous mistake. While Inspectors can and do perform law enforcement jobs, they also have a very different set of responsibilities on a day-to-day basis – overseeing the contract guard work force, performing building security assessments and training employees about workplace violence or other security issues, to name several. In the performance of these duties, it is less likely they will uncover criminal or terrorist activity. Such activity is far more often revealed through community interaction and continuous uniformed patrol which are the primary responsibilities of FPS police officers.

3. In the post- 9/11 world of today, it makes virtually no sense to rely upon a square footage based fee to entirely determine funding for the FPS. While the union does not oppose the continued funding of some optional FPS services through this mechanism, we strongly believe that most activities of FPS can and should be funded through annual

appropriations. The current funding formula is a root cause of the problems at FPS and it is in desperate need of reform.

4. Just within the past two years, FPS police officers and other law enforcement officers have seen their pay cut by 10 percent. Many have been told their jobs were being eliminated and we have watched as the agency's core mission has been threatened by a misguided attempt of non –law enforcement bureaucrats to eliminate critical FPS law enforcement activities. I can tell you we have lost many talented, experienced officers as a result and it will not be easy to attract them back or to hire new personnel to replace them. Evidently, the agency is finding this out as it tries to recruit new personnel for the positions required under last year's DHS Appropriations bill. As you can imagine, morale is in the tank. Your FPS Federal Law Enforcement Officers have borne the brunt of recent FPS budget reductions and we need Congress to step in. Restoration of retention pay and the provision of law enforcement retirement benefits are two changes that must be implemented as part of any FPS rebuilding process.

Mr. Chairman, I believe the state of the FPS right now is little different from that of the airline industry security prior to 9/11. There, a reliance on poorly trained, unmonitored contract guards with no law enforcement authority; security implementation by conflicting entities; an unworkable funding structure; and a perception of security through inspections, instead of protection by boots-on-the-ground Federal officers proved disastrous.

It should not have happened then, and it should not be allowed to happen now.

How did the FPS became an agency in need of rebuilding? And how can the Congress improve the protection provided for the almost 9,000 General Services Administration managed Federal facilities located in over 2,100 American communities, the over one million dedicated civil servants who work in these facilities and the members of the public who obtain services there?

As the Government Accountability Office pointed out in their report "Preliminary Observations on the FPS's Efforts to Protect Federal Property", the FPS is not only having difficulty meeting its mission but these difficulties have placed both facilities and Federal employees at increased risk of criminal and terrorist attack. I and many of my fellow FPS employees attribute most of these difficulties to actions of Immigration and Customs Enforcement, the Department of Homeland Security and OMB. Others have also pointed to major problems with FPS funding, including the Senate DHS Appropriations Subcommittee which reported: "The explosion of the Murrah Federal Building in Oklahoma City in 1995 and the first attack on the World Trade Center in 1993 demonstrate how critical the need is for a force to protect Federal facilities and respond to incidents therein. Since its transfer to the Department of Homeland Security from the GSA, FPS has been left to slowly twist in the wind, its funding requirements ignored by an agency that until recently was deeply mired in its own fiscal problems.

Prior to 2003, any FPS funding shortfalls were easily made up by GSA…. Rather than raising fees for services FPS officers and agents provide, the administration has chosen instead to `transform' FPS and make major reductions in its mission and its law enforcement personnel ….The increased level of risk resulting from these reductions is unacceptable."

To understand how FPS became an agency in need of rebuilding it is important to review the recent history of how we protect Federal buildings.

Number of FPS Police Officers, Inspectors, Criminal Investigators and other staff:

When I joined FPS it was part of the Public Buildings Service (PBS) of the General Services Administration, the government's real estate company. In 1986 to achieve cost savings, PBS reorganized the FPS. The PBS plan was to provide Federal buildings with the same security as their commercial counterparts and pass most of the FPS law enforcement and security responsibility to local police and contract security guards. PBS felt Government rents, including security costs, should be the same as what private business paid for their office space. The reductions resulted in a 1995 FPS field staff of approximately 950 Police Officers, Physical Security Specialists and regional managers.

Unfortunately, it took the tragic bombing of the Murah Building in Oklahoma City on April 19, 1995 to show PBS and our nation that Federal buildings are at risk to terrorist

attack, and have inherently different law enforcement and security requirements than commercial office buildings. After the Oklahoma City bombing, President Clinton commissioned a study of the security of Federal buildings that noted significant shortfalls within a system where GSA property managers and leasing agents were responsible for security. A study of FPS personnel requirements, based on the 1995 threats to Federal buildings recommended an overall FPS staff, excluding the national headquarters, of 1,480. Among other functions, this staff level provided for the monitoring of the 5,000 contract security guards used to assist FPS to protect the facilities. Since that time the number of contract security guards has tripled to 15,000, and the threats to our Federal facilities were changed forever by the 9/11 attacks. However, there has been no increase in the FPS staff necessary to detect and deter these new threats or to ensure contract security guards are performing according to their contract.

After 9/11, as the threats faced by Federal facilities changed in a fundamental, and DHS was created, the FPS was authorized only 1,453 total personnel. In 2007 the proposed budget was for 1,541, but completely abdicating its responsibility, the Administration proposed only 950 total personnel for 2008. For example, in Washington DC there were 248 personnel in 1995 before the Murrah Building attack, 340 on 9/11 and approximately 200 in 2007.

I am shocked at the leadership failure by the Department, ICE and OMB, which in the FY 2008 Administration budget, increased the risk of criminal and terrorist attack on Federal

employees, facilities and members of the public, by gutting the FPS to roughly the same number of field staff as existed at the time of the Oklahoma City bombing in 1995.

Meanwhile, after timely intervention by Congress, in FY 2008 FPS is projected to have 1,200 personnel and approximately $238 million nationwide, while there are over 1,600 Capitol Police with $281 million, to protect the Capitol and Congressional Offices in a 12 block area of Washington DC. The Secret Service has over 1,300 officers in its Uniformed Division, to protect its assigned facilities in Washington DC. The Veterans Health Administration has over 2,500 Police Officers to protect their 154 medical centers nationwide.

All these agencies use extensive proactive patrol by police officers to detect and deter attack – the very critical activities GAO found missing in FPS.

Between 2000 and 2007, as FPS personnel were cut by 20%, executive agencies increased the number of police officers by 40% and the number of security specialists by 46%. Why is it this way? Who knows? I'm frustrated -- I just can't explain to our Officers, who put their lives on the line every day to protect people and facilities, why this has happened. And neither can the Department or ICE, except to say we must accept some risk – some risk? We have accepted way too much risk to both our civil servants and facilities when the VA Police is twice the size of FPS.

When Congressional or White House employees call the police, Federal officers trained to the unique challenges of securing these facilities respond, why isn't the same response available to all Federal employees?

FPS Funding

After the creation of DHS, FPS continued to be funded through fees paid by agencies renting space from GSA. This has caused agencies to divert scarce funding, necessary to provide service to the public, to pay for their own security, including security fees collected by DHS. Ultimately, this funding mechanism resulted in increased risk, deferral of necessary security requirements or failure to meet Interagency Security Committee Standards.

The Administration had little difficulty finding billions of dollars to fund wars in Iraq and Afghanistan, increased border enforcement, and increases to the overall ICE budget but not to adequately protect Federal buildings and employees. In 2006 a FPS Officer overheard a senior ICE manager state she was going to eliminate FPS. Additionally, according to some GSA employees, OMB proposed transferring procurement and monitoring of the FPS contract security guards to GSA, with GSA property managers responsible for guard monitoring and supervision --- a return to the failed structure that existed prior to the Oklahoma City bombing. The Administration had returned to the faulty assumptions that Federal buildings required no more protection than a commercial property, and the FPS law enforcement responsibility could be transferred as an unfunded mandate to local police departments. These leadership failures on the part of ICE, DHS

and OMB eventually caused a funding crisis that reduced the personnel protecting Federal facilities.

Prior to its transfer to DHS, GSA subsidized the FPS by $139 million above security fee collections and paid FPS overhead and other costs from its appropriated base. DHS however, has relied only on security fee collections, resulting in a net cut of $700 million, including inflation adjustments of 2.5% a year from 2003 to 2008, despite increases in the fees charged to agencies for their protection. This cut in funding is behind many of the problems noted in the GAO report

In 2007, the Congress recognized the substantial risk increase caused by the inadequate Administration budget and mandated minimum numbers of FPS field staff and adequate funding, but in its 2009 budget justification ICE stated they were seeking repeal of these provisions. Only after a letter from the Appropriations Committee Chairmen, did the Department relent and agree to follow the law.

Pay and Attrition of FPS Officers:

After 1995, the number of FPS field staff steadily increased, but was plagued by attrition to other Federal Agencies where employees were fully recognized as law enforcement officers, with authority to protect themselves while off duty and law enforcement retirement benefits. GSA continually resisted granting these benefits to FPS, not because they did not meet the basic statutory requirements, but because it would require increased

agency retirement contributions. By 9/11 FPS still had not been able to reach the 1,480 personnel strength. After 9/11 the FPS Director and GSA obtained approval to pay FPS Police Officers and Inspectors a 10% retention allowance and obtained OPM approval for special salary rates. These critical actions stopped the hemorrhage of qualified personnel and by 2003 FPS personnel strength approached 1,400, only to fall as a result of the Administration's ill conceived 'transformation' initiative that included elimination of retention pay and failure to maintain the increased pay of the special salary rates. As FPS has hemorrhaged many of its most qualified personnel and, since FPS was not funded to accomplish its mission many agencies without security expertise including ICE, GSA and CBP have significantly increased their physical security personnel. This has resulted in unnecessary, inefficient duplication of functions, and the lack of a unified strategy to protect critical facilities.

The government reorganization that created the Department of Homeland Security placed FPS under the Immigration and Customs Enforcement Bureau which has as its mission the enforcement of our nation's immigration and customs laws. This is a mission entirely different from that of the FPS which is to protect government employees, visitors and properties from criminal and terrorist attack.

How Do We Rebuild the FPS?

To achieve the promise of one Department responsible for securing the Homeland, including Federal facilities, we should rebuild FPS by starting with a foundation of

sufficient uniformed field staff, proactive patrol of facilities to detect and deter attack, direct appropriations of basic and required FPS services, and restoration retention pay and provision of law enforcement retirement benefits. Once this foundation is established, Congress acting in its role as trustee should enact comprehensive legislation to ensure adequate protection for Federal facilities and employees.

1. Sufficient FPS staff to perform its critical mission. The GAO report noted that proactive patrols are a crucial tool to detect and deter attacks. Our first priority should be to provide the necessary FPS in-service field staff to meet the current mission of protecting GSA and DHS facilities. Adding money under the current "fee" funding scheme merely taxes other Federal agencies and takes needed funding from their mission to serve the public. However, one option for increased funding would remedy the long standing issue of funding FPS service wide and other general overhead costs. Prior to the FPS transfer to DHS, GSA paid these costs through their budget not from security fees. For fiscal year 2009, we recommend increasing the ICE appropriation by approximately $59 million to pay the costs of FPS shared services, Information Technology Operations & Maintenance, National Security Special Events, Inauguration/ Presidential transitions costs and GSA rent. This option would also require a change to the ICE appropriation language to include the operations of FPS. With the transfer of these costs to ICE, FPS should have funding (under the current projected fee structure) for a total FTE of 1,591. This would support approximately 1,200 in-service field staff.

For ***future year*** minimum staff, we recommend a workload study conducted by experienced law enforcement professionals, like that commissioned by the FPS Director

in 2005, be performed to report to Congress the service levels necessary to adequately protect Federal buildings including law enforcement personnel required to restore 24/7 coverage in the 22 cities with the largest concentrations of higher risk and total facilities as well as supported Federal employees. The workload study should be conducted by the Union and career FPS law enforcement personnel - with ICE and OMB involvement kept to a minimum.

2. Proactive patrols to detect and deter attack. The GAO found this is a critical component of an effective posture to protect Federal buildings against attack. Since 2005 the number of crimes reported to FPS and number of arrests by FPS Officers have fallen dramatically. This is not because crime is not occurring but because FPS patrols are no longer visible at our facilities – GAO provided startling examples of serious problems in this area. When these patrols do not occur our contract guards are much less likely to report suspicious or unusual activity, the kind of reports that often result in arrests, but since FPS Inspectors are tied up with security tasks they are not "on the street" to observe these violations themselves. FPS Police Officers are a critical component to accomplish this task, therefore of the recommended additional field staff for FY 09 at least 200 should be Police Officers dedicated to patrolling the areas with the biggest concentrations of Federal facilities. This should include restoration of 24-hour and weekend service in critical metropolitan areas.

3. Appropriation of essential funding. Stop the inequitable 'fee' funding scheme imposed on agencies for basic FPS and mandatory security measures that forces these agencies to choose between providing services to the public or securing their employees from their diminishing budgets. Give DHS the clear authority and responsibility to fund FPS general overhead expenses from their appropriated base, just as GSA did prior to FPS transfer to DHS. It is clearly inappropriate for the critical mission of FPS in a post 9/11 world to rely entirely upon square footage based fees to fund basic and mandatory services. While state and local taxes are used to fund basic police and security functions, no government collects fees from other government budget accounts for these essential services. Continually increasing basic fees, as OMB has done, ultimately reduces the basic security services agencies can afford and increases the risk of their employees and facilities to attack. Authorize and directly appropriate all basic, building specific and security fixture security costs to DHS/ FPS to implement an integrated risk-based strategy to protect Federal facilities. Supplemental security services, above minimum requirements, would continue through reimbursable agreements.

4. Restore retention pay and provide law enforcement retirement benefits. FPS has difficulty attracting the high-quality law enforcement officers needed to protect Federal facilities and has seen many superbly qualified officers leave since retention pay was cancelled. Additionally, the special salary rates granted to FPS by OMB in 2002 have been eroded so that in many places they are now less than the standard General Schedule Salary Rates. I have been told that it is almost impossible to recruit well qualified personnel in San Francisco and other high cost areas, where it was certainly less difficult

with the retention pay and special salary rates. As part of its role as trustee for FPS, Congress should provide for retention pay and restoration of the additional salary rates, much as it has done for the Secret Service Unformed Division and FBI Police, who have similar facilities protection missions. As described earlier, FPS officers are treated as second-class citizens under the federal law enforcement retirement program. They should be granted the same retirement benefits afforded to other law enforcement personnel who have facilities protection missions such as the Secret Service Uniformed Division, Capitol Police and US Park Police. In that same vein, ensure that FPS Officers are granted the same authority given to all other federal law enforcement officers to carry their service weapons on a 24/7 basis. Not only does this provide an additional police presence in communities where these officers reside, it also gives the officers protection against retribution from persons they have arrested and others who might wish to do them harm.

5. Once Congress has established a foundation for rebuilding FPS, serious consideration should be given to these important structural security and law enforcement enhancements for the rebuilt FPS:

a) Enhance the ability to protect employees, visitors and facilities by applying the Assimilative Crimes Act and the rules for conduct on GSA property to all Federal facilities. To protect the critical buffer zones adjacent to the facilities, expand the applicability of appropriate rules to areas immediately adjacent to Federal facilities.

b) Establish FPS as an organization primarily responsible for the DHS Government Facilities mission. There is no real rationale for having placed FPS within ICE and few would debate that it has not been a good fit. This has caused lost capability and has greatly diminished FPS' status and visibility. The effectiveness of the FPS would be greatly enhanced by establishing it as a bureau within the Department of Homeland Security

c) Security standards for Federal facilities are promulgated by the Interagency Security Committee which was established by executive order. Its critical standards are often viewed as optional by many agencies. Congress should establish the Interagency Security Committee as the standard setter for the minimum security requirements at all Federal facilities. Designate the Director of FPS as the committee chair and make the rebuilt FPS responsible for monitoring and reporting compliance with all committee standards. Standards and recommendations contained within FPS Security Assessments are mere exercises in bureaucracy without Congressional funding and mandates to Agencies.

d) The lack of minimum standards for contract security guards that are used to protect facilities is a risk that can be reduced. Even many FPS protected facilities in the Washington DC area use guards procured under a delegation of authority from FPS to the occupying Agency. This diffusion of contracting authority for this critical function increases cost by preventing economies of scale and results in varied training, different

standards and an inability to coordinate information and actions. The rebuilt FPS should be the primary source for the procurement, monitoring and supervision of contract guards at almost all facilities. FPS would ensure all contract guards meet minimum training, background requirements, and their performance is aggressively monitored. Allow limited delegation, where appropriate, with reimbursement for FPS monitoring costs.

e) FPS has significant experience coordinating background investigations of Federal contractors. It is at the forefront in implementing the requirements of HSPD 12. Rather than every Federal Agency establishing staffing to perform these tasks it would be more efficient and would level peak workload if FPS would also process and adjudicate all background investigations of contractors working in Federal facilities either on an appropriated or reimbursable basis.

f) To achieve the promise of the protection of Federal facilities under one Department as envisioned by the Homeland Security Act, establish the Federal Protective Service, through DHS, as the primary organization responsible to mitigate the risk of terrorist and criminal attack at Federal facilities excluding those who mitigate unique risks such as Congress, DOD, Intelligence Community, NASA, DOE, Coast Guard and VHA for their installations; Secret Service protected facilities; and Marshals Service for protection of judges and courtrooms. Allow very limited delegations of authority to agencies, with monitoring. Establish FPS as a distinct element within DHS focused on both the interior enforcement and the infrastructure protection missions. Reduce the inherent risk and

inefficiency caused by duplicative structure and personnel in many agencies to perform missions that would be more efficiently accomplished by a rebuilt FPS. By fiscal year 2011, transfer other agency security and law enforcement functions funding and personnel to FPS, except those who mitigate unique security risks and have specialty missions. Maintain the separate identity, qualifications and training of these elements, where appropriate.

The Union is convinced these measures will rebuild and position the FPS as a professional law enforcement agency that can effectively detect and deter criminal and terrorist attacks while protecting our critical Federal facilities, the dedicated civil servants who work in them and members of the public who visit them. Again, thank you for the opportunity to testify at this important hearing.