

Introduction

Introduction

A. The Quest for Merit in Modern Government

The laws, rules, and regulations that comprise the federal human resources management (HRM) system (or merit system as it is historically known) are embodied in Title 5 of the U.S. Code, Title 5 of the Code of Federal Regulations, and Executive Orders. The Office of Personnel Management (OPM) is the central management agency for the executive branch that interprets, implements, and oversees the federal government's personnel system. Since 1978, the Merit Systems Protection Board (MSPB) has adjudicated employee complaints of violations of the Merit System Principles that lie at the heart of federal HRM. For purposes of this dissertation research, the terms merit system, personnel management system, and human resources management system are synonymous and Title 5 refers to the U.S. Code.

Historically, the federal personnel system has grown increasingly regulated to the point that periodically there are major reform efforts to make the system more responsive and efficient. Most recently under the government reinvention movement, the personnel system has been attacked from within the government and outside as a major roadblock to making government run in a more business-like manner. As a result for the past 10 years, federal agencies have been struggling to make their HRM functions more responsive to changing organizational needs and customer demands while still meeting the legal and regulatory requirements of the merit system. Their efforts are resulting in great frustration and only limited demonstrable success. A growing number of these organizations are attempting to substantively alter their HRM systems by increasing their legal and administrative personnel authorities. They are seeking greater flexibility through such alternatives as OPM demonstration projects, direct legislative waivers of Title 5 requirements, and proposals to become government corporations. However, the limited number of waivers granted and corporations created as well as the strong OPM oversight of demonstration projects attest to the strength with which the political and administrative systems are holding on to the Title 5 merit-based personnel system. Congress has steadfastly avoided any major legislation on the subject, settling for limited

“fixes” to a several agencies’ problems, e.g., the Title 5 exemptions for the FAA and the IRS in the past several years.

The Clinton administration continues to search for ways to reinvent federal HRM to better support more entrepreneurial management. Merit-based human resources management in the public sector historically refers to those personnel rules, regulations, and processes that promote employee competence, protect employees from patronage abuse and other discrimination, and operate to support the work of government. Such practices tend to be seen as the opposite of entrepreneurial. (Merit in the private sector sense values and promotes employee competence but is usually connected to pay for performance rather than an institutionalized set of HRM policies and practices.)

In the reinvention movement, the specific issue of merit is seldom raised. In fact, Osborne and Gaebler (1992) generally dismiss the idea of merit in personnel management, seeing it as an anachronism from an earlier era. The focus today is on effective, efficient, and responsive government, whereas merit-based practices are equated with inefficiency and lack of responsiveness. Reinvention tends to look to private sector businesses for models of effective HRM even though such HRM policies and practices do not generally fall under the umbrella of merit systems; however, on closer observation, the differences may be less in practice than in context. As HRM research, theory, and practice have grown into a body of literature and as a common set of organizational roles and practices continues to evolve, the commonality of HRM systems between the two sectors is increasing. The primary difference between public and private sector HRM is the foundation of merit that lies at the heart of public systems and the political context in which governments operate. HRM systems fall along a continuum of fully public to fully private with shades of gray in between, including those federal organizations that are fully or partially exempt from the Title 5 central management controls on federal personnel management.

In attempting to help government organizations become more business-like, OPM has eliminated the more restrictive compliance-oriented regulations, such as those found

in the now-defunct Federal Personnel Manual, commonly referred to as the FPM. *But the issue that simmers underneath the surface of such changes is how merit fits into more business-like HRM systems. Can we separate merit in principle from merit in practice? Are there specifically defined practices that must be present in a merit-based system? Can we eliminate or change the more cumbersome and restrictive "merit practices" without putting the "merit principles" in jeopardy?* Neither the literature nor the law, as will be discussed later, defines specifically what policies and practices must exist to constitute a merit-based system. Title 5 defines certain HRM policies and practices for most federal organizations. Such law is subject to change and has been modified over the years to address pressing political and social issues (e.g., affirmative action) or to respond to needs of interest groups (e.g., veterans), usually in the form of “add-on” regulations that complicate the efficiency of the personnel system (Ingraham, 1995). Organizations struggling to reinvent their HRM environments, in effect, are seeking to “escape from Title 5.”

In the federal sector, we tend to think of the personnel system as a single entity -- "The Merit System" -- operating under Title 5. However, a number of federal organizations exist that operate under other legislative and administrative authorities. There is no single label or common purpose or structure for this group of organizations. Often called government corporations or excepted service agencies, some are attached to executive branch departments; some are independent organizations in the executive or legislative branches. Their operating authorities run along a continuum from fully federal to almost private. What they share in common from the HRM perspective is that they are fully or partially exempt from Title 5 personnel law and regulation and from the oversight of the OPM.

Many received their exemptions through special legislation (for example, in 1996, the FAA was authorized to create its own personnel system with a waiver from much of Title 5 while still remaining an agency of the Department of Transportation) or their initial authorizing legislation (e.g., the Tennessee Valley Authority which was instructed to create a merit-based personnel system in its original legislation in 1933 as an

independent federal agency). Little consolidated data exists about the HRM policies and practices in these organizations. Their flexible authorities and exemptions offer a rich, existing research base for alternative federal merit systems at a time when many agencies in the federal HRM community are seeking similar exemptions and when the question of defining merit is at a crucial juncture. The unknown element is the degree to which they reflect or operationalize merit in their HRM policies and practices.

I am particularly interested in these exempt organizations. While serving as the director of HRM at the Patent and Trademark Office (PTO), I was asked to draft a segment of the legislative language that would re-create the PTO as a wholly owned government corporation. Among other goals, we hoped to create a more responsive HRM environment by being freed from the restrictions of the federal HRM system under Title 5. At that time I contacted several government corporations to discuss their Title 5 exemptions. I found a variety of exemptions and practices. Several did not use some of their exemptions for various reasons such as the obligation to bargain with local unions; others discussed their flexibility to make changes to their HRM policies and practices as needed to address organizational issues such as pay comparability with similar public and private institutions. I did not discuss merit at that time; but I began to wonder later where merit fit into the HRM equation in these organizations and how their freedom to respond to institutional demands affected merit-based practices. That curiosity led to this dissertation research.

B. The Research Question

The question for my dissertation research is: To what extent do federal organizations fully or partially exempt from Title 5 HRM requirements reflect merit in their HRM policies and practices? Once drawn, this picture may inform us more generally about whether and how merit or other merit-like values/principles are defined in principle and practice in less regulated public environments. That information then serves as a potential starting point for discussing how to balance merit-based principles and practices with the greater efficiency and customer service goals of a more business-like federal environment. While the question is framed as a narrow empirical one, the

implications of the research go to the broader question of how we can define and operationalize merit in more decentralized, deregulated, and organizationally-integrated federal HRM systems.

C. The Contribution to the Literature

My primary research interest is merit in public personnel management. This dissertation research enriches the literature on merit-based HRM by investigating how merit principles and practices are embedded into the HRM systems of 19 Title 5-exempt federal organizations. The Title 5-exempt organizations serve as a vehicle for exploring the question of *what constitutes merit in more loosely regulated public environments*. This research fills a void in the discussion about how we can sustain merit in principle and in practice in deregulated and decentralized federal human resources systems. At the same time, it adds to the information available about HRM in those organizations that operate fully or partially outside the general government management laws and that have limited or no oversight by the central regulatory organizations such as OPM and MSPB.

While the research focus is specific to certain organizations, the context is the broader issue of merit in principle and in practice in modern public employment and how HRM responds to changing political and institutional demands. A recognition that alternative merit-based HRM systems exist under the federal umbrella without the constraints of Title 5 is important to the overall question of what constitutes merit in federal HRM and whether merit practices must be centrally determined and controlled. The larger goal is that of offering an alternative perspective for embedding the democratic values that merit represents in a more flexible, responsive, and business-like government. We can learn from other federal merit systems what merit-based values, policies and practices appear as constants regardless of Title 5 coverage.

D. The Framework of the Dissertation

The dissertation falls into three major sections that include building a model for the research, collecting data, and analyzing the data and making recommendations. The general content of each of the sections is outlined here:

Section I Building a Model of Merit-based Federal Human Resources Management:

This section focuses on building a working model of merit-based HRM based on scholarly literature and other information gathered and discussed in Chapters I and II. In Chapter I, an initial model is built based on the history of the federal merit system and a review of the law relating to public personnel management. Chapter II enhances the initial model by culling information from additional sources that offer a broader discussion of merit in HRM. These sources include:

- several HRM textbooks to see what differences appear between those oriented to the public sector and the more general HRM texts;
- OPM demonstration projects to see what waivers OPM has granted from traditional federal HRM practices; and
- interviews with key members of the Office of Personnel Management, the Merit Systems Protection Board, and the National Academy of Public Administration and a review of some of the studies each has conducted to see what the current federal leadership is thinking about merit in federal HRM.

The chapter concludes with an enhanced model that I use to discuss the practices of the exempt organizations in Section III of the dissertation.

Section II Collecting Data on Title 5-exempt Federal Organizations:

This section describes the data collection process and presents the findings of the field study. Chapter III sets the stage for the research by presenting some background and historical context for Title 5-exempt organizations. Chapter IV describes both the qualitative approach that serves as the basis for the dissertation research and the methodology I used in the field study to collect data on the HRM practices of 19 federal organizations partially or fully exempt from the Title 5. Chapter V displays the findings by organization in four specific traditionally merit-based areas of HRM – merit values or principles, recruitment and hiring policies and practices, classification and compensation policies and practices, and employee protections – and reviews additional data on selected organizations to confirm the findings.

Section III Analyzing the Present and Framing the Future:

Section III brings the two dissertation elements together: merit as a model of federal HRM and merit in the HRM policies and practices of the studied Title 5-exempt organizations. The analysis in Chapter VI compares the study findings to the merit model crafted in Chapter II and assesses the merit-based nature of the Title 5-exempt HRM systems. Chapter VII concludes the dissertation by exploring six themes that evolved from the research and suggesting a set of recommendations for the larger federal community on merit-based HRM in modern government.

The multi-phase dissertation process is visually depicted here:

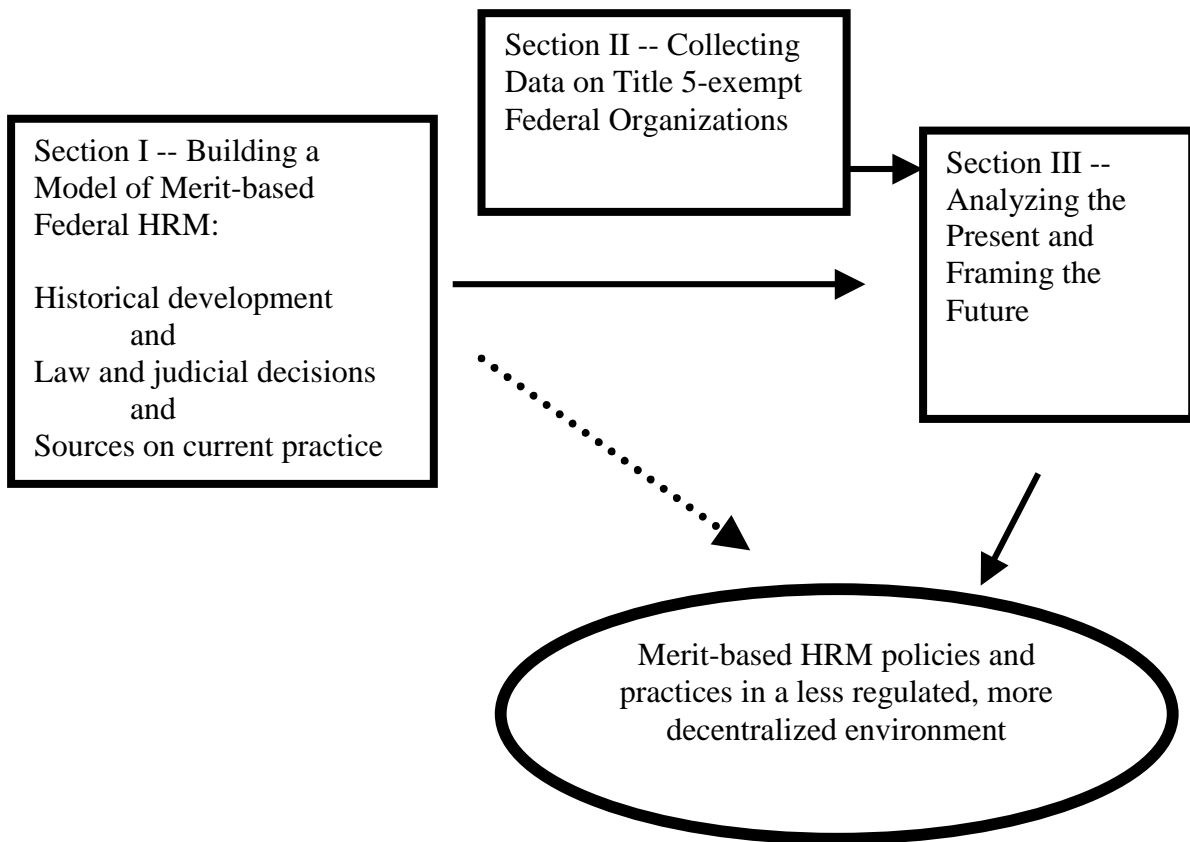


Figure 1 Multi-phase Dissertation Process

E. An Overview of the Research Results

The dissertation research reveals that the studied organizations have merit-based personnel systems, that merit-based values serve as a foundation for personnel management in these organizations, and that the HRM structures and practices among the Title 5 and Title 5-exempt organizations are more similar than expected. The differences occur primarily in

- the lack of external direction in fashioning HRM policies and practices
- the specific practices each organization crafts to implement HRM law and public policy,
- the greater flexibility the Title 5-exempt organizations have to alter their HRM systems to meet changing organizational needs and develop their own responses to new or changing legislation and case law,
- the limited oversight of these HRM systems in comparison to those under Title 5, and
- the strong sense of ownership the HRM staff have over their HRM systems, or those parts over which they have control.

The findings suggest that even in less regulated political environments, merit-based systems can and do survive and serve the needs of the organization. My key recommendation based on this research is to offer agencies the option to develop and defend their own merit systems under a broad public policy framework and an oversight and accountability plan. The growth of standard HRM policies and practices in all large organizations and the increased protections in the HRM systems stemming from civil rights and employment law as well as collective bargaining offer protections similar to those merit was originally intended to provide. A prime issue to be addressed, however, is the lack of government oversight and accountability.

Section I

Building a Model of Federal Merit-based Human Resources Management

Section I Building a Federal Model of Merit-based Human Resources Management

A major difficulty in discussing merit in public HRM today is the lack of a working model to guide policy and practice. Merit has a long history of developing incrementally through the addition of legislation, policies, practices, and procedures eventually codified in Title 5 of the U.S. Code (Ingraham, 1995). There is no standard definition or clearly articulated set of practices defined as the core of a merit-based personnel system. This is one of the reasons the federal sector is currently struggling with reinventing federal HRM. If there are alternative merit systems available to serve as models for Title 5 reinvention, how do we know that they are merit systems? Can we define a model of merit-based HRM to serve as a guide both for creating a framework for establishing and assessing decentralized and deregulated HRM systems?

This section of the dissertation builds a working model of merit-based HRM. Chapter I traces the story of merit through the literature from its inception in the Pendleton Act of 1883 and lays the legal foundation for merit in public law. From this material, I develop an initial model for merit-based HRM systems. In Chapter II, the model evolves more fully with the addition of information from four sources. An overview of several HRM textbooks explores the differences among texts oriented to the public sector and those that are more general. An overview of OPM demonstration projects reveals the waivers that OPM has granted select agencies from Title 5 HRM practices. Finally, a picture of current thinking on merit comes from interviews with executives of the Office of Personnel Management, the Merit Systems Protection Board, and the National Academy of Public Administration along with a review of the studies each has conducted on topics related to merit-based HRM. The final merit model is used later in Section III to assess the merit-based nature of the HRM systems of the studied organizations.

Chapter I **Crafting an Initial Model of Merit-based HRM from History and Law**

In this chapter, I begin the process of bringing merit to life from multiple perspectives. The first two sub-sections focus on history and law and the third uses insights from these to draw a picture of merit in federal HRM. First, I use the scholarly literature to retell the story of “merit” as it historically unfolded in the evolution of federal personnel management. The story explores the connection of merit to the democratic process, looks at merit history from the perspective of both merit-in-principle and merit-in-practice, briefly reviews merit in state and local government personnel systems, and discusses the role of collective bargaining in merit systems to round out the picture. Second, I review the legal foundation of merit to identify those features of HRM that are mandated by law and explore the growing body of case law that has begun to define HRM practices for both public and private sectors. The chapter ends with the crafting of an initial working model of merit-based HRM drawn from this material.

A. The Merit Story

The merit system has evolved incrementally over the past 100 plus years through the growth of government, legislation, and judicial decisions. The story of merit takes us on a journey that starts with the search for a definition then traces how merit principles and practices have evolved from the Pendleton Act of 1883 through the present struggle to deregulate and decentralize the merit system. It reveals how shifting political, economic, and social contexts have complicated the meaning and interpretation of merit both in principle and practice. It is not easy to define merit-based personnel management in public HRM systems. There is no single operating definition of the term merit in public management. Rather, *merit operates more as a value or underlying principle with connotations of fairness, equity, and earned achievement in public employment in lieu of political or other acts of favoritism or discrimination.* Merit has served as both an overarching tradition in public service as well as a unifying theme in public personnel management. However, in the current reinvention movement, merit as a foundational principle appears to be in crisis as we struggle with merit as a system of practices. Can we have one without the encumbrances of the other or is merit inextricably linked to

bureaucratic structures and rule-driven systems? The story of merit begins at the beginning with a connection to the democratic process and a search for a definition.

1) Merit and the Democratic Process

Merit has an instrumental connotation today as a set of principles and practices that distinguishes personnel systems in the public sector from those in the private sector. Merit principles act as a body of values that guides federal personnel management practice. What is missing from the conversation about merit, however, is its intimate connection to the democratic process. Mosher asks, “How can we be assured that a highly differentiated body of public employees will act in the interests of all the people, will be an instrument of all the people?” (1982, 5).

Human resources management in the federal sector is of necessity more than a business application. Ingraham says it directly: “Whether or not there is now merit in the merit system, it is a major force in government and governance and is fundamental to the effectiveness of both” (Ingraham, 1995, 129). Merit systems “hire, motivate, discipline, and reward the government employees who are the most immediate and visible link between the institutions of government and the citizens they serve” (Ingraham, 1995, 1). Thus, any system dealing with the people who participate in democratic governance carries a heavy normative burden (Lane and Woodard, forthcoming). At the founding of the republic, the Constitution in Section 2 of Article II refers not to *employees* but rather to *officers* of government (Rohr, 1986, 79-80). The concept of constitutional officer has been a sub-text of the traditional merit system, recognizing that people engaged in service to the public interest required special methods of selection, utilization, and protection. What truly differentiates merit in federal HRM is its role in “fully integrating the modern American administrative state into the constitutional framework” (Rosenbloom and Carroll, 1995, 97). But part of the difficulty with that challenge is the political context in which the personnel system operates and where it seeks its legitimacy. “At its heart, however, the problem of merit remains a problem of politics and of consensus about what a merit system should be. ... In the past, the character of the public service mirrored widely held political views and values. At

present even identifying what the pattern of those views might be is difficult” (Ingraham, 1995, 130).

Historically, in our system of governance, public administration has served as the implementation arm of the political will through the actions of federal agencies. Public personnel management is a key vehicle in that implementation process since the quality of the workforce directly affects the government’s capacity to act. Public personnel management also manages a national resource through the allocation of public jobs and serves as one of the management processes that sustains public organizations. With at least 15 percent of the total workforce working for some level of government (33 percent if the not-for-profit sector is included), Shafritz, et al. (1992) see a direct link between merit and governance. “When one considers the tremendous implications that government employment holds for the economic health of American communities and the aspirations of various interest groups, it is understandable that the processes controlling entry to these jobs are subject to both intense scrutiny and widespread concern” (1992, 177). The principles and practices of merit evolved from those values inherent in a democracy – openness, fairness and equity, responsiveness, and representativeness. Merit thus defined dictates normative as well as instrumental roles in governance. This is especially important as the civil service struggles to transform itself into a key component of the management process. “In the modern world, merit must be about effective problem solving and management as well as legitimacy and accountability” (Ingraham, 1995, 14).

2) Defining Merit-based HRM

A review of the major public HRM texts written by well-known scholars and practitioners in public personnel management revealed several perspectives in describing merit in federal HRM. Bernard Rosen describes a merit system as

a fair and orderly process for hiring, paying, developing, promoting, retaining, disciplining, and retiring people on the basis of ability and performance. It is the antithesis of employment based on racial, ethnic or religious preference, political reward; discrimination based on sex, personal favoritism, or unvalidated selection

devices. In other words, a merit system is based on merit principles; it is designed to produce a competent, stable work force to carry on the business of government (1975, 7).

Nigro and Nigro discuss merit in terms of merit principles and practices:

In application, the merit principle dictates that appointments, promotions, and other personnel actions should be taken exclusively on the basis of the employees' relative ability and job performance. Since the turn of the century, this has usually meant the administration of competitive examinations for appointments and promotions. Test scores have been relied upon to distinguish accurately among candidates according to their capacity to perform satisfactorily on the job. For other personnel actions such as pay raises, reductions in force, and dismissals, it has also been assumed that employees' "merit" could be determined through performance appraisals and they should be treated accordingly (1994, 22).

O.Glenn Stahl describes a merit system in modern government as

a personnel system in which comparative merit or achievement governs each individual's selection and progress in the service and in which the conditions and rewards of performance contribute to competency and continuity of the service (1962, 28).

For Cayer, a merit system bases decisions involving selection, promotion, compensation, and the like on "objective factors--particularly competence and worth of the individual to the organization" (1975, 35; 1996). Loverd and Pavlak note that the merit system included both institutional protections for civil servants to keep out corruption and abuse of "spoils" and a focus on ability rather than politics as the basis for appointment. In the early part of the twentieth century, merit practices included selection from the best of three and such

scientific personnel methods as job analysis, position classification, and pay systems (particularly with regard to the notion that those performing 'equal work' should receive 'equal pay'), more objective and systematically devised examinations, job-related training programs, and efficiency ratings (1995, 11).

Thompson defines merit as a value "which emphasizes that rewards ought to go to the most competent--those individuals with the best record of or potential for achievement" (1995, 11).

The consistent theme running through these descriptions is that of competence (i.e., judging employees or candidates according to ability to do the job) and the protection of employees from political abuse or favoritism. The literature includes some description of practices that have been used to identify competence but nothing prescriptive about how judging relative competence should be done. The Pendleton Act of 1883 stated that examinations would be used to ensure open competition and reduce patronage. Today, however, few employees are hired based on written examinations; although, there is competition as candidates are “examined” based on the qualifications they bring to the job. Open competition refers more to the distribution of information about job vacancies than the type of selection process. The various definitions of a merit system leave us open to broadly interpret merit as a set of personnel policies and practices that focus on competence and ability in employment decisions to the exclusion of such non-job-related factors as patronage or other forms of favoritism or discrimination. Bernie Rosen’s description captures the essence of what the various scholars have said and will serve as the foundation of the merit model: a fair and orderly process for hiring, paying, developing, promoting, retaining, disciplining, and retiring people on the basis of ability and performance.

3) Merit in Principle

The Pendleton Act of 1883 defined the hiring requirements that would ensure that certain jobs were filled based on merit rather than patronage. Merit principles were embedded in merit practices. The Act called for open competitive examinations to test for fitness, selections from among those who scored the highest, appointments in proportion to state populations, and protection from political influence or coercion. For the first half of the twentieth century, merit principles and practices converged along this path. Later, however, a set of stand-alone principles representing merit in public personnel management evolved from the convergence of three sets of activities. First, the use of examinations was challenged based on bias and adverse impact on minority groups and women. Second, the courts increasingly decided cases against the use of patronage in most personnel activities as unconstitutional. Third, federal personnel management became more decentralized.

The Merit System Principles, first articulated in the Intergovernmental Personnel Act of 1970 then expanded and codified in the Civil Service Reform Act of 1978, capture the philosophy of merit in government employment and provide a framework for merit-based HRM systems. At a minimum, these principles call for personnel systems to provide open competition for employment, equal pay for equal work, and protection from arbitrary action. They open the way for building merit systems that balance equity and protection with efficiency and effectiveness. Only the 1883 law, however, specifically dictated practices to match the principles. Rosen says that "[T]he original civil Service Act of 1883 call for 'open, competitive examinations for testing the fitness of applications of the public service . . . selections according to grade from among those graded highest . . .'" (1975, 7) as well as apportionment of selectees according to state populations, and protection from political influence or coercion. In the 1970 Intergovernmental Personnel Act, six Merit System Principles were articulated as governing city and state as well as federal personnel management. The Civil Service Reform Act of 1978 codified the Merit System Principles into law and expanded them from six to nine principles (see, e.g., Rosen, 1975; Ingraham and Rosenbloom, 1992; and the Legislative History of the CSRA, 1979). The 1978 principles, listed here, act as guidelines for values and behaviors in support of merit-based public HRM:

Merit System Principles

§2301(b) of Title 5, United States Code

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
2. All employees and applications for employment should receive fair and equitable treatment in all aspects of personnel management, without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
5. The Federal work force should be used efficiently and effectively.
6. Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
7. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
8. Employees should be:
 - (A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - (B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
9. Employees should be protected against reprisal for lawful disclosure of information which the employees reasonably believe evidences:
 - (A) a violation of any law, rule, or regulation, or
 - (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

The Merit System Principles are especially important to this research because they express the merit-based values that public employment stands for under democratic government. They serve as guidelines for establishing and evaluating federal HRM policies and practices under Title 5 and could serve as the unifying feature of a broader federal HRM system in less regulated environments. The meaning or interpretation of such merit-based principles has evolved over time as a reflection of the changing nature of society and government even if the personnel systems they support have not been very flexible. From the 1880s to the 1950s merit principles emphasized open competition, examination and competence as protection from patronage and the promotion of efficient

and effective management in a growing civil service. From the 1960s to the 1990s open competition continued as a primary principle but examinations were challenged as biased, due process became an important component for employee protection in employment decisions, and equity was added to efficiency and effectiveness (Mosher 1982; Ingraham 1995).

As we enter the year 2000, merit struggles to balance competing interests: open competition challenges targeted recruitment to enhance diversity; a renewed focus on competence challenges issues of equity and diversity; due process and fair treatment in all HRM activities challenge efficiency and effectiveness; and political responsiveness and market competitiveness challenge the traditional politics/administration dichotomy. Merit in principle appears to continue to hold a serious place in the value system of public personnel management but its meaning may be shifting under the pressures of a focus on government efficiency. The shift would have a direct consequence for merit-based practices.

4) Merit in Practice

Historically, merit has been defined literally by the policies and practices covered in Title 5 of the U.S. Code and the Code of Federal Regulations, the OPM regulations and instructions, and executive orders. Managers and even HRM staff seldom had to consciously think about merit in principle or practice. The rules and regulations ensured HRM policies and practices reflected merit. Federal personnel management practices developed through a cry for a reform of the spoils system and merged in the early part of the century with the scientific management methods. Its structure and policies grew incrementally over the years in an add-on, fragmented fashion in response to a variety of political and social issues. This story is helpful in developing a picture of the important elements of federal HRM.

a. The Early Years of Government Employment

In the early years of the Republic as described by Rabin, et al (1995), Ingraham (1995), and Mosher (1982) as well as others, the key quality sought for filling

government positions was fitness -- integrity, loyalty, military service, and class standing or talent (education). This resulted generally in the hiring of men from the gentry/elite levels of society. At the lower ranks of government, loyalty and often geography played a role in selection more than education; positions were generally held for life if the worker performed well. Abuses primarily revolved around the promotion and appointment of relatives and friends, the treatment of offices as property, and continuation of positions no longer needed. By the 1830s, the expanding enfranchisement of adult male citizens and the growth of political parties altered the view of public employment and ushered in the spoils era.

Both as a societal reaction to elitist hiring and as a reflection of the emerging mass participation in partisan politics, the spoils era promoted rotation in office (ending the notion of a job for life), created the perspective that government work was routine and repetitive so that "any applicant could aspire to any office" (Rabin, et al 1995, 6), and generated concern for equality of access to public positions (Rosenbloom, 1971). (Equality of access, however, focused on geography and class not race and gender. Even though, the Pendleton Act opened government employment to blacks, the workforce would continue to be predominantly white male until the latter half of the twentieth century.)

The abuses of the spoils era did change the face of the public service, "once reserved for honorable men, now ... associated with partisan politics, incompetence, inefficiency, and corruption" (Rabin, et al 1995, 6). The focus of public employment during this period moved from hiring based primarily on character and fitness (and nepotism) and from continued employment based on performance to hiring and firing determined by partisan loyalty and financial assessments. By the 1850s, voices for civil service reform were beginning to call for administrative morality and competence.

b. Reform Era

Both the president and Congress found an advantage in spoils, making it difficult to control and reform. Between 1850 and 1883 there were several abortive

efforts at creating some sort of civil or career service operating along with patronage appointments. Ingraham (1995) states that the Coast Survey, the Naval Observatory, the Navy Medical corporations, and the Smithsonian Institution each had a career service in their scientific and professional positions. In 1853, Congress passed legislation that provided for exams for clerks in Washington (mainly in the Post Office and the General Land Office) and an early classification system. Under Grant, the departments of Interior and Treasury in 1870 introduced competitive exams. In 1871, a rider attached to an appropriations bill authorized the president to set "regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and to ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability" (cited in Ingraham 1995, 24). During this period, two key features of the merit system emerged: the "rule of three" that limited selection to candidates at the top of a list of eligibles in order to allow some discretion in appointment as the Constitution required, and preferential treatment for veterans in admission to civil service. However, continuing pressures for patronage on both the president and Congress ended this merit reform effort in 1875.

The reformers continued their press for the end of patronage practices. They equated civil service systems with "good government" exemplified by "fair and equitable examinations, qualified public servants, and a commitment to the higher ideals of the state The intricate connection between politics and merit was clearly recognized . . ." (Ingraham 1995, 25). The reform movement got an added boost with the assassination of President Garfield by a disgruntled office-seeker. Senator Pendleton of Ohio introduced reform legislation with a central merit principle -- admission to the civil service would be only through fair, open and competitive examinations.

The Pendleton Act of 1883 emphasized practical skills and knowledge in examinations rather than education, permitted competitive entry at any level not just entry level, and placed the Civil Service Commission under the authority of the president. Initially, ten percent of the existing federal workforce was covered with additional coverage to be determined by executive order of the president. Removal power was **not**

addressed, leaving that open for future redress. *The Act had the singular intention of separating public employment from political patronage through the establishment of a merit system.* The early operational framework responded to a specific political context during a time when the work was not complex and the business of government was limited. It focused on appointments. Veterans preference was formally recognized as policy and in practice but was not directed in the Pendleton Act itself.

c. Merit Meets Scientific Management

With the advent of the scientific management theories on bureaucratic centralized control and the notion of defining the one best way to accomplish a task or a mission, expertise in personnel systems translated into highly specified operational systems. "Under the Classification Act of 1923, personnel experts began to prepare detailed job descriptions, systematically linking civil servants' pay scales with their skills. Through merit-based appointment, tenure protections, and 'scientific' position-classification procedures, the Progressives sought to ensure capacity by elevating and protecting expertise in the public work force" (Garvey, 1995, 89).

Merit and bureaucracy became quickly intertwined as a means of control and of maintaining the separation of politics and administration. In classifying and grading federal positions according to duties and responsibilities, the Classification Act institutionalized the rigid concept of hierarchy in the American federal service. It established in law a concept of merit operationalized as "rank in position" and emphasized standardization across organizations (Ingraham 1995). As a result, the merit-based personnel system intentionally reduced management discretion in dealing with employees, even as it also opened federal jobs to the general public. Line managers did not recruit or hire; personnel rules and regulations controlled how employees could be disciplined; the Office of Management and Budget (OMB) controlled the number of employees; OMB and Congress controlled the budgets; and line managers had limited flexibility and discretion. "Merit had come to signify a narrow and negative focus on positions and jobs, rather than competence, accountability, and effective public service " (Ingraham & Rosenbloom, 1992, 275). *At this point, merit in principle and merit in*

practice lost their vigor and focus and became connected with what is considered bad about modern government.

In most conversations early in the current reinvention movement, merit in principle and practice were fused and negatively perceived. Today, there is some movement in a positive direction. At least in some circles, the *merit principles* are making a comeback while the federal HRM community struggles to change restrictive *merit practices*. The OPM is marketing training in Merit System Principles for federal supervisors and managers and made a major political splash by eliminating the highly procedural ten thousand-page Federal Personnel Manual. The MSPB regularly surveys federal employees on their perceptions of the Merit System Principles as applied in their agencies. Line managers are being delegated more authority and responsibility for HRM policies and practices. The federal HRM community, however, is struggling to balance merit-based practices with a new emphasis on customer service and business-oriented government.

5) Merit in State and Local Government

A brief look at literature discussing state and local government merit systems offers a separate but related perspective on merit-based HRM. While not directly germane to the study of merit through the lens of non-Title 5 organizations, a consideration of state and local governments is useful to see where the key issues are in other merit systems. Many such jurisdictions have maintained even more centralized personnel management systems than the federal sector has. A good overview of the state of merit in state and local governments is found in the Winter Commission report (Winter, 1993).

America's civil service was invented 100 years ago to guarantee merit in the hiring process. Sadly, many state and local governments have created such rule-bound and complicated systems that merit is often the last value served. How can merit be served, for example, when supervisors are only allowed three choices from among hundreds of possible candidates for a job? How can merit be served when pay is determined mainly on the basis of time on the job? How is merit served when top performers can be "bumped" from their jobs by poor performers

during downsizings? ... Over the years, the basic purpose of the civil service system has been forgotten: *To recruit the most talented among our citizens into government, not to employ legions of classification experts and personnel administrators who spend their days tracing bumping routes and rewriting job descriptions* (emphasis added).... (Winter, 1993, 25)

The Commission calls for a deregulation of government by “reforming the civil service, including reduced use of veterans preference and seniority” (Winter, 1993, 24).

Many civil service systems sharply limit freedom to hire in two ways: (1) They rely heavily on written tests that may be biased, out of date, poor in predicting performance, and expensive to construct. (2) They sharply limit the number of candidates who are forwarded for interviews, through a “rule of three” or other limiting provision. Under such a rule, only the top three individuals on a list of eligibles are certified for hiring. ... These constraints on managerial discretion were put in place to ensure the primacy of merit, and *cannot be dropped without instituting clear protections for those who might face discrimination* (emphasis added). Nevertheless, the commission recommends that states and localities reconsider these requirements in light of today’s needs. Many governments are finding that using selection criteria other than written tests is critical to finding and promoting good people. In addition, expanding the list of candidates who can be forwarded for interviews can allow more aggressive recruitment in order to achieve diversity (26).

The Commission proposed reducing the number of job families into which all employees fit by

- compressing thousands of classifications into a few dozen with levels of expertise or bands;
- creating a simple pay and promotion structure with a small number of broad pay bands (usually three) for greater flexibility in rewarding good employees and making it easier to make reassignments on an as-needed basis; and,
- establishing a mechanism for quickly terminating employees possibly through binding arbitration that brings both sides to the table within days (Winter 1993, 27-34).

The section in italics in the above quotation is an important notation in this research. Even though the Winter Commission promoted increased flexibility, there is concern about maintaining protections for employees against discrimination and abuse. This

leads to a consideration of the import of a 1996 change in the state of Georgia's merit system.

The state of Georgia has *eliminated* its merit system. Under the terms of a 1996 state law, employees hired after July 1, 1996 will be employed "at will." Those employees

can be promoted, demoted or transferred instantly. Their raises are offered on the basis of performance only. And they can be ... instruct[ed] ... to clear out of the office on the spot, with no right of appeal. New hires are offered the same basic benefits package as all other state workers, but otherwise, their terms of employment are radically different (Walters 1997, 17).

Georgia's Merit Systems Commissioner believes that there are now external factors that reduce the risk of a return to patronage, including federal and state laws and legal precedent such as *Rutan v. Republican Party of Illinois*. Others are concerned, not that patronage may return, but that there is no oversight to ensure consistency among agencies in dealing with the whole range of personnel issues like pay scales, hiring policies, discipline procedures or whatever since each department is now free to manage its own personnel system. They see potential danger in "getting sued for arbitrary hirings and firings and inconsistent treatment of employees" (Walters 1997, 19).

As of the date of the article, departments such as the Department of Human Resources were keeping many old policies in place and moving slowly to implement increased flexibilities. The personnel director of the Georgia Department of Transportation warns: "If we don't treat people fairly, then they have ample recourse to respond through the legal system, and it's been my unfortunate experience that in most cases they're not real reluctant to use it" (Walters 1997, 20). (One interesting note in Georgia's move to eliminate the merit system is that there are no public unions in Georgia, unlike in Massachusetts where a similar movement was soundly defeated at the polls at the hands of organized labor.) Essentially, Georgia has moved to break the paralysis of an over-structured system by removing the employee protections the personnel system was originally established to ensure. Employment-at-will, however, is now increasingly subject to a range of employment and civil rights laws that affect hiring

and firing for all employers. What this review provides us is a broader picture of the difficulties that merit-based systems are facing in the larger public arena. The question of employee protections in a political and legal context is evolving as a theme in this arena as well as at the federal level.

6) Merit and collective bargaining

The rise of collective bargaining in the federal service has grown steadily since the 1960s. Traditional civil service merit systems are based on the proposition that the personnel laws, rules, and regulations set the terms of the relationship between the employer and the individual worker; however, in unionized organizations, collective bargaining agreements set the terms and conditions of employment within the limits allowed by law. Today, public HRM generally treats collective bargaining as a component of the civil service system; however, most scholars find it incompatible with a merit system. Klingner and Nalbandian (1998) describe collective bargaining as an alternative personnel system to civil service, patronage, and affirmative action systems. Mosher (1982, 188) describes the intense individualism of the civil service as antithetical to the idea of collective relationships among employees. There is tension at the heart of the democratic process where unions are concerned.

A principal argument for collective bargaining emphasizes democracy. Bargaining provides the opportunity for participation by those most concerned in determining the conditions and rewards of their work, for maintaining human dignity in the work situation, for actualizing the self against the stultifying effects of authoritarian rule. ... [However,], the defenders of governmental hegemony and of civil service urge that collective bargaining, unless circumscribed by narrow boundaries, threatens political democracy, the ultimate power of the citizen through his political representatives to control the destinies of government and the conditions whereby it employs its personnel (Mosher, 1982, 214).

The Civil Service Reform Act of 1978 attempted to balance these concerns. More recently, Vice President Gore's emphasis on labor-management partnerships is encouraging a collaborative rather than adversarial relationship. The key issues for this dissertation, however, is that within certain parameters, HRM policies and practices are

negotiable. The agency and its chain of leadership in the executive and legislative branches are only one factor in the crafting of personnel systems.

Employee organizations can influence a number of personnel functions directly or indirectly, for example, pay and benefits (where legally negotiable), promotion procedures, and disciplinary action and grievance processes, family friendly practices, layoff procedures, alternative dispute resolution procedures, and alternative work schedules, among others. Unions tend to place primacy on the value of individual employee rights achieved through the collective voice and power of employees (Klingner and Nalbandian, 1998). The focus of negotiations then is the protection of practices that ensure fairness and reduce management discretion, very similar to the emphasis of the early merit reforms. As an example, unions strive to maintain seniority systems and tend to reject pay for performance systems.

Collective bargaining even under Title 5 directly affects merit practices. For example, internal promotion plans are negotiable. Where more than one bargaining unit exists, an agency often has multiple sets of selection and promotion procedures to administer. In effect, even though these agencies follow Title 5 personnel management policies and regulations, they are actually managing multiple processes. For organizations exempt from Title 5, the scope of bargaining is broader, including bargaining over pay and benefits (USOPM, 1998, D-13). This increased flexibility in determining HR practices appears to increase the potential for employees in an agency to organize.

Most recently, under the FAA's legislative release from Title 5, the attorneys in the FAA's chief counsel office voted to choose the American Federation of State, County and Municipal Employees to be their bargaining agent in a move to ensure that their pay remains competitive with that of the air traffic controllers who are bargaining compensation (The Washington Post, 6/14/99, B7) in what is touted as a budget neutral pay environment. Employees perhaps see that such negotiations could be at the expense of other members of the organization. Collective bargaining adds a new dimension to

merit usually in the form of additional rules or benefits. Equity issues have the potential to become skewed, however, as this example suggests. At the postal service, The Washington Post reports that the letter carriers in a recent arbitration decision will be paid by the third year of the contract at a higher rate than the postal clerks for the first time since 1907 (9/21/99, A17). Equity then may be addressed more through negotiation/arbitration than as a merit-based or management principle.

Unions tend to build in greater protections for employees than the law or regulations prescribe or add additional benefits. They also generally support the status quo, longevity and seniority, and clear job structures and reporting chains. Unions also generally resist greater discretion for supervisors without a balance in employee protections. The fairness and equity concerns behind much of the union perspective mirror similar issues under merit; but, the bottom line is that the scope of concern is a narrow constituency-based focus rather than the larger principles of the public interest, merit, or efficiency for the effective government. In the views of Douglas (1992), Rosenbloom and O'Leary (1997), and Klingner and Nalbandian (1998), labor-management relations today compete with traditional civil service law as the basis for public personnel management.

7) Chapter Summary

In building a model of merit-based HRM, this part of the chapter has focused on the historical evolution of the merit principles and structure and the institution of practices and procedures aimed at selecting individuals for government service based on their ability and fitness rather than political patronage. From the earliest stages of the civil service certain principles began to take shape, like open competition, that have come to symbolize the values of democratic governance as well as the primary principles of public personnel management. At all levels of government, merit became institutionalized in a bureaucratic structure as a set of regulations and practices that reduced the discretion of line management and eliminated external, non-job-related

factors such as patronage. From this material, I suggest the following elements as important for a merit-based HRM system:

- In federal HRM, merit principles and values reflect the democratic process from which they have evolved. A merit-based HRM system is thus intimately connected to the political context in which it operates and public policy of which it is a part.
- A merit-based federal HRM system constitutes a fair and orderly process for hiring, paying, rewarding, promoting, developing, and disciplining employees with policies and practices that compare candidates based only on ability and performance and establish protocols for fair and equitable treatment of similarly situated individuals. Personnel decisions are based on specific job-related grounds in lieu of patronage or other acts of favoritism or discrimination.
- Merit-based practices have traditionally included open competition, comparative processes (examinations or other means of rating and ranking candidates), selection from among the best candidates, job analysis, and equity-based classification and pay structures.
- As authorized by law, merit-based systems are open to the collective bargaining process. Collective bargaining raises obligations to negotiate as appropriate over HRM policies and practices and to comply with negotiated agreements.
- Merit constitutes a value system that is grounded in fairness and equity in personnel decision making to eliminate other influences. Such value systems are usually supported by merit-based principles and practices.
- Historically, the merit system has embraced and been modified by political and public policy issues and interests such as veterans preference.

The material covered to this point lays the foundation for understanding what a merit-based system is. The historical context of federal HRM, however, represents an incomplete picture. The heart of merit-based HRM in the federal government is the legal context through which it is formed and in which it operates. In modern societies, according to Sitkin and Bies, “law operates to constitute organizations and interorganizational relations” (1994, 14). Under the new institutionism, Sitkin and Bies

tell us that legal systems help organizations create and transmit the key processes for framing assumptions and for developing constitutive rules. The next segment of this chapter sets HRM in a legal context that shapes its role in modern government organizations and reduces the differences between public and private sector people management.

B. The Legal Foundation of Merit

As noted by Rosenbloom and Carroll: “Public personnel administration in the United States is law-bound. It is extensively regulated by a complex, multilayered legal regime.” (1995, p. 109). They also observe for HRM:

It is evident that constitutional law has become central to contemporary public personnel management. ... Law is now more than an ‘add-on’ to good management; it is a defining element of public personnel administration. Personnelists who ignore it or subordinate constitutional values like due process to managerial values such as efficiency risk costly, time-consuming suits, and even having money damages assessed against them personally” (Rosenbloom and Carroll, 1995, p. 97).

HRM today whether in the public or private sector is grounded in a legal as well as managerial framework. As Rosenbloom and Carroll note above, however, it is the constitutional component that perhaps more than anything else separates public from private sector HRM systems.

There is a growing body of legislation and judicial decisions that direct public employers to protect their employees against arbitrary and capricious action, political and other forms of discrimination or favoritism, and violations of substantive constitutional rights. In addition, a range of civil rights and employment laws protects employees in both the public and private sectors. From this broad set of laws and court decisions, it is possible to begin deriving a set of policies and practices that will help draw a picture of essential components of a merit-based personnel system. Before discussing the larger topic of employment law and judicial decisions, however, some explanation of both Title 5 and the Civil Service Reform Act of 1978 is useful since they play an important role in

understanding the evolution of both the merit system and the Merit System Principles under public law.

1) Title 5 and the Civil Service Reform Act of 1978

Title 5 of the U.S. Code (Title 5), "Government Organization and Employees," was enacted in 1966 (P.L. 89-554, 80 Stat. 378) to codify the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers (Introduction to Title 5, United States Code Annotated). It drew together literally hundreds of laws that apply to the federal workplace. Part III, "Employees," is particularly significant as it provides the Merit System Principles and the laws affecting employment and retention, employee performance (and training), pay and allowances, attendance and leave, labor-management and employee relations, insurance and annuities, and access to criminal history record information. Hundreds of laws were pulled together under Title 5 along with the many exceptions it grants to specific organizations, positions, or interest groups. It is a complex code that leaves room for interpretation and discretionary action even as it attempts to control management decision making. Similarly, Title 5 of the Code of Federal Regulations contains regulations that further define Title 5 law and serves to delineate the requirements of merit-based HRM as well as the exceptions from those requirements.

A key piece of legislation under Title 5 is the Civil Service Reform Act of 1978 (CSRA). The CSRA was the first major overhaul of the merit system since its 1883 inception. For the first time, Merit System Principles were incorporated into the law.

Title I establishes in law the general policies of the Merit System Principles applicable to *the competitive civil service and throughout the executive branch* [italics added]. Under existing law, there is no clear statement embodying the merit principles, upon which the Civil Service Act of 1883 was based, and under which the civil service system has gradually evolved in the last century. (Legislative History of the Civil Service Reform Act, Vol. 1, 1979, 4-5).

The *Congressional Record -- Senate* states that one of three intentions of Bill S14270 was "to assure that merit principles and employee rights are tightly protected" (August 24,

1978, 1613). This bill "adds new protections -- not now in current law -- to prevent the merit system from being undermined by political abuses" (August 24, 1978, 1609). It establishes the Merit System Principles and the prohibited personnel practices to bar personnel actions motivated by political favoritism.

The Personnel Management Project (PMP) Report that crafted many of the ideas behind the legislation identified two main purposes for the new law – to protect merit principles from partisan political attacks and to protect employees from improper application of personnel authorities. The PMP’s principal conclusion stated that:

The main idea of the merit system is to hire people into the civil service on the basis of their qualifications, and to advance people and retain them in the service on the basis of their relative performance on the job and their ability to take on more responsible work. No other considerations should apply in hiring, promoting, or retaining career employees – not political party, race, color, sex, religion, national origin, marital status, age, handicap, or other factors unrelated to the job (USMSPB 1985, 14).

The legislative history reinforces the Act’s intention to protect civil servants from political abuse and to reject any consideration but relative ability and performance in hiring, promotion and retention. Where merit had originally and traditionally focused on protections at the point of hire, the CSRA brought greater attention to the employment relationship throughout an employee’s career. It began to blur the lines between EEO and merit-based personnel practices. Perhaps as an unintended consequence, the Act opened the door to an increasing number of legal challenges to internal merit practices by placing greater emphasis on employee rights and equal employment opportunity. The meaning of merit began to take on an additional emphasis – not only protection from patronage but also a focus on fairness and equity in all personnel activities. This growing internal perspective for merit has become institutionalized in the past twenty years through law, negotiated labor agreements, and EEO complaint decisions and settlements. As a result, personnel practices originally intended to promote merit have also become defenses against charges of discrimination, whistle blowing, and other legal challenges.

2) Legislation

Operating within the parameters of the Constitution, legislation, regulation, and judicial decisions, the federal personnel system has traditionally stood apart from conventional private-sector personnel practices, which it otherwise resembles and often emulates. Driven in large part by reform efforts to replace patronage with neutral competence, the government personnel system initially focused on establishing a competitive hiring system. Later, the federal personnel system began responding to a growing body of sometimes conflicting values and issues, such as ensuring fairness and equity in all personnel actions, responding to broad social and political interests, increasing the efficiency and effectiveness of management operations, and protecting employees from bias and favoritism. Broad legislation addressing a wide range of workplace issues affecting both public and private employers provides us with the legal framework for HRM in federal government organizations.

Some of the major laws and executive orders that have resulted in regulations and procedures for federal HRM systems include the:

- Pendleton Act of 1883 – established the basic premise of competitive hiring, neutral competence, and civil service coverage over limited number of positions.
- Lloyd-LaFollette Act of 1912 – determined that employees may be removed only “for such cause as will promote the efficiency of the service” (Hays and Kearney, 1995, 148). The provisions limited termination to a justifiable cause and placed the burden of proof on the employer. Employees were entitled to notice, charges, and an opportunity to reply but had no right of appeal. Also, gave federal employees the right to join unions that did not authorize strikes (Shafritz, et al., 1992).
- Classification Acts of 1923 and 1949 – set the stage for using internal equity as the means for assessing the relative value of positions and for creating a national compensation plan for federal employees; later, decentralized some elements of personnel management, such as classification, to the departments.
- Ramspeck Act of 1940 – prohibited discrimination in federal employment because of race, color, or creed.

- Veterans Preference Act of 1944 – gave veterans the right to appeal dismissal from federal employment. The Act delegated responsibility for monitoring employee dismissals to the Civil Service Commission (CSC) which was empowered to order the reinstatement of veterans whose removal was deemed to be either unjustified or contrary to procedure. Non-veterans could appeal dismissals, demotions, and suspensions but the employing agency could ignore the CSC’s decisions.
- Executive Orders 10987 and 10988 (1962) – extended the full range of appeal rights to all federal merit system employees. They required the government to show just cause for dismissals, the employer to bear the burden of proof in such proceedings, and the government to be formally required to follow its own procedures (Hays and Kearney, 1995, p. 149), all of which were codified in the Civil Service Reform Act of 1978.
- Equal Pay Act of 1963 – prohibited sex discrimination in wages and salary and mandated equal pay for substantially equal work.
- Age Discrimination in Employment Act of 1967 (1978, 1986)– prohibited discrimination against persons age 40 and over (later over 39).
- Civil Service Reform Act of 1978 – called for the federal workforce to reflect the nation’s social diversity and eliminate underrepresentation, established Merit System Principles and Prohibited Personnel Practices, formalized an employee appeal structure (actually raised expectations of getting a fairer deal with an external appeals process—the Merit Systems Protection Board), and put labor relations into law (replacing EO 10988).
- Americans with Disabilities Act of 1990 – prohibited discrimination against persons with disabilities.
- Civil Service Due Process Amendments of 1990 – gave nonpreference eligibles under Title 5 who have completed two or more years of current continuous service in a non-temporary, excepted service appointment the right to appeal adverse actions to the Merit System Protection Board.

Both public and private sectors are affected by the increasing legal orientation of all employment policies and practices under the various laws affecting employment such as the Civil Rights Acts of 1964 and as amended in 1972 and 1991, the Fair Labor Standards Act (1938), the Family and Medical Leave Act (1993), Workers Compensation, and Occupational Health and Safety (1970). This growing body of employment law has resulted in employment policies and procedures that protect the employee from discriminatory or arbitrary HRM practices and protect the employer from legal jeopardy. The emphasis is one of *fairness and justice rather than merit per se*; but the personnel practices they spawn provide for similar ends – fair treatment of employees in the workplace *based on merit*. For federal merit systems, they reinforce the need for personnel practices that focus on job requirements and that do not have discriminatory impact on individuals or groups of employees.

3) Judicial Decisions

The latter part of the twentieth century also saw an increase in judicial involvement in the structure of the merit system. In the 1970s and 1980s, the federal judiciary played a substantial role in defining and redefining the merit system. The Supreme Court, in particular, has been an ardent supporter of two historical tenets of merit: 1) depoliticizing of the public service, and 2) assuring that operational definitions and applications of merit in public personnel administration are strongly job related (Ingraham and Rosenbloom 1992b, 285).

The first is embodied in the *U.S. Civil Service Commission v. National Association of Letter Carriers* (1973) and *Broderick v. Oklahoma* (1973) that upheld political neutrality laws and in a series of cases that run as late as 1990 in ruling that patronage hiring and dismissals (and virtually any personnel-related action) are unconstitutional unless uniquely tied to work in which partisan political relationships are integral to the positions: *Elrod v. Burns* (1976 ILL), *Branti v. Finkel* (1980 NY), and *Rutan v. Republican Party of Illinois* (1990 ILL). The alternative as derived from these cases is the use of merit-based systems where only specifically designated positions could fall under the patronage umbrella. All other appointments would be subject to specific merit-

based policies and procedures. In the federal personnel system, these cases resulted in distinguishing civil service, merit-based positions and appointments from a limited number of politically-designated positions with separate appointing authority.

In the second set of decisions the Supreme Court issued a number of rulings specifically addressing the employment system. With the erosion of the privilege doctrine, the courts vested civil servants with certain liberty and property interests in their employment. Federal and state courts have granted public employees a refuge (i.e., due process protection) in disagreements involving freedom of speech and association, privacy, and other constitutionally protected areas (Hays and Kearney 1995a; Ingraham and Rosenbloom 1992b; Rosenbloom and O’Leary, 1997):

- *McLaughlin v. Tilendis* (1968) and *American Federation of State, County, and Municipal Employees v. Woodward* (1969) – public employees have a constitutional right to form and join labor unions as freedom of association.
- *Board of Regents v. Roth* (1972) -- public employees are constitutionally entitled to procedural due process protections when dismissals abridge their constitutional rights or liberties, damage their reputations, seriously impair their future employability, or infringe upon a property interest, such as tenure, in their jobs.
- *Cleveland Board of Education v. Loudermill* (1985) -- a public employee has a property right in a job because the Ohio civil service statute made him a classified civil service employee who was entitled to retain his position during good behavior and efficient service. Procedural due process remains central to public personnel management to provide “an opportunity for a hearing *before* he is deprived of any significant property interest.”
- *Rankin v. McPherson* (1987) – public employees (even those in probationary status) retain substantive constitutional rights and have a constitutional right to speak on matters of public concern.
- *Johnson v. Santa Clara County* (1987) -- a broad definition of merit supported the establishment of a socially representative workforce, holding that exam scores do not

have to be the sole determinant in promotions and that "there is rarely a single, 'best qualified' person for a job."

Probably the most important case among the employment related decisions is *Griggs, et al, v Duke Power Company* (1971). This Supreme Court decision has been profoundly influential not only in establishing the protocol for resolution of EEO cases but, more significantly for our purposes, in demanding the validation of all personnel processes that lead to decisions in organizational life. Thus, *Griggs* utilizes the vehicle of EEO adjudication to establish firm requirements for fully professional human resource management. Mr. Chief Justice Burger was emphatic on the point:

Nothing in the Act [Civil Rights Act of 1964] precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract (Thompson, 1991, p. 270).

Clearly, the *Griggs* doctrine, reaffirmed in the Civil Rights Act of 1991 and supported by numerous other cases, makes personnel decisions grounded in merit-based criteria more legally defensible. Such systems also support institutional goals of creating and maintaining a competent work force. The law and the personnel profession are thus unified (Lane and Woodard, forthcoming).

These laws and judicial decisions moved the merit system to a more constitutionally and statutorily grounded (rather than an administrative) process for employee protections and in doing so *expanded the operational definition of merit*, specifically holding that personnel decisions had to be based on specific job-related grounds and provide due process protections. Some of the results included the introduction of specific due process procedures for adverse actions, the use of the "just

cause” standard for discipline, the implementation of progressive discipline with tables of penalty, the gradual reduction in the use of written examinations (due to the questions of bias and lack of job-relatedness), and the increase in alternative selection mechanisms such as direct hire and outstanding scholar appointments.

While testing has been the most visible component of merit-based systems since its inception, examinations generally have been challenged on three fronts:

- not adequately measuring job-related knowledge, skills, and abilities of the position,
- being culturally biased and exclusionary, and
- being subject to a variety of influences in administration and application of results (Hays and Kearney, 1982).

They have been challenged successfully in the law (e.g., *Griggs v. Duke Power Company*, 1971; *Luevano v. Devine*, 1985) for their adverse impact and lack of job-relatedness. Their role in most merit-based selections has been greatly diminished in recent years. According to the MSPB (1999), however, recent research on the quality of selection instruments and methods in predicting performance shows tests of cognitive ability to be better predictors of job performance than assessments of training and education or grade point average that are currently used. This may prove to increase the use of testing in the future not for merit-based purposes, per se, but to improve the quality of selections generally assuming such tests can meet legal challenges.

In conclusion, the dramatic increase in civil rights and employment legislation and related case law has driven HRM systems to create regulations and procedures that protect the organization, whether public or private, from litigation over personnel-related decisions. In particular, we have seen the rise in “just cause” actions and due process procedures. These legal doctrines fully support and are merged with the demands of professional, merit-based personnel practices. Merit practices are no longer necessarily arbitrary control mechanisms. Under a broad umbrella of law, HRM serves the organization as both public policy and management process. The result is that many merit-based HRM practices today would have to be invented if they did not already exist in order to protect both the employer and employees while promoting good business and

good government. The practices fashioned under merit principles are now used to meet the requirements of the law and its interpretation in judicial decisions.

From the legal perspective, several additional components of a model of merit-based HRM appear. They include

- protections for employees from arbitrary and capricious action, political and other forms of discrimination and favoritism, and violations of substantive constitutional rights;
- the reinforcement of the use of due process procedures, just cause and progressive discipline;
- the obligation to tie selection instruments to, and base personnel-related decisions on, job-related requirements;
- compliance with law, regulation and executive order, and
- the right to form, join, and assist unions.

The legal environment both shapes the federal HRM context and begins to reduce the traditional gap between public and private HRM systems. HRM policies and practices under the broader umbrella of employment and civil rights law and case law are becoming more rather than less similar. HRM structures and functions are increasingly institutionalized across organizational sectors and merit-based practices are fashioned to protect institutions against violations of law. Merit practices are no longer arbitrary control mechanisms. The increasing legalization of the workplace suggests that law and law-like institutional forms such as HRM offer a normative source of organizational legitimacy independent of their immediate organizational functionality (Sitkin and Bies, 1994, 21).

C. Crafting an Initial Model of Merit-based HRM

The question at this point is: what picture can be drawn about a merit-based HRM system from the history and the law? Key elements of merit fall into two categories – 1) traditional merit-based policies and practices that have evolved into a merit-based personnel structure and 2) legal requirements through law and judicial decisions that

inform all federal HRM systems. From this material, we can begin to craft a model of merit in federal HRM. The model posits the following:

- A merit-based federal HRM system constitutes a fair and orderly process for hiring, paying, rewarding, promoting, developing, and disciplining employees with policies and practices that compare candidates based only on ability and performance and establish protocols for fair and equitable treatment of similarly situated individuals. Personnel decisions are based on specific job-related grounds.
- Merit-based practices have traditionally included open competition, comparative processes (examinations or other means of rating and ranking candidates), selection from among the most competitive candidates, job analysis, equity-based classification and pay structures, progressive discipline, and removal for cause.
- More recent features ensure due process and appeal procedures to protect employees against arbitrary and capricious action, political and other forms of discrimination and favoritism, and violations of substantive constitutional rights of employees and to provide for the opportunity for employees to form and join unions unless otherwise exempt by law.
- Merit System Principles as codified at 5 U.S.C. 2301 form the foundation of a federal merit-based HRM system. However, in those instances where the Title 5 does not apply, the literature clearly describes merit-based personnel policies and practices as those that treat people fairly based on ability not patronage and equitable standards.
- Personnel policies and practices are in compliance with applicable law and case law, regulation and executive order. Government agencies are obligated to follow their own personnel procedures.
- Merit-based systems are also responsive to public policy interests, such as the employment of veterans, people with disabilities, and under-represented labor force members; and engage in collective bargaining of personnel systems where appropriate.

Based on this collection of elements central to a merit-based HRM system then, we can craft a definition and draw a model of a merit-based HRM system. **Definition:** a federal merit-based HRM system is one that

- is set in a political context,
- is formed by law, public policy, and negotiated agreements,
- reflects a fair and orderly process for managing human resources,
- is based on work-related requirements and a person’s ability to perform and advance, and,
- includes protections against arbitrary and capricious action, discrimination and favoritism, and violations of substantive constitutional rights.

Visually, this model is conveyed in figure 2.

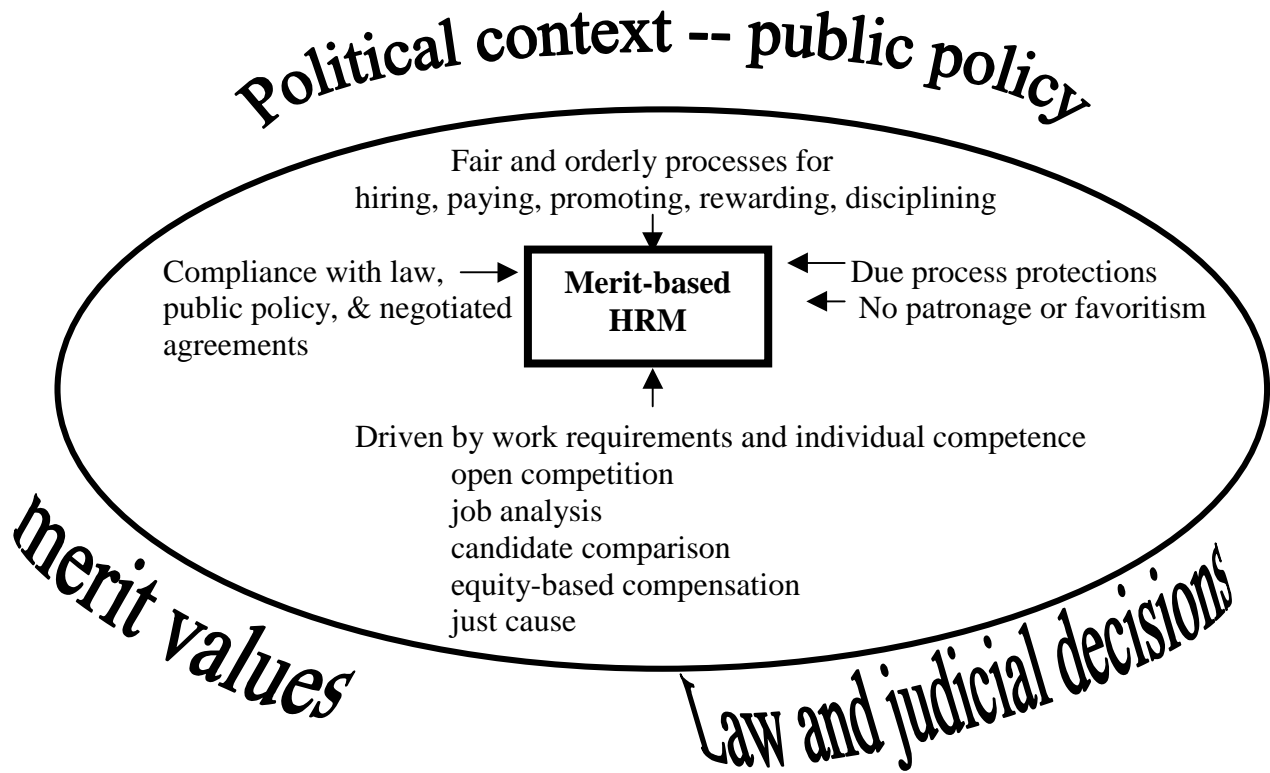


Figure 2 Initial Model of Merit-based HRM

Before finalizing the model, however, it is important to take a look at several other sources on the subject of merit to see how they might enlarge or confirm this initial working model and discuss current trends. Chapter II expands the discussion about merit by adding several additional perspectives. These include reviews of a sample of HRM texts, personnel management demonstration projects, and interviews with executives from OPM, MSPB, and the National Academy of Public Administration (NAPA). Material from these sources provides patterns and trends that are currently influencing merit thinking in the federal sector. From these additional perspectives, a more complete model emerges.

Chapter II. Enhancing the Model – A View From Other Sources

The task in this chapter is to seek out additional perspectives to ensure the merit model captures the essential ingredients of a merit-based HRM system. In addition to the information drawn from the literature and the law, the model needs to reflect the current dynamic of merit in relation to the practice of federal HRM. Three sources that offer different lenses for current thinking on merit in HRM include:

- A. a sample of HRM textbooks to identify what differences, if any, appear in those oriented to the public sector from those focusing on the general HRM field of study;
- B. OPM demonstration projects to see what waivers OPM has granted from traditional federal HRM practices; and,
- C. interviews with key executives of the Office of Personnel Management, the Merit Systems Protection Board, and the National Academy of Public Administration along with a review of some of the studies each has conducted in the area of merit to explore what those working with this issue think about merit in federal HRM.

A. Summary of the Sample Textbook Review

Textbooks used in courses in survey courses on human resources management provide an overview of the context and operating policies and practices in both public (government and quasi-government) and private (other types) organizations. To see what a sample of texts might reveal in the way of differences between public and private sector HRM, I decided to review a small sample of textbooks that are used in HRM courses at the graduate level in public personnel management and in general HRM courses. I expected to find differences in principle and in practice between the public and private sectors captured in the textbooks. What I discovered instead was a commonality among the texts in the discussion of HRM issues and practices in large organizations.

Given the emphasis in the public sector on merit as a control system to limit political influence and ensure competence in the workforce, I expected to find substantively different personnel practices in the public sector texts that would

distinguish merit-based practices from at-will types of environments. However, while the private sector does not operate in the same political context as the public sector does and does not use the term merit in the same way, such HRM systems similarly reflect a focus on acquiring and retaining a competent workforce. The gap between public and private personnel management appears to be narrowing. The broad field of HRM is developing its own scholarly identity that is influencing HRM in both public and private sectors, particularly through the growing body of civil rights and employment laws that apply to both the public and private sectors.

The textbooks selected for review either specifically aimed at the public sector or were written for general HRM policies and practices in any organization. The selection was a convenience sample of available textbooks used in teaching graduate courses and/or found in the Virginia Tech library. This brief review was intended add to the data available for describing merit-based systems. The review captures information in four categories of analysis -- merit principles or values, hiring and staffing, classification and compensation, and employee protections, all key components of a merit system and the basis for data collection and analysis later in the research.

The texts for the public sector included Klingner and Nalbandian, 1998; Rabin, et al, 1995; Nigro and Nigro, 1994 and 1981; Cayer, 1996 and 1975; Shafritz, Riccucci, Rosenbloom, and Hyde, 1992; and Stahl ,1962 (as a classic text in the field). The general texts included Ivancevich, 1997; Lewin and Mitchell, 1995; and Bernardin and Russell, 1998. The results of the review are summarized here in each of the four categories of analysis. Appendix A covers the full review of the textbook sample.

1) Merit Principles or Values

The public-centered texts set merit squarely in historical and political contexts as a reform of the patronage/spoils system. Nigro and Nigro, Loverd and Stahl focus on merit as personnel decision making based on ability. Klingner and Nalbandian emphasize merit HRM as the allocation of a public resource -- jobs. Cayer and Loverd talk about fairness and equity in personnel actions and protection of employee rights. By

the 1970s, the public sector texts were also emphasizing both EEO and due process in their discussions of merit and merit systems. Representation is added to fairness and equity as a goal of public personnel management. The public sector texts speak of fairness in personnel practices, social equity, distributive justice, merit principles as articulated in the CSRA of 1978, political neutrality, hiring on basis of ability and competence, and absence of arbitrary removals. However, some texts incorporate these ideas more fully than others.

In the general HRM texts, there was generally a strong emphasis on EEO and fairness in personnel systems, especially equal employment opportunity and the legal ramifications involved. The primary focus was on the importance of equity and fairness in personnel decision making for both compliance and good workplace practices. Ivancevich (1997) expressed the values of fairness, truthfulness, and honor as well as just and equitable employee relations. Merit in a political context is a clear difference between the two sectors; the values of fairness and equity, however, well as the impact of EEO are very similar. When the word merit is used it refers to compensation based on performance or contribution to the organization. Even though the underlying interest in personnel management for the private organization is to attract and retain competent employees, the term merit is more narrowly defined.

2) Hiring and Staffing

Both public and non-public-oriented texts address similar issues in recruiting and staffing. Overall, the HRM field today is advocating generally the types of activities for recruiting and hiring that the public sector has used in the name of merit for a long time, i.e., job advertisements, job posting/application, comparison of applicants' skills, knowledges, and abilities as needed for the duties of the position, selection based on the possession of these capabilities rather than for other non-merit-based reasons. The public sector has historically followed a more controlled/centralized path in using a detailed set of procedures to limit bias and favoritism in the selection process. The private sector appears to be using more formal procedures both to assure a competent workforce and to meet legal requirements under government regulations and civil rights laws. The public

sector, however, has traditionally followed this approach to reduce political patronage, ensure fairness, and provide citizens with the opportunity to apply and be considered. More specifically, public HRM usually delineates rating and ranking procedures that often include some form of testing, the “rule of three,” and veterans preference to reduce managerial discretion and to promote the welfare of interest groups. Stahl (1962) stands out in promoting the use of central registers as a contract between government agencies and the general public; yet he also allows that competition can include both numerical ranking and groupings of candidates into broad categories of quality as developed by the Tennessee Valley Authority early in the formation of their merit system.

An important difference between public and private sector employment at one time was the emphasis on merit versus patronage within the public sector. Today, while that issue still stands, civil rights laws and judicial decisions have pushed the private sector (as well as the public sector) to ensure that hiring and promotion actions are also free of bias, reducing but not eliminating that sector’s freedom to hire and fire at-will. Finally, the public-oriented texts address the primary difference between the two sectors – public jobs as an allocation of public resources. While there were no specified practices that appeared essential solely for merit systems, it is clear that this context requires as public policy a more open, competitive, and consistent employment process, which leads to a more formal obligation for notice, comparison of candidates, and documentation of the selection decision.

An area of common interest between the two sectors is the understanding of selection as the relationship between predictors and criteria (Lewin and Mitchell, 1995). The intent of employment laws is to prevent employee selection decisions from being made on the basis of predictors that are unrelated to criteria for job performance. In addition, the goal of any selection system is to accurately determine which applicants possess the KSAs (knowledges, skills, and abilities) dictated by the job (Ivancevich, 1997). An area where the two sectors have more in common than expected is that of the use of testing. One of the major complaints about hiring in the federal government has been the use of examinations and the rule of three. The private sector doesn’t deal with

the high three; but testing is a major component of hiring in many types of organizations. “Many companies now use aptitude or cognitive ability tests to screen applicants, bolstered by considerable research indicating the tests are valid for virtually all jobs in the U.S. economy” (Bernardin and Russell, 1998, 142). The authors describe a range of tests that are being used. This coverage is greater than found in any of the public-sector texts. However, the issue of adverse impact remains a concern to all employers using tests. It is for this reason that many employers, public and private, do not use cognitive ability tests and, instead, use other methods such as interviews or performance tests that have less adverse impact but are less indicative of potential performance. Many in the federal government may fail to recognize that testing is not just a control mechanism limiting discretion in hiring. The historical development of text usage in the private sector is tightly linked to the business need of assuring competence in the workplace.

Bernardin and Russell (1998) give us description of a recruiting and hiring process that can cut across all institutional lines, public and private. They state that recruiting in the near future may look like this for most large companies: line manager does job analysis; questionnaire is converted to a job posting and matched with current database of applicants; list of candidates is created; line manager receives a list of interested and qualified candidates; a testing and interview format in compliance with all EEO guidelines is derived from the same job analysis information; additional data is collected on the applicants; and a list of top candidates is compiled. This clearly defines a good HRM hiring process—public or private—for fairness, competence, and merit.

3) Classification and Compensation

Traditionally, classification and compensation have been significantly different between the public and private sectors. For the most part, the federal system has been centrally managed under a nationwide classification and compensation system under Title 5. Internal equity has served as the foundation for classification with pay annually adjusted to inflation or private sector wages, as recommended and agreed to by the president and congress. In this sense federal pay setting is a political process not directly driven by business requirements and profit margins. Only in the context of

demonstration projects under Title 5 or in some of the Title 5-exempt organizations has this model been altered, with the use of broadbanding classification and compensation systems. Special salary rates, granted by OPM to some occupations in certain locations in the 1980s, and locality pay, introduced in 1990 under the Federal Employees Pay and Compensation Act, began a shift away from a nationwide pay scheme in response to recruitment problems in high cost of living areas.

With the exception of the historical federal approach to a national classification and compensation system emphasized in the public-oriented texts, the textbooks overall do not reveal major differences in this area between the public and private sectors. Several general HRM texts included the public sector classification approach as one possible approach to classification and compensation but then provided more in-depth information about variable compensation alternatives. Equity-based compensation schemes are evident in both sets of texts. Bernardin and Russell (1998) capture the essence of classification and compensation systems in both sectors: an effective compensation system enables an organization to attract and retain qualified workers; complies with government regulations; motivates employees and fosters a feeling of equity; and has a structure that reflects the organization's ability to pay. The issues of internal and external equity and equal pay/comparable worth versus efficiency and market-based pay systems are current issues for discussion generally in the HRM field; but the public texts did not explore them as frequently, or in the same depth, as the other texts did.

The public-oriented texts focused on central classification and compensation systems, which describe public pay systems generally but gave only limited discussion to the move toward broadbanding in public organizations. Of significance are the differences broadbanding creates/allows in the merit context, such as pay variation at entry level, easier movement through the band rather than the timed process of steps, and greater options to assign people to work not tied to a specific grade. All of the writers depicted job analysis as the foundation for both classification and compensation. Only the public sector texts differentiated between rank-in-position and rank-in-person

approaches. A major difference not noted in the different texts is the openness of the public systems where pay schedules are available to the public. In the public sector, compensation, according to Cayer (1996; 1975), needs to be fair and equitable in principle and in fact. Stahl (1962) suggests that the best practice is to establish a minimum rate, several intermediate rates, and a maximum rate to avoid the rigidity of grade structures and to mitigate the potential inequity of market conditions.

4) Employee Protections

The subject of employee protections, not a standard topic in most texts, covers the issues of due process and the protection of employee rights in the employer/employee relationship. It is in this arena that major differences arise between merit-based HRM and other HRM systems. The major difference between the public-oriented and general HRM texts is the emphasis on due process in the public sector, driven significantly by the constitutional rights of the public employee. Even here there was little given in the way of a formula for protecting employee rights while providing for an efficient and effective disciplinary system. It is clear that due process calls for providing a statement of charges, an opportunity for the employee to respond, and the provision of a formal decision *before* the action is taken. The general HRM texts strongly emphasized legal/compliance issues to ensure employee rights (especially under civil rights laws) and to protect the employer but they did not convey the same focus on due process and appeal rights as the public sector texts did. “Just cause” is beginning to find a place in the private sector HRM conversation. Lewin and Mitchell (1995) and Ivancevich (1997) discuss progressive discipline. The overall private sector emphasis was on defensible personnel practices that meet legal requirements, including the protection of employee constitutional rights, such as privacy, (as balanced with the employer’s legitimate business interests) and protection against discrimination. Even though not directly addressed by the textbook authors, most large corporations provide some form of due process both as sound disciplinary process and as protection against breach of contract suits in state courts or as a result of union negotiated contracts.

In conclusion, the textbook comparison increases my perspective that the legal environment of HRM has led to an institutionalization of HRM as a field of theory and practice. As a result, the differences between the public and private sectors and between merit and other systems are narrowing in the language of a survey-level text on HRM. The most cogent results of the review include a strong emphasis on the importance of EEO and civil rights in HRM policies and practices in both sectors and the due process requirements of the public sector. This is a theme reflected throughout all of the texts. In particular, many of the practices that public organizations have been doing for “merit” are now being replicated to assure a competent workforce, protect employers from legal challenges, and meet the requirements of various employment laws. The differences are clear, however, in the specific discussion of merit as both a value system and the political context in which public HRM functions. The similarities fall in the actual HRM practices replicated across organizational lines, especially in recruitment and staffing and classification and compensation. The area of employee protections shows more divergence but the constitutional grounding of the public sector stands out as an addition to the more common practices to protect against discrimination in the workplace that apply in all sectors.

B. Demonstration Projects -- Title 5 waivers

Under the Civil Service Reform Act, the Office of Personnel Management can approve limited waivers of Title 5 requirements for agencies requesting demonstration project authority. Organizations seeking waivers of some Title 5 requirements frequently request to participate in demonstration projects under OPM’s leadership. Such waivers are revealing in identifying HRM practices that may be removed from the federal personnel system without threatening the merit-based nature of the system. This information is drawn from the OPM web site on demonstration projects:

www.opm.gov/omsoe/demonstr/fact.

Three demonstration projects that have become permanent in their specific organizations include (1) the Navy’s China Lake project that established pay-for-performance in a broadbanding framework; (2) the National Institute of Standards and

Technology (NIST) authority for a similar broadbanding system that included flexible starting salaries, flexible probationary periods, expanded direct hire and delegated examining authority, delegation of classification authority to line management under a simplified and automated classification system; and (3) the U.S. Department of Agriculture's exception to streamline external hiring through categorical groupings of candidates rather than following the rating and ranking requirements of the "rule of three," although veterans still receive preference.

In the USDA project, applicants meeting minimum qualification standards are placed in one of two groups (quality and eligible) on the basis of their education, experience and ability. All candidates in the quality group are available for selection, with preference given to veterans. The results of the project indicate that there has been an increase in the number of candidates per job announcement, referral of more candidates to managers for selection, increased hiring speed, and greater satisfaction with the hiring process. OPM also states that there has been no adverse impact on the number of women, minorities, or disabled hires and that more veterans were hired than at comparison sites, although there was still dissatisfaction with veterans preference.

Of the current active projects, eight are categorized by OPM as pay-for-performance in a broadbanding framework, and two projects cover contribution-based compensation systems and exceptions to hiring and appointment authorities. The experimental areas include waiving classification appeals outside the department level, hiring based on scholastic achievement grade-point averages at undergraduate and graduate levels, limited types of appointments, contribution-based appraisal and compensation systems, and simplified RIF procedures. Veterans preference is maintained in both hiring and RIF.

The two newest demonstration projects focus on broadbanding and hiring in one instance and skill-based pay in a team environment in the other. The Naval Research Laboratory has waivers to eliminate the "rule of three," replace the classification system with a broadbanding system, and establish a contribution-based appraisal and pay system.

The Veterans Affairs New York Regional Office replaces the classification system with skill-blocks and pay tied to skill certification and a balanced scorecard performance system, variable pay tied to organizational outcomes and team performance, and a performance management system designed to support teams.

In conclusion, the demonstration projects are putting pressure on federal HRM leadership to rethink the classification system, simplify hiring, and tie pay to contribution/performance. *The primary effect in the demonstration projects is to reduce the rigidity of the Title 5 system while retaining OPM's central oversight and control.* Veterans preference has not been eliminated but in some instances is applied in a less structured manner.

The greatest challenge to the traditional merit perspective through the demonstration projects appears to be the changing nature of position classification and compensation. The general principle of equal pay for equal work may be shifting in perspective to mean pay based on performance or contribution or skill levels rather than nationwide pay scales based on longevity. Rather than applied broadly in a national classification and compensation system, the equal pay concept is shifting toward a local or occupational focus, as the locality pay and demonstration project banding systems demonstrate. It is noteworthy that the waivers in the demonstration projects generally reflect practices currently in place in the Title 5-exempt organizations. The "rule of 3" is virtually eliminated. Other general merit principles such as open competition and due process generally have not been altered in the demo projects. A key difference between the demonstration projects and the exempt agencies, however, is the strong oversight role that OPM plays in the demonstration projects. The projects reinforce a growing understanding that, in the larger federal system, merit-based HRM does not have to mean uniform HRM. The demonstration projects reveal that rigid classification, compensation, and rating and ranking schemes can be eliminated or modified without defeating the goals of a merit-based system.

C. Interviews and Studies

Interviews with representatives of the Office of Personnel Management (OPM), the National Academy of Public Administration (NAPA), and the Merit Systems Protection Board (MSPB) provide some current official perspective on merit issues in the federal sector. These organizations were selected because they represent the primary institutions in the federal sector involved in creating, overseeing, and studying merit systems. This section summarizes the pertinent information from the interviews and discusses key studies and reports conducted by each on merit-based policies and practices in Title 5-exempt organizations.

1) The Office of Personnel Management (OPM)

At OPM, I met with three executives of the Office of Merit System Oversight and Effectiveness, who discussed their own struggle with how to define and implement merit in a reinvented government. They talked about conflicting values, the Merit System Principles, open competition, and compensation. A significant issue, they believe, is that there is no dominant value serving as a central focus for the larger federal HRM community as merit once did; even though, merit still serves as the basis of the federal personnel system. The Merit System Principles are gaining recognition as central tenets of public personnel management; but they compete for visibility with the government-as-a-business mantra of reinvention in a more decentralized environment. OPM is stressing the importance of educating managers in understanding the principles and the part they play in guiding decision making. The Merit System Principles are also being used as a guide for assessing whether a non-Title 5 HRM system is merit-based.

The OMSOE staff is now developing a protocol or guide defining merit-based policies and practices under each of the Merit System Principles. OPM would like to increase its role in overseeing the merit systems of Title 5-exempt organizations to maintain the integrity of the merit system in the exempt organizations as well as those covered by Title 5. The draft guide consists of a series of questions in the areas of filling vacancies, staffing, classification and compensation (policy review), performance and awards (policy review), reduction-in-force (policy review), EEO (policy review), and

accountability. The review focuses primarily on whether or not the agency has established rational systems, whether they follow them, and whether they are comparable to those of Title 5. It does not attempt to dissect or police the operating practices. Rather, OPM hopes to create a broad standard or agenda for merit oversight and accountability.

On the topic of the Merit System Principles, the interviewees expressed a serious concern with the question of openness as it relates to the first Merit System Principle (see page 14 of this document). In a study on openness in the employment process (USOPM, April 1999), OPM states that “Providing public notice of available employment opportunities is central to achieving fair and open competition” (USOPM, April 1999, 1). OPM assumed that Title 5 agencies were following the statutory and regulatory directives under Title 5 of the U.S. Code and the Code of Federal Regulations to post all job vacancies with the OPM government-wide automated employment information system known as USAJOBS. The actual findings indicated that one third of all personnel actions, which require public notice, were not posted on USAJOBS in FY 1997. “Of those personnel actions for which posting to USAJOBS was required, one-half of those made by the Department of Defense and one quarter of those made by non-Defense agencies were not posted as required in FY 1997” (USOPM, April 1999, 5). There is no specific finding about why the postings are not made. However, this is not to say that those organizations are not advertising their vacancies.

The question is one of openness. The issue is the posting on the government-wide jobs system to offer the widest number of citizens the opportunity to apply and be considered. From the line organization perspective, there is evolving a greater focus on individual institutional needs than on the more global government service as a system. Much thought goes into planning a recruitment or outreach process for various vacancies. Not all interests are best served by a mandated central advertising database such as OPM is maintaining. This process is OPM’s interpretation of how to address the openness issue; they were disappointed to find less than full compliance with their mandate. Openness in a political context is fuzzy. Often, federal jobs are restricted to certain

populations, e.g., veterans and people with disabilities. Recruitment is frequently targeted to attract candidates with certain skills or from underrepresented members of the labor force. OPM, however, is frequently challenged by congressional staff to explain why constituents may not have heard about vacancies in federal agencies.

Flexibility is also a conundrum for OPM. The interviewees suggested that in their view managers don't really want too much freedom. One executive commented: "They push back and ask for procedures to be sure they don't violate the law." This puts OPM in a position of establishing rules and procedures that government managers then ultimately complain about. The interviewees stated that "Law has become a larger driver of such regulation than merit per se." Managers want to be certain their actions will be supported if there is a legal challenge.

The last topic dealt with compensation. As noted under the section on demonstration projects, this is where the most changes in federal HRM in federal HRM are occurring. The press for organizations to be able to meet local and occupational competition for top candidates is shifting the long term emphasis in classification and compensation from internal equity and longevity to a stronger mix of internal and external equity and pay for performance. There are questions about whether multiple pay systems can be considered merit-based and fears about the government competing with itself for future and current employees. However, there is little doubt or conflict around the shifting emphasis and structure in the areas of classification and compensation. In a tight labor market and under the business-focus of government reinvention, the need to be able to compete financially is overriding the historical and traditional merit system approach to a uniform classification and compensation system.

2) The National Academy of Public Administration (NAPA)

NAPA is an independent, nonprofit organization chartered by Congress to improve government at all levels. The Academy's Center for Human Resources Management (CHRM) provides public sector managers and human resources professionals with a source of practical expertise, best practices, and innovative solutions for improving the

management of human resources. The current head of the CHRM discussed NAPA's perspective on merit in the government. In his view, IRS and FAA are the emergent models of federal HRM. Both have recently been given latitude by Congress to create HRM systems exempted from much of Title 5 to meet their institutional needs.

NAPA is concentrating its resources on helping agencies improve their personnel processes and relationships with organizational leadership. Given the stress that most HRM offices are under to reinvent themselves, this makes sense; but the director's concern is that the larger strategic issues of merit are not part of the conversation. He feels there is not enough conversation about values around merit in the larger federal HRM community. In a presentation to Brookings (May 1999-presentation viewgraphs), he identifies the *federal HRM values as commitment, competence, fairness and equity*. These values are supported by the Merit System Principles and enacted through the HRM systems and programs. HRM accountability then becomes a line management responsibility where the institutional leadership takes ownership of the merit system. In NAPA's view, OPM creates policies and procedures that are not required by law, complicating the personnel system and reducing both the flexibility that agencies should have to manage their administrative systems and their responsibility for meeting the requirements of the law rather than implementing personnel processes.

In two studies NAPA identifies areas where OPM adds requirements not found in law that impede flexible management. In their report, Overcoming barriers to innovative and flexible HR practices (1997), NAPA states that "5 U.S.C. 2301 [the Merit System Principles] should be a foundation on which a sound staffing program can be built. Instead, these [principles] have been engulfed by a morass of laws, regulations, and policies. Post-NPR legislation, proposed to reform the civil service system, adds even more" (35). In the staffing area, for example, NAPA notes that OPM has added requirements not mandated under the law such as specifying lengths of time for advertising job openings, using the postmark for accepting applications, and requiring delegated examining units be established separate from other parts of the personnel office. In addition to recommending greater flexibility for agencies to devise their own

hiring practices under the Merit System Principles, the study supports streamlining the classification system with the use of position description libraries, delegation of authority to line managers, development of a skills-based pay system alternative, and the use of a broadbanding model.

The 1998 New Options, New Talent report calls for OPM to take such actions as reducing the number of competitive federal hiring methods to three (permanent, temporary without time limits with full benefits, and temporary with a time limit and limited benefits); eliminating regulations and policies that do not directly support merit principles to speed up hiring; allowing agencies to noncompetitively convert to permanent appointments term and certain other temporary employees who previously competed for current appointments; and eliminating the adverse impact on salaries of re-employed retirees (NAPA, 1998, xiv).

In conclusion, NAPA believes OPM should not impose requirements not mandated by law and should increase the flexibility of agencies to address hiring and compensation issues while holding them accountable for their actions.

3) The Merit Systems Protection Board (MSPB)

MSPB was established under the Civil Service Reform Act of 1978 to provide an appeals level for civil service employees and to protect merit in federal personnel management. Two long-time executives of the MSPB discussed merit from the MSPB perspective. In their opinion, merit is not eroding. It is a deeply ingrained value in the federal workforce; patronage is now foreign to the rank and file. The interviewees feel this is a direct consequence of the systems put into place over the years, even if those systems also inhibited efficient management. They cautioned, however, that while it makes sense to increase management flexibility, the government would have to ensure long term that there would not be a drift back towards patronage. They also noted that public policies in fact now promote social goals, such as the interests of veterans and a representative workforce, that also reduce the likelihood of returning to a spoils system. The environment that promotes a representative workforce also promotes merit -- hiring

based on ability, removal for cause, due process, and equal pay for work of equal value. There is still a need, they said, for a statutory framework that would articulate appropriate values and find a way to hold managers accountable.

Two areas of merit that gave them pause during the discussion were open competition and equal pay for equal work. Given the size of the labor force, it is uncertain that every citizen should have the opportunity to apply for every vacancy. OPM is being swamped with applications. This is not a timely or necessarily fair approach to connecting people to job vacancies. Fair and open may mean more at the local level or in communities of interest. Overall, the conversation seemed to waiver between letting organizations be free to manage their own HRM programs and concern over the likelihood that merit would be compromised in an essentially decentralized system. This is an area of considerable complexity for policy makers in federal HRM.

Several MSPB studies critique OPM's continued control over specific policies and practices. A report on "the rule of three" states: "In this report, the U.S. Merit Systems Protection Board questions the continued use of the rule of three in today's Government, in terms of both its utility in the overall hiring process and its actual value to veterans" (MSPB, 1995, vi). The report highlights that use of case examining and demonstration project category-type certificates lead to higher appointment rates for veterans listed first on them. The latter approach allows managers to select any candidate from one of two categories. Eligible veterans are placed at the top of the category without any point references and must be selected. However, since individual vacancies are posted rather than using a standing register of candidates, veterans appear less often (but are chosen more frequently when they are on a certificate). The MSPB recommends the demonstration project category approach over case examining because managers have more latitude in the number of candidates considered.

Another recent MSPB study (1999) looked at delegated examining units (DEUs) in federal agencies that have delegated OPM authority to rate and rank candidates for most vacancies in their organizations under a case examining approach. DEUs focus on

assessing training and experience without the use of tests or other written examinations. MSPB's perspective is that the rule of three in this case may adversely affect workforce quality over the long haul. The Board takes the position that such assessment techniques that have limited validity and reliability and, therefore, should provide more candidates rather than fewer to ensure that managers have a range of quality candidates from which to select. They propose eliminating the rule of three and giving selecting officials a larger pool of candidates from which to select. MSPB also recommends that Congress invest in the heavy costs of developing quality tests/examinations for agencies to use to simplify the examining process and produce higher quality candidates.

Two other MSPB studies specifically reviewed the merit systems of Title 5-exempt organizations. These studies were conducted in 1989 and 1991 respectively on the personnel systems of the Tennessee Valley Authority and the Veterans Health Administration, a subdivision of the Department of Veterans Affairs. Excerpts from the TVA report reveal that the basic HRM system is merit-based but without some of the restrictive practices of Title 5. The reports states that

...[With one exception relating to use of union memberships as applicant sources], our review did not find any other TVA policy or practice to be in violation of the merit principles. What this report does clearly illustrate is that a merit system can have many different forms. TVA's system is one that provides a great deal of management discretion bounded by general guidelines and, through employee unions, one that allows a significant degree of employee involvement. Moreover, the corporation's ability to make relatively rapid and significant changes in its approach to human resource management—such as dropping a pay-for-performance system for white-collar bargaining unit employees or changing to a new system for job classification—can be of significant value in meeting new or changing organizational demands or pressures. In comparison, civil service agencies work under a merit system based more heavily on controls and a limitation on options for managers in the personnel process. Although neither system is inherently superior to the other, there are any number of scenarios wherein TVA's greater flexibility (and, by extension, greater adaptability) provide an advantage (USMSPB, 1989, 49).

The VHA Title 38 study reveals similar findings for this rank-in-person HRM system:

Our review indicates that many of the practices of the title 38 system provide greater flexibility and control to line managers, while ensuring that those within title 38 are well qualified and are dealt with in an equitable manner” (USMSPB, 1991, 46).

In contrast to title 5, title 38 of the law requires no formal rating and ranking for appointment and, surprisingly, since this system is focused on the care of veterans, the law requires no veterans preference in appointments. Further, title 38 does not require any competition for internal placements with promotion potential (USMSPB, 1991, 23).

Although different approaches were used for the various occupations and few formal criteria were used in recruiting and selecting, we found no indication of discrimination in the process. ... We found no evidence that the title 38 recruitment process was inherently discriminatory. In fact, the greater flexibilities of recruitment under title 38 allow the medical centers we visited to engage in effective targeted recruitment. ... However, hiring decisions do focus on qualifications – use of professional standards for quality hires and the tight labor market for these fields limits the “intrusion of non-quality factors from entering into selections” (USMSPB, 1991, 29).

Overall, MSPB appears supportive of more agency-specific merit systems with greater flexibility to craft merit-based HRM practices that meet their organizational needs. Practices not mandated by law, like the “rule of three,” no longer support quality selections in the federal service. The interview raised serious concerns about accountability and oversight in more decentralized and deregulated environments but supported more locally defined practices. Larger merit principle issues like open competition and equal pay are at the crux of a changing perspective on merit-based systems. The MSPB studies offer a window into the potential for less regulated merit-based federal HRM systems than is currently possible under Title 5.

D. Finalizing the Model of Merit-based HRM Systems

Translating the will of the people into effective administrative action requires often-conflicting qualities of technical competence and political responsiveness. For almost a hundred years, variants of the merit system at federal, state, and local levels

provided a mechanism for the resolution of this policy/administration problem and for the effective staffing of governmental organizations. Maintenance of the merit system was a public policy of the highest order, assumed to be essential to making democracy work. Today, our imperative is to define the core elements of merit in public personnel management to ensure we have protected the democratic values at the heart of government while building flexible management processes that support the business of governing (Lane and Woodard, forthcoming).

The material gathered in this chapter has affirmed the components depicted in the initial working model of merit crafted in Chapter I. In the textbook review, the public texts emphasized competence over patronage and favoritism or discrimination, HRM policies and practices that consist of fair and orderly processes related directly to the work to be done, obligations under the law, merit-based values of fairness and equity, and a context of public policy. The textbooks also revealed that HRM functions are similar across sectors, comprising recruitment, staffing, classification, compensation, benefits, training, discipline, and employee rights and responsibilities. The OPM demonstration projects showed that even under Title 5 there are possible alternatives to a uniform classification and compensation system approach (e.g., broadbanding) and a limited candidate comparison technique (e.g., categories rather than the rule of 3). The interviews and studies suggest that it is possible and may be preferable to move away from a centrally developed HRM system and grant more latitude to agencies in devising their own HRM practices.

In addition, these sources raised areas of concern and indicated trends and patterns for a broader merit context in federal HRM. These issues expand the model. The key current trends/issues that came in particular from the demonstration projects and the interviews with executives from OPM, MSPB, and NAPA include:

- Open competition – A key component of a merit-based process (both historically and in the Merit System Principles), open competition suggests two things – 1) citizens will have the opportunity to know what jobs are available in the federal government

and 2) candidates and employees will have the opportunity to compete for vacancies based on their competence and potential to advance. Hiring is the most visible element of the public employment process. Hays and Kearney (1982) note that the entire merit concept hinges on the assumption that public employees are selected through open competition on the basis of their actual job competence. Given the size of the nation, however, and the increasing complexity of the work of government, the question looms about just how “open” such competition must be. Current practices under Title 5 are not fully in accord with OPM requirements and the emphasis on targeted recruitment in all sectors is changing the landscape of open competition.

- Compensation – While continuing to be grounded in the values of fairness and equity and tied to individual and organizational performance, both classification and compensation are becoming less rigid and uniform. Alternative systems, like broadbanding, are already in play in the demonstration projects and are being discussed by OPM as potential legislative changes to grant authority to craft institution-specific systems. Special salary rates and locality pay as well as recruitment and retention bonuses and advance-in-hire salary rates are already options under Title 5. The systems should still be able to demonstrate some combination of internal and external equity for merit and legal purposes; however, the traditional understanding of merit in compensation is moving from national uniformity to a more local or occupational definition.
- Tenure – a major change in federal employment may be the reduction over time of the “permanent, core workforce” to better match resources to operational needs. In a tight labor market, the need for competence and high performance will reduce the risk of a return to patronage. In times of labor excess, accountability mechanisms will need to ensure that merit values continue to inform the system and reduce the risk of abuse. NAPA recommends that appointment options be reduced and that organizations have the flexibility to determine what mix of employees best meets its needs and resources.
- Focus on institutional or local needs rather than the government-as-a-whole – Most of the changes that have occurred or are under consideration in federal HRM reflect a move away from a uniform, one size fits all, approach to personnel management.

Delegations of authority are placing more authority in the hands of line management (e.g., delegation of classification authority) to enable organizations to better respond to their operating needs and competition for resources. The compensation system as described above offers more local options than the nationwide GS schedule traditionally has done. Merit is shifting from a centralized, management hands-off posture to a decentralized, management responsibility position.

- ➔ Reduced central control, increased accountability mechanisms – The question of oversight and accountability is evident more by its absence than by direct discussion. The issue is more frequently addressed as decentralization and deregulation of HRM authority. Organizations under Title 5 perceive OPM policy and oversight as inhibiting organizational performance; however, both as a management process and as a component of government, merit-based HRM systems need to have defined oversight and accountability mechanisms. Such controls may not need to come from a central source, like OPM, that delineates specific practices and mandates procedures not defined in law. The variety of laws and judicial decisions affecting the workplace are creating the framework against which all federal HRM systems must be crafted and judged. Oversight and accountability mechanisms may be centralized or decentralized, internal or external. But this issue is just beginning to be addressed.

Overall, the data gathered in this chapter support the initial model in tying merit to public policy, law, merit principles, and functional HRM policies and practices. They reinforce the emphasis on employment and civil rights law as a driving factor in creating and maintaining merit systems. The model needs to be expanded, however, to incorporate the influence of three trends likely to modify federal merit-based HRM over the next few years – focus on institutional or local needs rather than the government-as-a-whole, need for new oversight and accountability mechanisms to support decentralized and deregulated HRM systems, and shift in the meaning of merit principles and practices, e.g., open competition, compensation, and tenure. The expanded model of merit-based HRM systems is shown in the figure below.

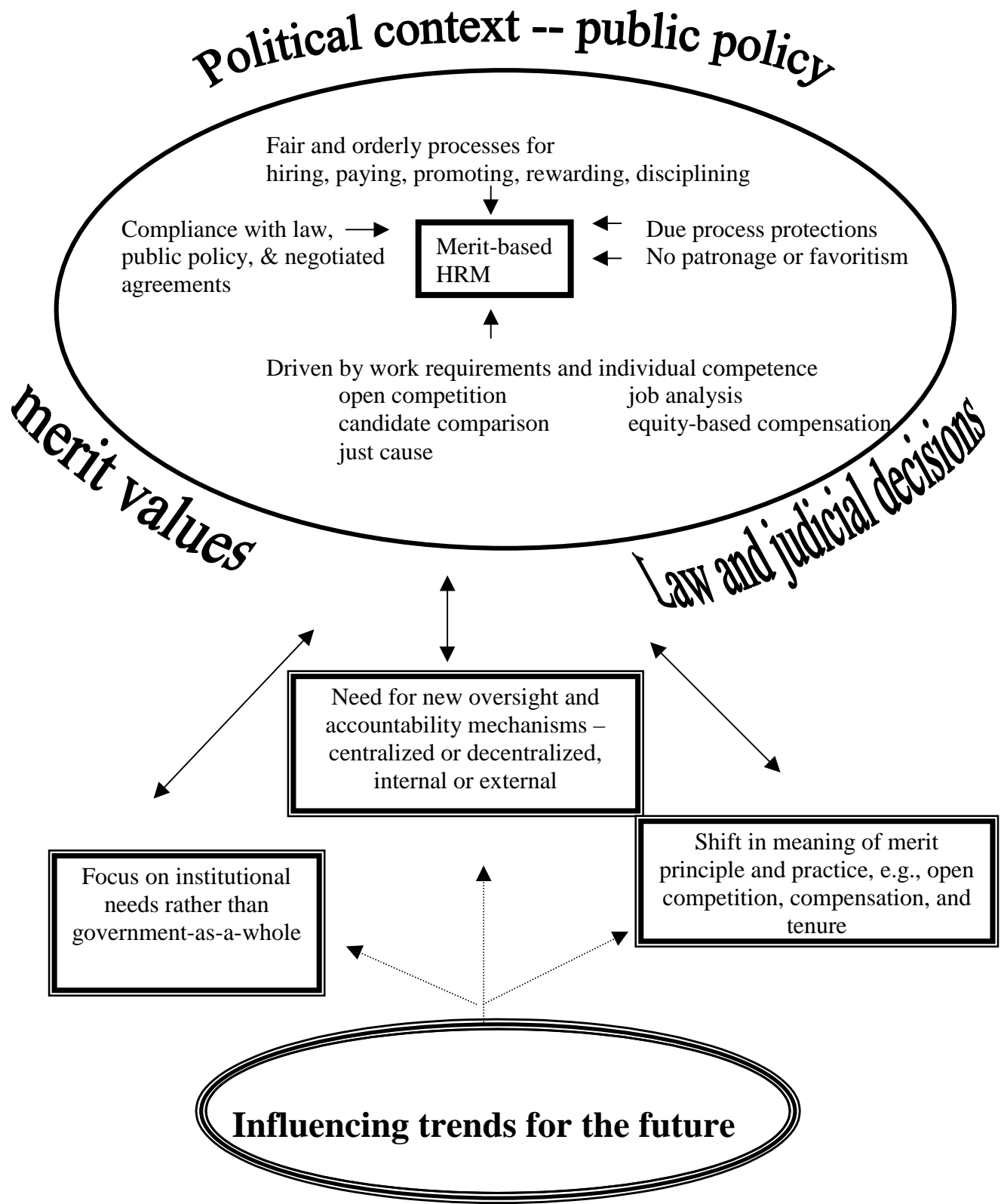


Figure 3 Model of Merit-based HRM Systems

The completion of the model concludes Section I of the dissertation. The model produces an effective framework for looking at the HRM systems of other federal organizations, exempt from all or part of Title 5, to provide some gauge of the merit context of their personnel management processes. In Section II, the research moves forward to study the HRM systems of nineteen federal or quasi-federal organizations whose HRM systems are fully or partially exempt from Title 5.

Section II

Collecting Data on Title 5-exempt Federal Organizations

Section II Collecting Data on Title 5-exempt Federal Organizations

Section II of the dissertation presents the data collection segment of my research. As I described in the introduction to the dissertation, my interest is in exploring merit in modern government. My lens for analysis is the rich pool of data available in those federal organizations that are fully or partially exempt from Title 5. They are charged in their authorizing legislation usually to develop and maintain merit-based HRM systems. A key element in their world, however, is the limited oversight they receive from central management organizations like OPM. For this and other reasons, numerous agencies under Title 5 have pursued legislation for similar exemptions. Several have joined this group in recent years including the Federal Aviation Administration and the Federal Bureau of Investigation. Others like the Bonneville Power Authority and the Patent and Trademark Office met strong resistance to such proposed legislation.

I was very curious about what the HRM systems looked like in the exempt organizations and how merit was reflected in their policies and practices. This dissertation research is centered on the data I collected on 19 Title 5-exempt organizations in a field study I conducted through the OPM. Chapter III sets up some background on these varied types of federal organizations that have developed personnel management policy and practice along a parallel but separate path from those subject to Title 5. Chapter IV describes the multiple case study methodology of the field study. The findings from the study are presented in Chapter V with additional data on four selected organizations from the study provided in Chapter VI to verify the findings from the field study.

Chapter III. Setting the Stage for the Research: Background on Government Corporations and Other Title 5-exempt Organizations

The literature on government corporations and other organizations exempt from, or not covered by, Title 5 USC personnel requirements is important in setting the context for the creation of such organizations and exempting them from the central government management controls. This literature provides a broad description of federal corporations and other types of exempt organizations and raises issues relating to accountability and oversight. Many of the organizations studied in the dissertation research are generally referred to as government corporations although they are not all specifically listed as corporations under the Government Corporation Control Act of 1946. They fall along a continuum of federal government organizations with the exception of the one the government-sponsored enterprise (GSE) included in the study whose employees are not considered federal.

The importance of this literature is to understand that, in the historical evolution of public personnel management law and regulation, a set of organizations has developed personnel systems along a parallel but independent track from that of the heavily structured and managed traditional agencies which ultimately became subject to Title 5 of the U.S. Code. Their authorizing legislations generally directed them to develop their own merit-based personnel systems with little or no direction on what constituted merit and with limited oversight by any central management body.

Of particular interest is the question of whether the Merit System Principles apply to these personnel systems. Under 5 U.S. C. 2301 (a) (1) (2), the Merit System Principles apply to an executive agency and the Government Printing Office. 5 U.S.C. 2301 (c) states that

in administering the provisions of this chapter – (1) with respect to any agency (as defined in section 2302 (a) (2) (C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and (2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any

action, including the issuance of rules, regulations, or directives; which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the Merit System Principles.

5 U.S.C. 2302 (a) (2) (C) excludes from the definition of “agency” government corporations and designated intelligence agencies, such as the Federal Bureau of Investigation and the Central Intelligence Agency, and the General Accounting Office. However, the second section of the above quote opens the possibility the heads of most other organizations in the executive branch are to ensure that “personnel management is based on and embodies the Merit System Principles.” The real question is whether the organizations themselves believe they are covered and how they act on that belief in embedding merit-based policies and practices in their HRM operations.

A. An Historical Perspective

Congress has historically established government corporations to carry out business-type programs that needed a high degree of autonomy and flexibility. They were often fully or partially exempt from the central management laws of government. Traditionally, the United States government has believed that whenever possible work should be done by the private sector, with the federal government playing a regulatory role, not an ownership one. Corporations were established and maintained successfully during World War I then dismantled. The Depression saw the creation of the stabilization corporations and World War II, the mobilization corporations. These organizations responded both to a national need and at the same time to the scientific management movement with its emphasis on economy, efficiency, and flexibility for managers. The corporate form became a necessity in these instances because the traditional bureaucratic command and control structure of federal organizations was ill suited to rapid business maneuvering in a highly volatile environment (see, e.g., Seidman and Gilmour, 1986; Rosenbloom, 1971; Moe, 1995).

Government corporations also appealed to the New Deal mindset because they "tended to place managerial values above partisan political values" (Moe, 1995, 2) and

because President Roosevelt needed a vehicle for hiring a workforce of policy experts who would help carry out his agenda. FDR created entire agencies outside of civil service laws. The percentage of government positions covered by the classified civil service dropped to 66 percent during the New Deal as FDR created 60 new agencies, 55 of which operated outside of central management regulation, including the civil service. "These exemptions were made primarily so FDR could staff the agencies on a patronage basis rather than through merit procedures . . . His patronage aimed at attracting more intellectual and other college-bred members of the middle class" (Rosenbloom, 1971, 103). For him, the neutral competence that had become a job requirement under civil service was inadequate to the policy-advocate role he needed to address the social and political problems the country faced, and to gain some control over the bureaucracy in the office of the president. Van Riper states that Roosevelt

seldom disapproved congressional exemptions of newly created alphabetical agencies from the classified service . . . By the end of 1934 Congress had exempted from merit system regulations the personnel of almost sixty new agencies, totaling approximately 100,000 offices, and had placed only five agencies under the jurisdiction of the Civil Service commission. The result was a public service in which the proportion of offices under the merit system rapidly declined from its previous peak of around 80 per cent under President Hoover. By 1936 only about 60 per cent of a total federal public service of more than 800,000 was on the classified list. (1958, 320)

Politics and merit continued their historical tug of war; but within a few years, under political pressure from Congress and the public, Roosevelt expanded civil service coverage over many of the new agencies so civil service coverage grew to over 90% by the 1950s.

To understand the nature of government corporations and other exempt organization, it is useful to review some terminology. Government corporations cover a range of unique functions, including producing power (Tennessee Valley Authority), providing insurance and financial services (Federal Crop Insurance Corporation), and promoting commerce (Overseas Private Investment Corporation). Some organizations are financially independent corporations housed within Executive Branch agencies, like

the Federal Prison Industries in the Department of Justice. Some are partially or completely dependent on appropriations, like the Community Development Corporation under Housing and Urban Development; and others are wholly owned corporations under the executive branch, like the Tennessee Valley Authority. They all carry some combination of public and private characteristics and their personnel systems are frequently exempt from all or part of the federal civil service laws (Moe and Stanton, 1989, 322); however, their employees are considered federal employees.

Government-sponsored enterprises (GSEs) represent another type of government organization. They are privately-owned, federally chartered financial institutions with nationwide scope and limited lending powers that benefit from an implicit federal guarantee to enhance their ability to borrow money. They include such organizations as the Federal National Mortgage Association (Fannie Mae) and The Federal Home Loan Mortgage Corporation (Freddie Mac). Their authorizing legislations declare their officers and employees non-federal employees.

Still another category covers "other" enterprises that don't fall easily into the other two groups, such as the U.S. Postal Service, which has a publicly appointed Board of Governors, can set its own rates (with approval of the Postal Rate Commission), and is required to live off its income (although it does receive some subsidies). Such organizations are federal in nature and their employees are exempt from some or all of the Title 5 personnel regulations.

B. A Place for More Flexible Government

A major reason for creating government corporations and other fully or partially exempt organizations was to allow sufficient flexibility to perform a government function in a more cost-effective manner in less regulated environments. This includes flexibility in the hiring, promotion, compensation and dismissal of personnel. There is no consistent model of personnel systems among these exempt organizations. They possess a mix of authorities that allows them to fully create their own personnel systems or requires them to blend Title 5 and exempt authorities. The Tennessee Valley Authority and the Federal

Reserve Board are examples of civil service systems independent of the overall OPM-administered federal personnel system. The FDIC and the Office of Thrift Supervision exemplify organizations that have exemptions for classification and compensation systems only. In some instances, exempt organizations choose to follow the Title 5 laws and systems for a variety of reasons. Employees of the Smithsonian Trust system are fully exempt from Title 5; yet, for ease of administration and for fairness with the Title 5 employees who also work there, the Smithsonian applies most of the Title 5 employment system to the Trust employees. There are also traditional agencies that for a variety of reasons have full or partial exemptions from Title 5. For example, the intelligence community organizations, such as the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency, operate under separate personnel systems justified on the basis of unique personnel and institutional needs. Finally, there is another category of organizations that are not covered by Title 5. These include organizations under the legislative and judicial branches of government. Congress has specifically covered the Government Printing Office under Title 5 but the rest of those branches are not covered. The Library of Congress is under a unique court order to establish a merit system in response to an employee lawsuit. It has chosen to follow Title 5 with OPM oversight to meet court requirements.

C. Oversight and Accountability

One important contrast between the Title 5 agencies and the Title 5-exempt organizations is the latter's lack of a coherent oversight mechanism. This becomes an issue in looking at the merit bases of these personnel systems.

There is at present no central management oversight or supervision of government corporations as a class or agency. . . . Government corporations today are largely perceived as discreet entities each with their own political and administrative requirements and each with varying degrees of policy accountability (Moe 1995, 68).

Even within some executive branch agencies, special personnel systems exist for certain employees, such as the Foreign Service in the State Department and the VA's Health Administration. Such employees often work side by side with employees in the

competitive service; however, they are outside the purview of the OPM unless the organization signs an Interchange Agreement, which verifies they have a merit-based personnel system, to enable their employees to maintain their federal status and benefits in transferring to the competitive service. Even then, there is little serious oversight conducted. The Merit Systems Protection Board in HRM studies on the TVA and the VA Health Administration (USMSPB, 1989; 1991) conducted a general review of the merit systems in these alternative personnel systems but did not indicate any specific guidelines for assessment. This limited oversight operates in sharp contrast to the competitive service where merit is controlled through regulation and compliance-oriented reviews.

A major advantage exempt organizations enjoy is the flexibility to change HRM policies and practices within the limits of law and other covered directives to respond quickly to changes in the organization's environment without approval from OPM. The MSPB noted this in the 1989 TVA study:

Moreover, the corporation's ability to make relatively rapid and significant changes in its approach to human resource management—such as dropping a pay-for-performance system for white-collar bargaining unit employees or changing to a new system for job classification—can be of significant value in meeting new or changing organizational demands or pressures. In comparison, civil service agencies work under a merit system based more heavily on controls and a limitation on options for managers in the personnel process. Although neither system is inherently superior to the other, there are any number of scenarios wherein TVA's greater flexibility (and, by extension, greater adaptability) provide an advantage (USMSPB, 1989, 49).

D. A Decision to Study Title 5-exempt Organizations

The actual and perceived management flexibilities of the Title 5-exempt organizations have led numerous federal agencies in recent years to seek corporation status or other exemptions from Title 5. My own interest in this research topic was triggered by a professional experience. While serving as the Director of Human Resources at the Patent and Trademark Office (PTO), I helped draft legislation that would re-create the PTO as a wholly –owned government corporation. Among other goals, PTO hoped to create a more responsive HRM environment by being freed from the

restrictions of Title 5 and the central management controls of OPM. As I discussed their Title 5 exemptions with a number of government corporations, I found that organizations had different exemptions and that they did not necessarily use all of the flexibilities they had. For example, one organization had not acted at that time on its ability to create new pay systems because to do so would require collective bargaining with great uncertainty about the outcome. As I thought about the “escape from Title 5” mindset, I began to puzzle over where merit fit into this changing HRM environment. If, in fact, each of these organizations had the potential to create its own merit-based personnel system, we had a rich source of data about agency-specific HRM systems that we had not really mined. This led to my collaboration with OPM on a field study to collect data on these organizations. OPM was eager to sponsor and support such a study since there was no central repository of information about the exempt organizations. I co-conducted the study with an OPM staff member and co-wrote the report published in 1998 (USOPM, 1998).

Chapter IV Methodology – Multiple case study approach

To determine how Title 5-exempt organizations reflect merit in their HRM policies and practices, I used a multiple case study approach in conducting a special study through the Office of Personnel Management's Office of Merit Systems Oversight and Effectiveness. In the study, I looked at merit-based practices in nineteen organizations fully or partially exempt from Title 5. I collected the data through a written survey and selected in-depth interviews with HRM representatives in these organizations. To enhance the credibility of the field study data, I verified the findings for four of the organizations by reviewing operating documents and official studies of their HRM systems conducted by such organizations as OPM, MSPB, and the FAA Inspector General. This chapter covers the qualitative methodology that frames the research and describes the elements of the data collection process.

A. The Institutionalization of HRM

Before going into the methodology, however, I'd like to briefly take a look at HRM from a neo-institutional perspective. The question of merit in the dissertation research is not considered in the abstract but viewed, instead, through the conceptual lens of the institutionalized HRM functions and systems that are currently found in most large public and private organizations. Over the past 30 years, HRM has grown into a key management process influenced by both by employment and civil rights law and the rise of HRM as an academic discipline and field of study. As a result, a set of roles, functions, services and practices has developed that are replicated in most intermediate and large organizations. As bureaucratic structures have grown and replicated their forms, the management processes have also become very similar. In institutional terms, this is a form of isomorphism (Scott, 1992; 1995) as large organizations mimic both form and management processes in modern management. Scott cites the work of Dobbin and colleagues in accounting for differences among diverse sample of organizations in adopting various employee protections such as due process, equal opportunity, and affirmative action procedures. "These organizations are viewed as responding to changes in their legal environments that...include not simply changes in legal rules but changes in

the broader normative climate that often accompany changes in the law. ... Personnel offices are viewed as important boundary-spanning structures that mediate between the organization and the larger environment” (Scott, 1995, 121).

This replication of HRM roles, functions, and practices among a variety of organizations provides the institutional framework through which it is possible to collect similar HRM data across the sample of independent organizations. Going one step further in considering this research, eighteen of the nineteen organizations have a federal affiliation as well that would further increase the similarity of their HRM structures, if not their practices. Both public and private sector organizations create HRM systems and functions grounded in what are now conventional practices for hiring, compensation, and discipline/termination, among others. This accepted framework for HRM enabled this research to generically investigate and compare policies and practices in selected areas of HRM in non-Title 5 organizations to a model for merit-based systems and to traditional Title 5 requirements of similarly structured HRM systems of competitive service agencies.

B. Qualitative Research

The principal research question for this dissertation is: To what extent do federal organizations fully or partially exempt from Title 5 HRM requirements reflect merit in their HRM policies and practices? With this information, we may be able to better define merit requirements or establish a broad framework for environments that are less regulated than the Title 5 competitive service is. The long-term goal is to better understand how to craft merit-based systems with the flexibility to support changing management requirements.

The methodology of qualitative research affords the opportunity to collect data in local conditions to confirm the presence of certain HRM practices in federal organizations that are part of the federal government but that operate outside of the boundaries of Title 5 law and regulation and OPM oversight. Multiple case study methodology provides the framework for looking at each case individually while

assessing the findings categorically. Each case stands alone and its findings are not generalizable; however, the cross-case data analysis can identify patterns of practice that exist within certain standard HRM structures.

According to Miles and Huberman (1994), a confirmatory study with a relatively focused research question and a well-bounded sample of persons, events, and processes can use a well-structured instrument. The use of an instrument to collect the data was important in this instance to enable me to do a cross-case comparison of the findings. The findings can then be arrayed in a descriptive comparative fashion. Denizen and Lincoln (1994) also support the use of the collective case approach where the cases examine multiple instances of a process as that process is displayed in a variety of different cases (Denizen and Lincoln, 1994, 201). Purposive rather than random sample selection is appropriate in this context. Most importantly for this study, “qualitative design is holistic, looking at the larger picture, the whole picture, and begins with a search for understanding of the whole. It looks at relationships within a system or culture and develops a model of what occurred in the social setting” (Denizen and Lincoln, 1994, 211-212). Each case is of secondary interest to the building of a larger picture. The identification of outliers is important to understanding how consistent or inconsistent the patterns and practices are across the cases. The danger in this type of research is that “multiple cases will be analyzed at high levels of inference, aggregating out the local webs of causality and ending with a smoothed set of generalizations that may not apply to any single case. The tension is that of reconciling the particular and the universal; reconciling an individual case’s uniqueness with the need to understand generic processes at work across cases” (Denizen and Lincoln, 1994, 435).

Yin (1989) holds that in the multiple-case study, every case should serve a specific purpose within the overall scope of inquiry, following a replication logic rather than a sampling logic. The appropriate research design is one in which the same results are predicted for each of the cases, producing evidence that the cases did involve the same syndrome. The analysis must follow cross-experiment rather than within-experiment design and logic (Yin, 1989, 52-53). The replication approach begins with

theory development then moves to case selection and the definition of specific measures. Each case consists of a whole study in which convergent evidence is sought regarding the facts and conclusions for the case; each case's conclusions are then considered to be the information needing replication by other individual cases. Both the individual cases and the multiple-case results can and should be the focus of a summary report. For each individual case, the report should indicate how and why a particular proposition was demonstrated or not.

Developing a protocol is an effective way of dealing with the overall reliability of case studies and is essential in multiple case study designs. The protocol should include: overview of the project, field procedures, study questions and table shells for specific arrays of data, and guide for the study report (Yin, 1989, 70). Evidence for case studies may come from six sources: documents, archival records, interviews, direct observation, participant-observation, and physical artifacts. A report on multiple-case studies offers the option of including no separate chapters or sections devoted to the individual cases. Rather, the entire report may consist of the cross-case analysis, whether purely descriptive or also covering explanatory topics. In such a report, each chapter or section would be devoted to a separate cross-case issue, and the information from the individual cases would be dispersed throughout each chapter or section. With this format, summary information about the individual cases, if not ignored altogether, might be presented in abbreviated vignettes (Yin, 1989, 135).

The methodology overview is provided here in Table 1 and further discussed in the section on the OPM field study that follows.

Table 1 Methodology Overview

Methodology
<p>To collect data on the merit-based HRM practices of organizations fully or partially exempt from Title 5 of the U.S. Code, a multiple case study methodology was used as described in the literature above. After categorizing the various types of governmental organizations based on available information, 28 organizations were selected as potential candidates for the study. The sample of organizations selections was purposive not random following several general criteria aimed at building a picture of the range of organizations by size, location, mission, visibility, and level of unionization. Twenty-one agreed to participate; 18 met the criteria after further discussion with their HRM representatives. An additional organization was added later in the study on the recommendation of another participant.</p> <p>The primary data collection instrument was a telephone survey using a structured survey questionnaire. The structured approach allowed for the collection of the same data from each organization. The questions provided the framework for collecting and analyzing the data in four categories that directly address the practices in four traditionally key components of merit – merit principles, hiring and staffing practices, classification and compensation practices, and employee protections. These became the categories of analysis. The coding and analysis scheme was built into the questionnaire design. Specific questions were identified for each category of analysis. The language of the respondents was captured in describing their organization’s policies and practices. The data are captured in tables embedded in Chapter V and presented as a matrix in Appendix C and in narrative format by organization in Appendix D. Since the data all came from interviews, the research also includes some confirmatory data collection on four of the organizations through a review of documents and studies conducted by oversight organizations. These are presented in table and narrative format in Chapter VI.</p>

C. The OPM Field Study

The broad purpose of the OPM study was to gain further knowledge of human resource systems, policies, and practices in organizations fully or partially exempt from Title 5. Specifically, the two overall objectives of the study were to:

1. Discover how Title 5-exempt organizations build the values and principles of merit, efficiency and effectiveness into their human resources systems and services; and,
2. Identify innovative human resources management policies and practices to share

with other Federal organizations.

For the study, twenty-eight organizations fully or partially exempt from Title 5 were contacted. Twenty-one of those organizations agreed to respond to the telephone survey and eighteen met the criteria for inclusion in the study. The large number of volunteer participants and the range of HRM information gathered allowed us to draw conclusions regarding the broad range of Title 5-exempt organizations that OPM has not previously been able to do.


I was able to frame one of the two study purposes in the context of the specific issue I wished to research: to discover to what extent federal organizations that are fully or partially exempt from Title 5 HR requirements reflect merit in their HRM systems. The key focus in this part of the data collection was the question of merit and its role in the HRM systems and practices of non-Title 5 organizations. The survey respondents were asked specifically if their HRM system was subject to the Merit System Principles under Title 5. This question was then augmented by a range of additional questions to collect evidence of merit-based processes throughout the HRM system, especially in the areas of staffing, classification and compensation, and employee protections. My interest was not in constructing detailed case studies of the personnel practices in these organizations but in drawing a broad picture of merit-based HRM policies and practices in less regulated environments. For this dissertation research and analysis, I will only incorporate those parts of the OPM study that directly address four categories of analysis that are key to determining merit-based policies and practices – merit principles or values, hiring and staffing, classification and compensation, and employee protections. Two additional areas also inform the analysis – unionization and oversight and accountability.

The field study included identifying the study population, selecting participants, developing the survey instrument, conducting the telephone survey of 21 Title 5-exempt organizations, and analyzing the findings. The two major components are briefly described here:

1) Identifying the Study Population and Selecting Participants

I spent a significant amount of time attempting to identify and categorize Title 5-exempt organizations. This task was more difficult than it appears because these organizations represent a complex array of coverage under, and exemptions from, Title 5 requirements, or, are not covered by executive branch personnel regulations. A true picture would require analysis of each organization's authorizing legislation. That level of detail was not necessary for either the OPM study or the dissertation. For this level of analysis, it sufficed to group all types of government entities into four categories of organizations: (1) organizations covered by Title 5, (2) organizations partially or fully exempt from Title 5, (3) organizations not covered by Title 5 or other central management controls of government, and (4) demonstration projects and performance-based organizations. Table 2 describes the organizations that fall into each group.

Table 2 A Continuum of HRM Title 5 Coverage Among Federal Organizations

1) Title 5-Covered Organizations and Positions	2) Government Organizations partially or fully exempt from Title 5	3) Organizations outside of Title 5 and central management controls
<ul style="list-style-type: none"> • Executive Branch organizations unless otherwise exempted by legislation – these organizations are subject to Title 5 laws and regulations and the policies and oversight of OPM, MSPB, FLRA • Excepted Service positions in Title 5-covered agencies – certain appointments and occupations covered by specific rules and regulations under Title 5 but excepted from some of the Title 5 requirements (e.g., VRA, co-op, disability, and political hires, and some occupations (e.g., attorneys, messengers) • Legislative Branch organization covered by Title 5 by statute – the Government Printing Office 	<ul style="list-style-type: none"> • Mixed group of government organizations including government corporations, independent agencies and establishments, and executive branch agencies (or parts of agencies) with legislative approval to create full alternative personnel systems or portions of such systems • Examples include the Tennessee Valley Authority, Postal Service, Federal Reserve Board, Foreign Service, Veterans Health Administration, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Federal Aviation Administration 	<ul style="list-style-type: none"> • Legislative Branch organizations (except for GPO) • Judicial Branch organizations • Government Sponsored Enterprises – privately owned, federally chartered financial institutions, such as Fannie Mae, Freddie Mac, and Sallie Mae, whose employee are considered private not federal.
		
<p>4) Demonstration projects and Performance-based organizations -- Title 5-covered organizations with waivers from some elements of Title 5 to enhance performance either on a test or permanent basis. They remain under the oversight of OPM but possess some of the flexible HRM authorities of the partially exempt organizations in category 2.</p>		

The organizations captured in Category 2 (Government Organizations partially or fully exempt from Title 5) serve as the focus of the dissertation research. Of the nineteen organizations studied, only two fall into another category -- the Library of Congress, which is a legislative branch agency, and the Student Loan Marketing Association (Sallie Mae), which is a government-sponsored enterprise organization. They fall into category 3, organizations that operate outside of Title 5 and the central management controls of

government. In category 2, the variety of "types" found (e.g., government corporations, independent authorities, executive branch organizations, etc.) and the complex legislative histories of each of these entities complicates any effort to account fully for their legal status. Instead, to simplify the problem for the purposes of the field study, the organizations were categorized in a way that supports the stated objectives of the study, *i.e., fully or partially exempt from Title 5.*

The selection of the 28 organizations was based on the following criteria:

1. Organizations from each of the two Title 5-exempt categories – fully or partially exempt from Title 5;
2. A cross-section of those organizations based on size, mission, location, and degree of unionization; and
3. Organizations judged to have potential value to the study (e.g., extent of Title 5 exemptions, known human resources innovations, etc.).

Participation in the study was voluntary and of the twenty-eight organizations contacted, twenty-one agreed to participate. Of these, there were eighteen organizations that, upon further examination, actually met the criteria for participation in the study. A nineteenth participant, the National Security Agency, was added later based on the referral by another organization. The list of participating organizations is shown in Table 3.

Table 2 Participants in the OPM special study on Title 5-exempt organizations

Study Participants		
Central Intelligence Agency	Library of Congress	Sallie Mae
Department of State- Foreign Service	Metropolitan Washington Airport Authority	Smithsonian Institution (Trust Employees)
Farm Service Agency	National Security Agency	Tennessee Valley Authority
Federal Aviation Administration	Nuclear Regulatory Commission	United States Postal Service
Federal Deposit Insurance Corporation	Office of Federal Housing Enterprise Oversight	Veteran’s Health Administration (Title 38 employees)
Foreign Agricultural Service	Peace Corps	

It is important to note here that what might be considered the full population of exempt organizations is not large, although various sources list different organizations. That number probably does not exceed 75. The selection aimed to focus on dominant organizations, such as the Postal Service and the Tennessee Valley Authority, while including smaller, less independent organizations, such as the Office of Federal Housing Enterprise Oversight, and organizations outside of the executive branch, such as the Library of Congress. Several contacted organizations chose not to participate. While the participating organizations offer a strong example of exempt organizations, there is the possibility that a different sample might yield different results.

2) Developing the Survey Instrument and Conducting the Survey

The second part of the study included developing, testing, and administering a telephone survey to the organizations agreeing to participate. A copy of the survey instrument is included as Appendix B. The survey was constructed to provide sufficient data for developing a broad picture of the HRM systems in the studied organizations and identifying general merit-based practices rather than attempting to conduct an in-depth assessment of any of the individual HRM functions. To ensure the questionnaire focused adequately on merit issues, I set up a matrix to match selected questions to the nine Merit System Principles. I then identified four categories of analysis that traditionally have

served as focal points for merit-related issues – merit principles, hiring and staffing, classification and compensation, and employee protections. These categories became the units of analysis for the dissertation. All respondents provided information on the same questions. The survey captured data in the following areas:

- Staffing
- Classification and Compensation
- Performance Management
- Monetary Awards and Non-Monetary Recognition Systems
- Benefits and Family-Friendly Policies
- Employee Development and Training
- Employee Protections and Labor Relations
- HRM Oversight and Accountability

The survey questionnaire included additional questions on demographic and general information to help OPM build a broad picture of the Title 5-exempt organizations. The dissertation focuses only on those questions and sub-questions that reflected the four categories of analysis. The coding plan was built into the questionnaire design. The questions were framed to collect specific information. The findings were captured for each case/organization then aggregated for an understanding of each unit of analysis. These categories of analysis form the key elements of merit in federal HRM:

- **Merit principles or values:** description of the values or principles that support the HRM system
- **Hiring and staffing:** description of coverage and the basic practices used for recruitment, hiring and promotion
- **Classification and compensation:** description of coverage and the basic policies and practices
- **Employee protections:** description of coverage and basic practices under adverse actions and the Whistleblower Protection and Hatch Acts

Other questions that also informed the research but were not reported in category form were on oversight and accountability and on labor relations. The former offer some insight on the flexibility the organizations have to change their systems. The latter is not seen as traditional component of merit; rather, collective bargaining has been seen as a

competing personnel system (see Mosher, 1982; Klinger and Nalbandian, 1998). Labor, however, does directly impact HRM policies and practices in the federal workplace. The chiefs of the human resources departments in these organizations or their designees participated in the interview process. The participants were very cooperative; however, some expressed concern that they would not want their participation to lead to greater OPM oversight of or intrusion into their HRM systems. The specific findings from the survey interviews are presented and discussed in Chapter V.

In conclusion, the study focused on collecting HRM data from unique organizations and presenting a general picture of their HRM practices as they relate to merit. The findings offer a body of knowledge about current practices in a less regulated public arena. The study was published by OPM in August 1998 and is located through the OPM web page (www.opm.gov/studies/index.htm). This field study provided data that had not been previously available from any government source and provides direction for further research.

Chapter V Findings -- HRM Practices in the Title 5-exempt Organizations

The field study provided a broad brush of information about the personnel systems of 19 organizations fully or partially exempt from Title 5 requirements. These organizations cover over a million federal employees. (Of course, the Postal Service accounts for 800,000 of them.) Since there are no simple guidelines about what constitutes merit in these systems, I decided to review the data on each organization in four specific areas of HRM that traditionally mark merit-based systems: merit principles, hiring and staffing, classification and compensation, and employee protections. These areas formed the categories of analysis for the research. The survey questionnaire included questions and sub-questions that directly captured responses in these categories. The results reflect the responses to the questions by the director of human resources or his/her representative.

In this chapter, the findings are displayed by organization in each of the four categories with a brief discussion after each that includes a numerical summary of the results. The findings are also provided in other formats: 1) A one-page summary matrix showing the results by organization and sub-question is located in Appendix C. 2) A narrative account of the findings by organization is located in Appendix D. The responses are self-reported; therefore, the results are reported in the language of the respondents.

A. Merit Principles or Values

Table 4 below describes the merit-related values the survey respondents identified when asked if the Merit System Principles (Merit System Principles) covered at 5 U.S.C 2301 applied to their HRM systems. I also captured any additional values/principles they shared during this discussion or in responding to other questions in an effort to produce a better understanding of the actual value(s) underlying the personnel systems.

Table 4 Merit Principles or Values – Survey Results

Organization	Merit-related values
Central Intelligence Agency	Not covered by Merit System Principles but generally follow them. Stated that the broader organizational values were integrity, objectivity, challenging conventional wisdom, taking risks, and diversity.
Veterans Health Administration, Title 38 (rank-in-person HR system)	Not covered by Merit System Principles but they are reflected in HRM practices through peer review panels and the professional medical standards used in appointment, advancement and retention decisions. HRM practices foster fairness and equitability.
Farm Service Agency	Not covered but merit principles are embedded in the county system directives that are based on equity and fairness.
Federal Aviation Administration	Specifically adopted Merit System Principles in the literature on the new HR system. Stated that policies are checked against them, that there is internal evaluation to ensure adherence, and that the National Employees’ Forum acts as a check. Merit requires balancing fairness and flexibility for results.
Federal Deposit Insurance Corporation	Covered by the Merit System Principles which are incorporated into their merit promotion plan and pay setting practices.
Federal Reserve Board	Not covered by the Merit System Principles but do adhere to merit concepts and use civil service laws and executive orders as appropriate to guide their personnel practices.
Foreign Agricultural Service (rank-in-person)	Not covered but merit principles are embedded in the FAS personnel system and are based on equity, fairness, and open competition.
Foreign Service	Not covered but merit is incorporated into HRM through negotiated agreements each year. The transparency of HR policies for all helps ensure the system remains fair and equitable.
Library of Congress	Not covered by the Merit System Principles as a legislative organization but has core values and performance and staffing plans since 1995 that generally follow the Merit System Principles.
Metropolitan Washington Airport Authority	Not covered by the Merit System Principles but generally follow OPM regulations except for whistleblower protection.
National Security Agency	Covered by the Merit System Principles – states in a 1995 document on the redesign of the NSA occupational structure that any new HRM structure “must be a vehicle for the application of the Merit System Principles.”

Organization	Merit-related values
Nuclear Regulatory Commission	Covered by the Merit System Principles which are incorporated into HRM by policies and practices that establish merit-based hiring and other decision making and are reflected in their institutional values of integrity, excellence, service, respect, cooperation, commitment, and openness.
Office of Federal Housing Enterprise Oversight	Covered by the Merit System Principles and Title 5 for all but classification and compensation.
Office of Thrift Supervision	Covered by Merit System Principles and Title 5 for all but classification and compensation.
Peace Corps	Not covered by Merit System Principles but follows rules of merit similar to those in Title 5.
Smithsonian Institution (Trust)	Not covered by the Merit System Principles but tends to mirror the Federal side, emphasizing fairness, equity, and open competition.
Tennessee Valley Authority	Uncertain about MSP coverage derives their values including merit from their corporate values that reflect merit and fairness.
Student Loan Marketing Association (Sallie Mae)	Not covered by the Merit System Principles. Stated that all personnel practices are consistent with corporate core values and in compliance with the law. As a Government sponsored enterprise, its employees are not considered federal for any purpose.
United States Postal Service	Not covered by the Merit System Principles. No articulated set of organizational values or principles but their corporate interests are governed by their focus on Customer Perfect! — the voices of the customer, business, and employees. Concern for employee satisfaction reflects interest in fairness in HRM practices.

Summary/Discussion

The responses to the question about actual coverage by the Merit System Principles revealed some uncertainty by the respondents about specific coverage, especially where the organization is generally exempt from Title 5. A strict reading of Title 5 on Merit System Principles coverage at 5 U.S.C. 2301 would suggest that more of the organizations may actually be covered; but it would take a careful analysis of the individual legislative authorities and Title 5 to make a final determination.

In summary, of the nineteen organizations responding to the survey, four stated they are covered by Title 5 and 15 stated they are not. A summary of this data is captured here:

Table 5 Numerical Summary of Merit Principles or Values Results

Category of Analysis	Summary of findings
Merit values or principles (N=19)	<p>Covered=4; Not covered=15 (3 administratively follow, 4 generally follow, 7 cited values of fairness and/or equity, 1 made no statement of values)</p> <p><i>Results:</i> 18/19 referenced merit principles and/or values of equity and/or fairness</p>

I was interested in hearing how the respondent discussed values if not covered by the Merit System Principles. I reported the responses to the question and additional information about values in the organization, if provided. Because the survey data is self-reported, I used the language of the respondents. “Generally follows” tells me from a practitioner’s perspective that the organization recognizes and promotes the role/value of merit as embodied in the Merit System Principles; but they do not have to be held accountable for following them. Because this is potentially too vague a response, the questions covering the other three categories collect data about specific practices that would reveal more about their actual merit-related practices (and values, as well). There are few specified requirements identified in the Merit System Principles. I was more interested in hearing the respondents discuss what values they do embrace and feel are reflected in their HRM policies and practices. So while most readily stated that they follow merit principles, they were much more comfortable with expressions of fairness and equity than merit.

Of greater importance in the survey responses, however, was the unequivocal position most of the organizations took on embracing merit principles or merit-based organizational values within their HRM systems. The only organization that did not identify merit as playing a role in its HRM system was Sallie Mae, the government-sponsored entity (GSE) included in the study where the employees are considered private sector rather than public. The Sallie Mae representative stated that HRM is driven by corporate principles that ensure employment decisions are in compliance with all relevant laws. Most of the other respondents cited either the Merit System Principles or values such as equity, fairness, and open competition as key merit values underlying their HRM

policies and practices. The Postal Service did not reflect any particular emphasis on merit as an HRM value base but suggested that a corporate emphasis on employee satisfaction reflected their concerns for fairness in HRM policies and practices.

The most interesting finding was how frequently the words fairness and equity were repeated as associated with merit since they were not raised or alluded to in the questions or discussions. In the current federal workplace, fairness usually refers to how a person perceives himself or herself to be treated and equity denotes some standard against which to judge fairness. The words, however, do not tell us what fairness and equity mean in practice. The next three tables look for evidence of merit-based practices in the key HRM areas of hiring and staffing, classification and compensation, and employee protections.

B. Hiring and Staffing

Historically, the hiring process has served as the central component of a merit-based HRM system, crafted as a means of restricting patronage appointments and building a competent, politically neutral workforce. This is also the area that is under attack in government reinvention as not being responsive to the demands for more flexible and responsive personnel practices, especially in tight labor markets. To draw a picture of the hiring and staffing practices, the survey respondents described practices in the categories of recruitment, rating and ranking of applicants, the use of veterans preference, and internal promotion practices. The responses are captured in Table 6.

Table 6 Hiring and Staffing – Survey Results

Organization	Recruiting	Rating and ranking	Vet Pref.	Promotion
Central Intelligence Agency	--primarily entry level recruitment --advertise and recruit worldwide --use internet, vacancy announcements, job	--recruiters rank candidates against standards --selections are made from the lists of eligibles	No	--use evaluation panels for this rank-in-person system --employees compete with everyone in their

Organization	Recruiting	Rating and ranking	Vet Pref.	Promotion
	fairs, campus visits, referrals			occupation and grade
Veterans Health Administration (Title 38)	--wide recruitment net: national ads, internet, posted announcements, electronic mail, conventions, job fairs, centralized placement service with automated inventory of applicants	--candidates are compared to the job requirements --selections are based on qualifications --as a rank in person system, employees are appointed and advanced to grades commensurate with their qualifications	No --when quals are generally equal, vets receive preference in appointment & retention	--employees are advanced based on qualifications --annual performance review by a standards board of peers to determine advancement eligibility
Farm Service Agency	--announces vacancies but relies on recommendations and candidates known to the local committees --also uses job ads and open continuous announcements	--no rigid rating and ranking system --comparison of relative qualifications based on education and experience --groups candidates in categories	No	--vacancies are posted on the internal LAN --have both career ladders and competitive promotions
Federal Aviation Administration	--use of internet to announce jobs internally and externally	--centralized applicant pool system (internal register) --posted vacancies --shortage category hires --traditional rating and ranking with crediting plans/KSAs and additional points for vets --convert temps w/o more competition	Yes	--managers may choose to automatically consider <u>all</u> eligible employees in the area of consideration rather than advertise a vacancy
Federal Deposit Insurance Corporation	Title 5-covered	Title 5-covered	Yes	Title 5-covered
Federal Reserve Board	--targeted recruitment for economists at highly ranked institutions	--hires based on individual qualifications compared to job requirements	No	--career ladders, competitive promotions, reclassifications

Organization	Recruiting	Rating and ranking	Vet Pref.	Promotion
		--can extend the 1-yr probation		
Foreign Agricultural Service (connected to the Foreign Service Officer system)	--internal labor pool of agricultural marketing specialists or economists (initially hired under Title 5 into the competitive service thru active college recruitment program)	--internal FAS exam and interviews of current employees --selections made by a Board of Examiners --5 year candidacy then certified by a tenuring board or returned to competitive service (similar to an extended probationary period)	No --the exam is open to internal candidates only --vet pref would be applied for initial entry into the competitive positions at the FAS	--annual promotion/selection board process to determine eligibility
Foreign Service (rank-in-person system)	--national announcement of examinations	--written and oral exams --candidates ranked by a panel of agency officials against the needed skills and personality traits and listed to be selected as needed	Yes	--for 2 years, promotions are automatic then competitive based on eligibility determinations by panels that rank-order candidates
Library of Congress (court order in 1995 required the creation of a merit system)	--uses targeted recruitment for diversity and the many skill requirements the Library needs, such as language expertise	--uses statistically valid natural breaks to identify most qualified candidates --posts vacancies; rate and rank based on crediting plans; 5 levels of review to ensure no discrimination --do not use the rule of 3	No	--promotions based on competition or through career ladders
Metropolitan Washington Airport Authority	--advertising, internet --validated tests for police officer, police sergeants, and new firefighters as well	--for some positions, test results are used --for other positions, pd review, KSAs identified; posted vacancies;	No	--competitive promotions; internal candidates may be placed on a separate list from

Organization	Recruiting	Rating and ranking	Vet Pref.	Promotion
	as validated physical requirements for firefighters	qualifications analysis; selecting official justifies selection from a list of candidates		external applicants and be considered in lieu of the external candidates
National Security Agency	NSA did not participate initially in the study so this data was not collected	--manager selects tasks, computer defines skills needed, job title and grade/band; skills become qualifications requirements --use polygraph	--Not in hiring --only in RIFs and adverse actions	--panel determines eligibility for promotion --professional program for promotion to grades 13 and higher
Nuclear Regulatory Commission	--advertising, campus visits, active applicant supply file --vacancies are broadcast internally and externally with targeted recruitment for women and minorities	--rate and rank applicants into three categories similar to the USDA demo project --managers are responsible for hiring and promotion decisions; receive training to qualify, rate, rank, select and give feedback to those not selected	Yes (same as Title 5)	--post some jobs internally only --promotions through career ladders, competition, and accretion of duties
Office of Federal Housing Enterprise Oversight	--actively recruit minorities and disabled candidates	--covered by Title 5	Yes (same as Title 5)	--covered by Title 5
Office of Thrift Supervision	--covered by Title 5	--covered by Title 5	Yes	--covered by Title 5
Peace Corps (unique 5-year employment rule)	--advertises positions --maintains open continuous announcements --advertises in special publications for targeted skills,	--uses basic qualifications to determine eligibility --selecting official interviews (optional), selects from roster of candidates and justifies, or creates	No	--when supervisors think an employee's skills warrant promotion, they submit a request and justification

Organization	Recruiting	Rating and ranking	Vet Pref.	Promotion
	use the internet --partners with educational institutions	panel to select		to HR --often, promotions are advertised within the org so others can apply
Smithsonian Trust Personnel System	--limited recruiting; large number of applications for every announcement --posts vacancies, uses open continuous announcements, internet	--rate and rank like Title 5 except for vet pref --managers may ask for exceptions from the rules --EEO Office reviews selection and promotion actions	No	--like Title 5 but exceptions can be granted --uses peer review process for senior research positions
Tennessee Valley Authority	--uses external recruitment mostly for nuclear positions --internet vacancy announcements --uses targeted recruitment --uses relocation bonuses	--may use mgt selection board to interview for behavioral competencies while selecting official interviews for technical competencies --may make selection from a Resumix list of candidates, usually after a structured interview --probation varies by union	No for white collar jobs; yes for trades and labor positions --considers vet pref & diversity to some degree in rating & ranking & RIF to break ties	--fills jobs mostly thru internal selection & promotion --uses internal intranet vacancy announcement system --may use reclassification but most jobs are posted and competed
Sallie Mae – Student Loan Marketing Association (employees not federal)	--receives resumes through employee referrals, newspaper ads, internet postings and internal job postings --uses referral bonuses available for all occupations, higher for IT referrals	--reviews resumes --candidates are considered based on job qualifications with consideration given to any affirmative action goals for the year --no hire or promotion is ever made based on any	No	--jobs are posted internally 3 days before going outside --promotions occur through a career system, management determination, & competition (posting)

Organization	Recruiting	Rating and ranking	Vet Pref.	Promotion
		factor prohibited by applicable law		
Postal Service	--posts non-craft vacancies -- advertises the postal exam for most hires	--rating and ranking is based on entrance exams with extra points for vet pref --hires craft employees from competitive registers using validated entrance exams --runs registers out of each district office, applies rule of three, use structured interviews --collective bargaining agreements cover filling of covered positions	Title 5 vet pref for hiring but not RIF for most jobs	--craft promotions are based on seniority under union contracts --non-bargaining unit positions are posted bi-weekly --mgt jobs are usually filled from within based on the STARS merit promotion process; applications are reviewed and interviews and selections are done by an official or committee

Summary/Discussion

In the exempt organizations the findings show that most are not covered by the Title 5 hiring and staffing regulations but do provide formal rating and ranking systems and even more have formal promotions systems. Only one third provided veterans preference to candidates/employees. The findings are summarized here:

Table 7 Numerical Summary of Hiring and Staffing Results

Categories of Analysis	Summary of findings
Hiring and staffing (N=19) sub-categories: hiring rating and ranking procedures veterans preference	Hiring: covered=3; not covered=16 (2 administratively follow Title 5) Rating and ranking: covered 3; not covered=16 (12 provide formal procedures, 2 have loose procedures, 1 does not have a formal system) Veterans preference: covered=8 (6 fully and 2 some occupations only); not covered=11 (1 gives informal

promotion system	consideration) Promotion system: covered=3; not covered=16 (15 described formal promotions systems, 1 did not) <i>Results:</i> 16/19 are exempt from Title 5; 12 provide formal rating & ranking procedures; 6 apply vet preference for some or all occupations; 15 provide formal promotions systems
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Since the Title 5-exempt organizations have fewer regulatory requirements in the hiring process, clear differences in their hiring policies and practices were expected. The results of the survey, however, showed there were few major differences in most recruiting, hiring, and promotion practices with the important exceptions of the rule of three and veterans preference. None of the organizations exempt from Title 5 staffing regulations apply the rule of three unless they are obligated also to apply specific Title 5 veterans preference regulations. For many managers working in Title 5 covered agencies, the rule of three is considered a serious inhibitor to effective management. If this requirement were lifted and if veterans preference were more flexible, many would perceive the system as more user friendly.

Other differences were found in the variety of timeframes required for various personnel actions and in the reduced emphasis on minimum areas of consideration for vacancy advertising (although in a tight labor market this is not a major issue). In the areas of recruitment and hiring, it is important to note that the specific procedures followed reflect how merit is perceived and managed in the organization. This study did not pursue that level of detail but suggests future areas for research. These are also areas ripe for collective bargaining. With eleven organizations housing at least one bargaining unit, merit practices are supplemented normally with additional procedures to ensure opportunity and fairness for internal employees.

Most of the 15 organizations exempt from Title 5 staffing requirements expect selecting officials to play a major role in the hiring process, for example, by participating in the rating and ranking process and providing written justification to document selections. The Nuclear Regulatory Commission has delegated merit selection to line managers who are responsible for hiring and promotion decisions. The Library of

Congress holds managers accountable for filling positions based on the organization's staffing plan that shows diversity imbalances in the workforce. The Smithsonian Institution uses peer review panels in both the competitive and "trust fund" systems for positions at grades 13 and above. The Peace Corps holds managers and supervisors responsible for differentiating among candidates and for justifying their selections. The Postal Service and the Tennessee Valley Authority (TVA) have incorporated structured interviewing in their selection processes to help selecting officials improve their hiring selections. The TVA also uses a management selection board for some selections to interview applicants for behavioral competencies while the selecting manager interviews for technical competencies. The board ranks the candidates and the selecting official makes the selection.

Management responsibility for staffing decisions is most pronounced in the rank-in-person systems. In a rank-in-person system an employee is "classified" by a panel of managers/experts according to the skills and achievements he or she brings to the work of the organization. This contrasts with the "rank-in-position" approach in the Title 5 classification system, which classifies jobs based on the duties of specific occupations. (Title 5 does have two rank-in-person categories, the senior executive service and scientific and engineering research positions, which are separate personnel systems under Title 5.) Four organizations in this study have rank-in-person systems. At the Central Intelligence Agency, the State Department Foreign Service, the Foreign Agricultural Service, and the Veteran's Health Administration (Title 38), hiring and promotion decisions are based on expert panel reviews of qualifications. Promotions are made from eligibility lists; some organizations have "up or out" promotion requirements which limit the idea of guaranteed employment based on seniority and focus on the qualifications of the employee rather than the requirements of the position.

Rating and ranking procedures vary among the organizations, from formal testing and central registers in the Postal Service to simple resume reviews by selecting officials at Sallie Mae. Most use some process for comparing the candidates; for example, the Nuclear Regulatory Commission places applicants in one of three categories while the

Library of Congress uses a statistically validated scoring scheme to identify the most qualified candidates. Four organizations use formal validated examinations in the hiring process. The Metropolitan Washington Airport Authority (MWAA) uses tests for police and firefighter positions; the Postal Service continues to use the clerk test and maintains large national registers; the Foreign Service has an entry-level exam; and the Foreign Agricultural Service (FAS) has an internal exam for selection for Title 22 (Foreign Service) positions. Several of these exams have survived legal challenge. At the other end of the spectrum, the Farm Service Agency follows rather loose procedures in comparing the relative qualifications of applicants. Candidates are often referred from local committees .

Most of the organizations use a one-year probationary period (one indicated this can be extended if circumstances warrant); the USPS has a 90-day probation. Three organizations have particularly interesting probation and appointment policies. The Foreign Agricultural Service selects candidates for its Title 22 Foreign Service Officer positions from current employees who take an internal competitive examination. Successful candidates move laterally into the Foreign Service. After a candidacy period of five years, they must be certified by a tenuring board or they return to a position in the competitive service at the FAS. The Peace Corps has a five-year employment rule. Employees can have a maximum of two 2½ year appointments. The Peace Corps reports that this limitation restricts the hiring pool but at the same time it reduces performance and conduct-related actions. The CIA, in its streamlining and restructuring efforts, is proposing a time-limited appointment of 3 to 5 years to serve as a probationary or trial period.

Like many other federal organizations, the non-Title 5 organizations also struggle with improving the usually long and cumbersome recruitment and hiring processes. In response to organizational needs, these exempt organizations are moving to develop institutional mechanisms to improve the timeliness and quality of the hiring process. The Federal Aviation Administration is testing several tools to continuously improve the hiring process: the use of a Centralized Applicant Pool System that provides automatic

consideration for applicants and the opportunity for managers to hire without announcing a vacancy, "on the spot" hires for special program needs and hard-to-fill positions, elimination of time-in-grade, use of the Internet for job applications, non-competitive conversion from temporary to permanent status if competition is held initially for the temporary position, standardized position descriptions, and reduction in the number of hiring authorities to three (permanent, temporary with time limit, and temporary without time limit).

Automation is also helping to improve the hiring process. Several organizations are using or planning to use the same commercial software for managing their HR Information System (HRIS) systems, tracking resumes, and qualifying (rating and ranking) applicants (PeopleSoft® and Resumix® were frequently noted). In the FAA's automated staffing system, Selections Within Faster Times (SWIFT), vacancy announcements are placed on the Internet and automated tools are available for creating, copying, and storing vacancy announcements. FAA states that this has reduced the time required to advertise vacancies by more than 80 percent and provides greater assurance that employees and outside applicants have timely access to vacancy announcements. The system will review qualifications and assign ratings and rankings, enabling managers to get referral lists over 90 percent faster.

C. Classification and compensation

Title 5 agencies have complained most consistently and aggressively about classification and compensation in competition with the private sector in attracting and retaining high quality candidates and staff. The quest to change the rules under which agencies operate has taken several forms over the past 25 years. In the 1970s and 1980s, OPM began to increasingly grant special salary rates for many occupations in hard-to-recruit locations. In 1990, the Federal Employees Compensation Act authorized locality pay for the annual pay adjustment as an across-the-board way of coping with the pay difference problem. Almost all of the demonstration projects include the use of paybanding rather than the standard classification and general schedule pay structure. Finally, agencies that have requested and received exemptions from Title 5 have at a

minimum received a waiver from classification and compensation requirements. In some instances, this included benefits (usually the option to add benefits but not alter standard government systems). Table 8 presents the findings in this area as reported by the participating organizations in this research.

Table 8 Classification and Compensation -- Survey Results

Organization	Classification	Compensation
Central Intelligence Agency (CIA)	<p>Current: --position-based classification system with generic positions descriptions</p> <p>Moving to: --collapsing occupations into 34 temporary groupings and building occupation-specific questionnaires --major job analysis, skills analysis, and workforce analysis to identify basic and cross-functional skills</p>	<p>Current: --generally follows Title 5 --pay progression based on time-in-grade, performance, and new skills as judged by promotion panels --limited broadbanding in place</p> <p>Moving to: --new system of broadbanding where skills development is separated from results evaluation and ties directly to pay based on growth in skills, abilities, and accomplishments --will retain GS ranges but may vary by occupation and may have special pay scales --pay basis will be merit not longevity</p>
Veterans Health Administration (VHA-Title 38)	--rank-in-person not in position	<p>--bases pay progression on performance and the acquisition of competencies/skills --nurse locality pay act of 1990 set up the first locality-based pay in govt</p>
Farm Service Agency (FSA)	--classification system similar to Title 5	--pay is equivalent to GS; basis for pay progression is seniority/length of service, performance, acquisition of competencies/skills, and training completed
Federal Aviation Administration (FAA)	--fewer and shorter position descriptions, automated library of pre-classified pds, delegated classification authority to line managers	<p>--flexible pay setting --recruitment, relocation and retention bonuses --gainsharing --negotiated pay for bargaining units --new compensation system for non-bargaining unit employees is a broadbanding system</p>

Organization	Classification	Compensation
Federal Deposit Insurance Corporation (FDIC)	--generally follows the GS classification system	Current: --GG-based schedule with 15 grades and 19 steps so employees get increase each year --pay scale is 10% higher than GS with a regional differential --basis of pay progression is seniority/length of service and performance based on ratings. Moving to: --performance-based pay system negotiated with NTEU --1998 moved to an open pay range system (pay banding) that retains 15 grades but no steps --conducts salary surveys as required by legislation for the banking agencies --the negotiated system guarantees some payout for fully successful ratings to ensure fairness for all employees and funding availability but FDIC hopes to move toward greater linking of pay to performance management system
Federal Reserve Board (FRB)	--created their own classification system using the factor evaluation system as a model; developed minimum qualifications --issued a guide to help managers write position descriptions; HR audits positions --two “point factor” job evaluation plans: 9 characteristics for nonsupervisory jobs and 7 for supervisory jobs --in creating their system, they benchmarked first then realigned occupations to develop a new structure.	--annual salary surveys with job matching with private sector and FIRREA organizations --compensation program consists of the job description, job evaluation, market analysis, and salary structure which groups all jobs into grades and salary ranges including a minimum, a midpoint, and a maximum; there is a booklet for managers to describe “the compensation program” --increases depend on performance and where the individual’s salary falls within the salary range --pay scale is divided into quintiles with definitions of performance tied to each. --longevity and seniority are not the basis for awarding merit increases but are recognized through the cumulative effect of performance-based increases --there is an annual budget for pay and

Organization	Classification	Compensation
		<p>performance distribution</p> <p>--cash awards can be granted any time; no bonus systems</p>
Foreign Agricultural Service (FAS)	<p>--follows the Foreign Service rank-in-person classification and compensation systems.</p>	<p>--within FAS, a senior officer group reviews performance appraisals and ranks people for promotions and meritorious service awards, which are equivalent to a step increase</p>
Foreign Service (FS)	<p>--as a rank-in-person system, managers and supervisors have authority to create position descriptions and classify jobs or duties.</p>	<p>--compensation is based on a person's rank</p> <p>--differentials exist for different parts of the world for danger or hazards or language proficiency.</p> <p>--salary scale has 6 grades</p> <p>--each bureau and post has a panel to approve awards for individual and/or team performance</p>
Library of Congress (LoC)	<p>--even though technically not covered by Title 5 as part of the legislative branch, the LoC elected to apply the Title 5 classification and compensation systems</p> <p>--concerns over protections from employee complaints over fairness of the compensation system.</p> <p>--job analysis serves as basis for positions descriptions from which the skills, knowledges, and abilities and selective placement factors are drawn.</p>	<p>--pay adjustments are based on performance ratings</p> <p>--SES has its own performance-based pay system (4 elements – each outstanding rating warrants a \$2000 award with an extra \$2000 potential for 4 outstanding elements)</p> <p>--managers at 15 and below chose to follow the civil service system of QSIs and cash awards</p>
Metropolitan Washington Airport Authority (MWAA)	<p>--started with Title 5 classification and compensation system.</p> <p>--moved to broadbanding system in 1990</p> <p>--HR conducted comprehensive review of all positions; salaried employees completed a PAQ; HR audited 50% of those jobs and rewrote all pds.</p> <p>--hourly jobs were based on a tailored factor evaluation</p>	<p>--hourly pay consists of steps with advancement based on seniority/length of service and fully successful ratings</p> <p>--salaried employees have a pay for performance system based on ratings</p> <p>--the ratings over time determine how quickly employees move from the minimum to the maximum range of the band</p> <p>--seniority and length of service for hourly, police and firefighters; steps built into the pay structure</p>

Organization	Classification	Compensation
	<p>system based on work at airports</p> <p>--a rank-in-man system is used for police and firefighters</p>	<p>--managers follow broad guidelines in granting awards as appropriate (HR audits every 6 months)</p>
<p>National Security Agency (NSA) (not part of the original study but added in second phase as recommended by CIA)</p>	<p>--current occupational structure based on 1975 extensive job analysis.</p> <p>--occupational standards ensure uniformity and effectiveness in the administration of job classification and personal qualification evaluations, based on a point-factor system</p> <p>Moving to skills-based system:</p> <p>--looking at skills required to do the job rather than classifying positions by tasks</p> <p>--the job skills analysis identifies tasks and related skills and uses a weighting system to identify similarities in skill requirements between occupations</p> <p>--with selected tasks will generate skills, title, grade, and qualifications</p>	<p>--has the authority to set pay but chooses to adopt and adapt the GS scale (GG system)</p> <p>--special pay rates from approximately 12 occupations which returns to the standard scale at grade 12</p> <p>--have used special pay for languages in the past</p> <p>--there is a technical pay track for senior staff as well as a managerial track for executives</p> <p>--promotions to 13 and above are based on education, experience, and job assignments as well as testing and performance</p> <p>Moving to broadbanding system:</p> <p>--emphasis on appropriate compensation rather than tenure-based within-grade increases and promotion eligibility</p>
<p>Nuclear Regulatory Commission (NRC)</p>	<p>--classification system is a benchmarked evaluation system based on graded duties</p> <p>--line managers have authority to classify positions with HR approval</p>	<p>--administratively follows GS and FWS systems for ease of pay administration and to sustain interagency transfer options</p> <p>--use flexible pay setting for some shortage category occupations based on salary surveys</p> <p>--Title 5 provisions of the Executive Schedule apply</p>
<p>Office of Federal Housing Enterprise Oversight (OFHEO)</p>	<p>--classification is based on 10 occupational groups, each with three broad pay bands</p>	<p>--bands have min, mid and max points; may move to grades and steps to better mirror comparability</p> <p>--required by law to have comparable pay and benefits with other federal financial regulators</p> <p>--director has authority to set pay which is not capped at the ES level as is the</p>

Organization	Classification	Compensation
		<p>norm</p> <ul style="list-style-type: none"> --self-imposed pay cap of \$142,000 --pay increases are 100% merit-based (performance ratings); no longevity increases --payouts taken in cash or added to base pay except for those in 4th quartile (cash required)
Office of Thrift Supervision (OTS)	<ul style="list-style-type: none"> --generic position descriptions based on skills, knowledges and abilities and job requirements --HR retains classification authority 	<ul style="list-style-type: none"> --under FIRREA must maintain pay parity with other federal financial regulators. --uses pay for performance system with a 5 level rating system --pay scale comprises 30 grades, nationwide pay system with rates varying by geographic location. --quality pay adjustments of 3% limited to 10% of workforce based on supervisor nomination.
Peace Corps	<ul style="list-style-type: none"> --loosely follows Title 5 classification but not a well-defined system --managers have full authority to write position descriptions and classify jobs --classifications are generally based on duties and required competency levels but these are often difficult to determine. --pds are often vague with little coordination between HR and managers to clarify the complexity of the jobs 	<ul style="list-style-type: none"> --do not follow the GS schedule --there are two pay systems each with 14 steps --pay progression is based on seniority/length of service and satisfactory performance --employees can earn more pay based on level of language proficiency --employees are eligible for a meritorious step increase after three months but no more than one MSI a year --employees can earn more pay if they reach a certain level of language proficiency --agency can negotiate salaries with new hires, offering up to 6% more than what they are currently making
Smithsonian (Trust)	<ul style="list-style-type: none"> --administratively follow Title 5 classification for equity with the Title 5 employees <p>Note: respondent indicated there may be movement toward</p>	<ul style="list-style-type: none"> --administratively follow Title 5 GS schedule --pay progression is based on seniority/length of service, performance, competency/skill levels --as an exception to Title 5 practices, the Trust employees can receive up to two

Organization	Classification	Compensation
	using the flexibilities available to the Trust system	steps or merit increases per year if rated outstanding
Tennessee Valley Authority (TVA)	<p>--TVA is moving from a Hay-based system to a market system to respond to the deregulation of utilities industry. The Hay system values power and authority and thus encourages the building of large staffs and technical skills, which is inconsistent with downsizing and movement toward softer skills like leadership and management. The Hay system also encourages internal equity within pay grades and job classes</p> <p>--TVA recognizes jobs are different even within the same classes and feel they need a classification and pay structure focused externally on the market where jobs are rated relative to the market not to points based on technical skills & knowledge. The surveys are difficult because the TVA jobs are only comparable in the utility industry; they have a problem getting good data for administrative jobs</p>	<p>--under TVA legislation, blue-collar pay is based on prevailing rate surveys within the industry. TVA managers sit with unions to explain industry rates.</p> <p>--Managers are involved in validating the market data and classifications for their areas. They defend the survey data when challenged by employees. Unions can appeal rate decisions to Department of Labor. COLAs are negotiated</p> <p>--white collar positions follow a similar approach using survey data but not so directed by law; no appeal right to DoL but there is an internal appeal mechanism</p> <p>--recently replaced 11 pay grades with 2 broad bands (starting with management at first). The point of reference is market compensation not the mid-point of a pay scheme. --managers are placed in the pay band based on a market survey, performance, and budget availability. TVA usually purchases market survey data from large survey firms. The system gives latitude for team performance and pay</p> <p>--business plans contain strategic goals for the TVA; performance goals are tied to these</p> <p>--Pay increases are based on meeting org goals</p> <p>--managers have a pot of money for increases in base pay and must decide the distribution</p> <p>--employees may not receive an increase if deemed not warranted</p> <p>--gainsharing is based on organization performance and profitability of the corporation</p> <p>--represented employees get same payout (a flat share); managers can receive up to five percent</p>

Organization	Classification	Compensation
Student Loan Marketing Association (Sallie Mae)	--the classification system is Hay point factor-based with job slotting	--14 grades/pay ranges for non-executive employees --pay progression is based on performance, position in range, and size of annual merit-pool --variable pay system includes an annual discretionary bonus for exempt and senior employees based on senior management recommendations
U.S. Postal Service (USPS)	--classification is the traditional Hay point-factor system based on the level of responsibility and the complexity of the position --used the Hay group to validate their classifications. The job evaluation unit does analysis for new positions and assigns a grade level with steps --internal equity is a pressure point for grade parity	--pay system includes: step system for bargaining unit employees, pay ranges for non-bargaining unit employees, and one broad band for executives --bargaining unit pay rates and COLAs are subject to negotiation --pay progression includes step increases based on seniority. Bargaining unit employees also have Special Achievement Awards, QSIs, and Meritorious Service Awards --pay rates for EAS (executive and Administrative Schedule) non-bargaining unit employees are done in consultation with their employee organizations. EAS positions have 25 levels (grades), each with minimum, mid, and maximum points --increases in pay for EAS employees is based on either the EVA payouts for exempt EAS employees or through performance evaluations for non-exempt EAS employees --non-bargaining unit employees participate in a team-based, variable pay/bonus program for each of the Performance Clusters based on the 3 national goals of the Customer Perfect! Management system. --all non-bargaining union pay increases are merit-based with no step increases or COLAs --EVA (Economic Value Added) bonus system is based on organizational financial performance

Organization	Classification	Compensation
		--bonuses are a flat rate payout based on meeting organization goals. All eligible employees in a unit receive the same payout --poor organizational performance means no payout

Summary/Discussion:

All of the study participants are exempt from Title 5 for classification and compensation and most have developed their own systems. Two organizations administratively follow Title 5 for classification and four follow closely the compensation system; but others diverge considerably from Title 5. The findings can be summarized as:

Table 9 Numerical Summary of Classification and Compensation Results

Category of Analysis	Summary of findings
Classification and compensation (N=19) sub-categories: classification compensation	Classification: covered=0; not covered=19 (18 demonstrate equity-based systems, 1 has a loose process) Compensation: covered=0; not covered=19 (all demonstrate equity-based systems) <i>Results:</i> 19/19 are exempt from Title 5; with one exception in classification, all provide orderly, defined systems based on a combination of internal and external equity

Classification and compensation are the two most sought-after exemptions Title 5. The ability to attract and retain employees in highly competitive or shortage category occupations or to match pay in similar private sector arenas like finance and banking is a key flexibility organizations have requested and received. Alternative classification and compensation systems provide the exempt organizations flexibility to meet competitive needs and to move from seniority-based pay systems to performance-based alternatives. The Federal Reserve Board, the Tennessee Valley Authority, the Federal Aviation Administration, the Central Intelligence Agency, the Nuclear Regulatory Commission, the Office of Thrift Supervision, the Metropolitan Washington Airport Authority, the

Office of Federal Housing Enterprise Oversight, and Sallie Mae have all developed (or are in the process of developing) their own classification systems, based on benchmarking, factor evaluation systems, or other job analysis assessments. Several others including the Postal Service and the Tennessee Valley Authority use Hay- or market-based systems. Correspondingly, the majority of the organizations exempt from Title 5 compensation systems have also established pay systems that are more flexible and better fit their unique environments and organizational needs (pay-for-performance systems, broad bands, variable pay and others).

An example of an organization with special needs in the areas of classification and compensation is the Office of Federal Housing Enterprise Oversight (OFHEO), where the authorizing legislation requires that the organization have comparable pay and benefits programs with other Federal regulators (e.g., Office of Thrift Supervision, Federal Deposit Insurance Corporation, Federal Reserve Board, etc.). OFHEO uses a broad band pay system to help recruit for unique and hard-to-fill positions. Auditors at OFHEO must have a high level of knowledge and expertise related to the banking industry. Therefore, the majority of the OFHEO's recruiting efforts are concentrated in the banking industry, Wall Street, and other financial forums. In order to attract high-quality candidates, OFHEO must be able to offer comparable compensation packages and the broad band system has given it more flexibility to do so. However, the respondent reported that there have been some problems with employees reaching the top of their pay band too quickly, particularly if the employees are recruited at high points in the pay band. To remedy this situation, they have devised formulas for employees at the top of their bands so that some or all of the salary increases are granted as cash awards rather than increases to base salary.

The Postal Service has implemented both a broad band system and merit-based pay for all of its non-bargaining unit positions (approximately 80,000 employees). Increases in salary are determined solely by performance and there are no longer any step increases or cost-of-living adjustments (COLAs). Other organizations that have implemented pay-for-performance systems include the Office of Thrift Supervision and

the Federal Deposit Insurance Corporation (FDIC). The FDIC recently negotiated pay for performance system for the first time.

Several of the organizations outside the Title 5 classification system have moved to, or are in the process of moving to, market-based classification and/or compensation systems. For example, in order to be competitive in the newly deregulated utilities industry, the TVA is moving away from a traditional Hay-based classification and compensation system to a market-based system. TVA officials state that their former classification system tended to put value on power and authority and subtly encouraged managers to build large staffs with specific technical skills. This is inconsistent with TVA's movement toward deregulation, downsizing, and increased emphasis on the "softer" skills such as leadership and management.

It should also be noted that five exempt organizations reported that they administratively follow Title 5 for either classification or compensation or both because it is easier than establishing their own systems, particularly if only a portion of the organization is outside of Title 5. For example, approximately one-third of the Smithsonian Institution's work force is outside of Title 5 -- these employees are administered through a trust fund system. However, to promote fairness and equity between them and the Title 5 employees with whom they work side-by-side, the Smithsonian has chosen to manage both sets of employees in essentially the same manner and under the same systems. The NRC follows the Title 5 pay structure for ease of pay administration and to sustain inter-agency transfer options for its employees. These are exceptions, however; most organizations are taking advantage of their exempt status to craft classification and compensation systems that offer more flexibility to their managers and employees. The Peace Corps may be the outlier in this set of data. Their classification system is not well defined by their own report. Managers have authority to create jobs and classify duties; and there is little coordination between HRM and the managers.

D. Employee protections

A unique component of merit systems for the public sector has been the due process protection built into Title 5 HRM policies and practices. In looking at the Title 5-exempt HRM systems for evidence of such protections, the survey included questions relating to the handling of adverse actions, grievance and appeals options (such as the Merit Systems Protection Board, if covered), Hatch Act violations, and Whistleblower reprisals. Table 10 covers the information provided by the respondents in these areas.

Table 10 Employee protections -- Survey Results

Organization	Adverse actions	MSPB or other external appeals	Hatch Acts	Whistleblower Protection Act
Central Intelligence Agency	--not covered --has internal due process procedures but the director has authority to fire without due process for National Security purposes	--none provided to employees --internal appeal rights vary according to action taken --employee can sue the agency	--not covered --IG investigates violations	--not covered --IG investigates charges
Veterans Health Administration (Title 38)	--not covered --has extensive procedures to follow --uses ADR and peer review of grievances	--Title 38 preference eligibles only have appeal rights to MSPB	--covered by Title 5	--covered by Title 5
Farm Service Agency	--covered by Title 5	--none provided to employees --county employees appeal thru NASCO to state director to Hqtrs	--administratively follow Title 5	--not covered
Federal Aviation Administration	--not covered --provides due process under Guaranteed Fair Treatment system --faster grievance and appeals procedures for nonbargaining unit employees	--nonbargaining unit employees can appeal decisions to a panel that includes an outside arbitrator through the Guaranteed Fair Treatment	--covered by Title 5	--special hotline set up for this purpose --complaints investigated by the IG

Organization	Adverse actions	MSPB or other external appeals	Hatch Acts	Whistleblower Protection Act
	--negotiated grievance and appeal process for covered employees	Program --April 2000 Congress reinstated right to appeal to the MSPB as sought by employees		
Federal Deposit Insurance Corporation	--covered by Title 5	--covered by Title 5	--covered by Title 5	--covered by Title 5
Federal Reserve Board	--respondent uncertain about Title 5 coverage --follows the spirit of Title 5 and has due process procedures in place --tries to avoid adverse actions by encouraging employees to move on when the fit is not right --uses Adjusting Work-related Problems Policy and mediation to resolve problems before action is taken	--respondent uncertain about coverage of Title 5 [Note: if the Board is not covered by the Merit System Principles, the employees do not have access to MSPB]	--covered by Title 5	--respondent uncertain about official coverage of Title 5
Foreign Agricultural Service	--not covered but has similar due process practices to the Foreign Service	--appeal of actions handled through the union	--not covered	--not covered but can be addressed through union grievance procedures
Foreign Service	--not covered but has similar due process practices (long and time-consuming)	--employees can file appeals or grievances within the agency only	--covered by Title 5	--handled by IG hotline

Organization	Adverse actions	MSPB or other external appeals	Hatch Acts	Whistleblower Protection Act
Library of Congress	--not covered --due process practices mirror Title 5 --uses alternative dispute resolution	--appeals go to the Librarian then to court	--not covered --IG investigates	--not covered --IG investigates
Metropolitan Washington Airport Authority	--not covered --set up their own Employee Relations Council to review actions	--grievance system gives appeal rights to the general manager then to the Board	--not covered --legal counsel would handle violations	--not covered --legal counsel would handle complaints
National Security Agency	--NA --not discussed	--NA --not discussed	--NA --not discussed	--NA --not discussed
Nuclear Regulatory Commission	--covered by Title 5	--covered by Title 5	--covered by Title 5	--covered by Title 5
Office of Federal Housing Enterprise Oversight	--covered by Title 5	--covered by Title 5	--covered by Title 5	--covered by Title 5
Office of Thrift Supervision	--covered by Title 5	--covered by Title 5	--covered by Title 5	--covered by Title 5
Peace Corps	--not covered by Title 5 but generally follow its provisions	--no external appeal but few actions taken due to 5 year employment limitation --employees have the right to file a union grievance	---covered by Title 5	--covered by Title 5
Smithsonian (Trust)	--not covered by Title 5 --has an administrative appeals process in place	--not covered by Title 5 --can appeal actions to the Undersecretary	--not covered by Title 5	--not covered by Title 5

Organization	Adverse actions	MSPB or other external appeals	Hatch Acts	Whistleblower Protection Act
	--2-4 weeks notice for termination but can fire on the spot			
Tennessee Valley Authority	--not covered by Title 5 --has progressive discipline procedures and negotiated grievance procedures --there are no grievance mechanisms for nonbargaining unit employees	--MSPB appeal rights only for RIFs	--covered by Title 5	--covered by Title 5
Student Loan Marketing Association (employees are not federal)	--not covered --has a progressive discipline process --first handled through verbal coaching and the performance management system --may establish a remedial plan --can involve verbal and/or written warning, demotion, transfer, probation and/or termination	--not covered --employees can appeal adverse actions to higher level of management and to HR	--not covered --respondent did not know what this was	--not covered --internal audit acts as a neutral and confidential source for complaints and investigation of any illegal or unethical activity
U.S. Postal Service	--not covered --due process procedures in place through negotiated and non-negotiated internal procedures	--not covered --preference eligibles and all managers & supervisors have appeal rights to MSPB for adverse actions; --Preference eligibles have	--covered by Title 5 --General Counsel handles violations	--not covered --established internal regulations --IG investigates complaints

Organization	Adverse actions	MSPB or other external appeals	Hatch Acts	Whistleblower Protection Act
		MSPB appeal rights for RIF actions. --non-bargaining unit employees have an internal appeal process --covered employees have negotiated grievance systems		

Summary/Discussion:

Of the eighteen organizations responding to these questions (NSA was not included in this section), only four are fully covered by Title 5 for adverse actions, external appeals process, and the Hatch and Whistleblower Protection Acts. They are the Nuclear Regulatory Commission, The Office of Federal Housing Enterprise and Oversight, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation. Of the remaining 14 organizations that are not covered by Title 5, there is a mix of coverage and practices in each category as shown here:

Table 11 Numerical Summary of Employee Protection Results

Category of Analysis	Summary of findings
Employee protections (N=18) sub-categories: adverse actions (due process) external appeals Hatch Act Whistleblower Protection Act	Coverage Adverse actions: covered=4; not covered=14 (14 provide due process) External appeals: covered =8 (3 cover vets only); not covered=10 (internal appeals only with exception of arbitration in collective bargaining agreements) Hatch Act: covered=11; not covered=7 (4 offer IG) Whistleblower: covered 7; not covered=9 (6 provide some coverage, usually IG); unclear coverage=1 <i>Results:</i> 18/18 provide due process in adverse actions; 8 offer external appeals (12 if you include 5 under union agreements); 11 covered by Hatch Act (4 others provide IG access); 7 covered by Whistleblower Act (6 others provide IG access)

The primary employee protection in the federal HRM arena is the right to procedural due process. All eighteen organizations clearly provide due process procedures for their employees in the event that adverse actions are taken against them. The major difference between the exempt organizations and Title 5 agencies is the access to the Merit System Protection Board to appeal agency action. Access to the Board is restricted to those covered by the Merit System Principles, preference eligibles, and others so designated by statute. Most of the organizations offer some internal grievance and appeals procedures but this is not clearly established across the exempt organizations. However, given the number of organizations with bargaining units, most employees have an opportunity to have their cases heard outside of the chain of command. Twelve of the participating organizations have negotiated grievance and arbitration procedures. Also, several organizations mentioned the availability and use of the Inspector General and the General Counsel as sources for whistleblower and Hatch Act complaints. As mentioned earlier, civil rights remedies are available to employees of all of the organizations.

Several organizations noted specific efforts to ensure employees are treated fairly:

- The Federal Reserve Board has an Adjusting Work-Related Problems Policy. In addition, employees and supervisors can choose to use the Mediation Program at any time, putting formal resolution efforts aside while mediation occurs.
- The Library of Congress is using dispute resolution techniques and last chance agreements in lieu of standard disciplinary actions.
- The State Department Foreign Service and Veterans Health Administration have a peer grievance review process.
- The Federal Aviation Administration initiated a new appeals process in 1996 called Guaranteed Fair Treatment under its new HRM flexibilities. A three-member panel consisting of one advocate chosen by each side in a dispute and a neutral arbitrator resolves appealed actions. The panel issues a decision within 10 days of the hearing; the decision is final and binding but not precedential. This process replaces the MSPB appeal process and greatly reduces time frames for resolving disputes. For several years, however, employees have sought to have their access to the MSPB re-instituted, complaining that the Guaranteed Fair Treatment program was not as fair

because it did not allow discovery among other things. Congress passed and the President signed a bill to grant access to the MSPB appeals process in April 2000. Employees now have the choice of either process.

- The Nuclear Regulatory Commission is piloting a negotiated procedure for EEO grievances (not complaints). At any time in the process, an employee can request mediation through the Federal Mediation and Conciliation Service. Both labor and management must agree to the request and split the cost. Mediation is limited to two sessions before the case goes directly to arbitration.
- Sallie Mae's Internal Audit acts as a neutral and confidential source through which employees can take reports, complaints, or evidence of any illegal or unethical activity for investigation.

Beyond the due process that is mandated as a result of *Loudermill* as discussed in Chapter I, the exempt organizations offer fewer protections to their employees in the grievance and appeals processes. Most provide only internal grievance procedures. One surprising finding was at the TVA. Non-bargaining unit employees do not have access to any grievance or appeal process. This was questioned by MSPB in the 1989 study of that organization with a recommendation that one be put into place. As of January 2000 based on an e-mail inquiry to the Freedom of Information Office there, the TVA has not moved to do so.

E. Recap and Plan for Verifying the Findings

The field study conducted through the Office of Personnel Management provided data on the HRM systems of nineteen organizations fully or partially exempt from Title 5 personnel management requirements. The survey responses were captured in four categories of analysis that traditionally address merit issues: merit values or principles, competition in hiring and staffing, equity-based classification and compensation, and employee protections. The data were presented by organization in each of these categories to identify patterns and trends that would indicate whether or not exempt organizations fashion HRM policies and practices that support a merit-based system or whether they tend to more closely mirror the at-will employment practices of the private sector. The findings provide evidence that the participating organizations maintain

formal, documented HRM systems that reflect merit in principle and practice. The findings will be further analyzed in Chapter VII. Table 12 provides a complete summary of the findings. The data were collected principally through conversations with HRM directors and/or one or more designated representatives in each organization. To increase the level of confidence in the reported information, I have chosen to confirm the findings for four of the organizations before moving on to the analysis. The selected organizations are the Postal Service, the Tennessee Valley Authority, the Office of Thrift Supervision, and the Veterans Health Administration. The results of this confirmatory data gathering are described in the next chapter, Chapter VI.

Table 12 Summary of the Data Collection Findings in the Four Categories of Analysis

Categories of Analysis	Summary of findings
Merit values or principles (N=19)	Covered=4; Not covered=15 (3 administratively follow, 4 generally follow, 7 cited values of fairness and/or equity, 1 made no statement of values) <i>Results:</i> 18/19 referenced merit principles and/or values of equity and/or fairness
Hiring and staffing (N=19) sub-categories: hiring rating and ranking procedures veterans preference promotion system	Hiring: covered=3; not covered=16 (2 administratively follow Title 5) Rating and ranking: covered 3; not covered=16 (12 provide formal procedures, 2 have loose procedures, 1 does not have a formal system) Veterans preference: covered=8 (6 fully and 2 some occupations only); not covered=11 (1 has informal consideration) Promotion system: covered=3; not covered=16 (15 described formal promotions systems, 1 did not) <i>Results:</i> 16/19 are exempt from Title 5; 12 provide formal rating & ranking procedures; 6 apply vet preference for some or all occupations; 15 provide formal promotions systems
Classification and compensation (N=19) sub-categories: classification compensation	Classification: covered=0; not covered=19 (18 demonstrate equity-based systems, 1 has a loose process) Compensation: covered=0; not covered=19 (all demonstrate equity-based systems) <i>Results:</i> 19/19 are exempt from Title 5; with one exception in classification, all provide orderly, defined systems based on a combination of internal and external equity

<p>Employee protections (N=18)</p> <p>sub-categories: adverse actions (due process) external appeals Hatch Act Whistleblower Protection Act</p>	<p>Coverage</p> <p>Adverse actions: covered=4; not covered=13 (13 provide due process); unclear coverage=1</p> <p>External appeals: covered =8 (3 cover vets only); not covered=10 (internal appeals only with exception of arbitration in collective bargaining agreements)</p> <p>Hatch Act: covered=11; not covered=7 (4 offer IG)</p> <p>Whistleblower: covered 7; not covered=9 (6 provide some coverage, usually IG); unclear coverage=1</p> <p><i>Results:</i> 17/18 provide due process in adverse actions; 8 offer external appeals (12 if you include 5 under union agreements); 11 covered by Hatch Act (4 others provide IG access); 7 covered by Whistleblower Act (6 others provide IG access)</p>
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Chapter VI Verifying the findings in selected organizations

I have confidence in the overall results of the field study for several reasons. First, the respondents were providing information to the Office of Personnel Management. While that may have caused some to put a positive spin on their responses, they also voluntarily chose to participate and knew the results would be published. Second, in the study I found limited variation in HRM structure and practices among the participating organizations. This leads me to believe the data represents an example of the evolution of the HRM field in general and, in particular, in organizations that are still part of and influenced by the federal HRM community. Third, my thirty years experience in federal HRM, including 10 years in HRM deputy director and director roles, gives me a level of experience from which to judge the results. Nonetheless, since the data I have comes primarily from each organization's HRM staffs, it is useful to find other corroborating sources for some of the findings.

A. Data Collection Methodology

To provide some confirmation of the organization self-reported survey responses, I selected four agencies on which to do some verification of the findings (not new research). My intention was to find documents on each organization that officially addressed some or all of the information reported in the survey. I did not attempt to find the same sources or same number of sources for each organization. I selected available records from official studies, reports, and agreements (e.g., MSPB, IG, OPM) and HRM policies that would lend credibility to the survey data and confirm or challenge the merit-based nature of the HRM system. Rather than attempting to compare the organizations to each other, I sought to confirm the information provided by the HR director or representative. The specific documents for each of the four agencies were:

- Veterans Health Administration (VHA) – 1991 MSPB study, OPM interchange agreement, internal delegation of authority to the standards board
- Tennessee Valley Authority (TVA) – 1989 MSPB study, literature on the TVA, HRM policies

- Federal Aviation Administration (FAA) – documents on the new FAA HRM system, IG report, OPM interchange agreement
- Office of Thrift Supervision (OTS) – HRM policies in the two areas, classification and compensation, where OTS is exempt from Title 5

The coding structure consisted of extracting from the documents those elements that addressed the four categories of analysis, and/or, corroborated the existence of a merit-based system, such as an OPM interchange agreement.

B. Overview of the Confirmatory Data

The four selected organizations are representative of the types of exempt federal organizations included in the study. The VHA represents a career system (rank-in-person) exempt from Title 5. The TVA is a long-term government organization fully exempt from Title 5. The FAA, as one of the newest exempt HRM systems, represents the current struggle to create a responsive, merit-based HRM system. Finally, the Office of Thrift Supervision (OTS) is one of the organizations partially exempt from Title 5, representing in particular those that are exempt only for classification and compensation. Table 13 provides a brief overview of the confirmatory data. It is followed by the discussion of the data review collected on each organization.

Table 13 Summary of Confirmatory Data on Four Organizations

Organization Review	Data Confirmation
1. Veterans Health Administration (Dept of Veterans Affairs)	
MSPB study of the VHA HRM system (1991)	<ul style="list-style-type: none"> • Provides an overall assessment of the HRM program and comparison to Title 5 • Found the system to be non-discriminatory, based on merit, and more effective than Title 5 practices • Exempt from Title 5 except for Hatch and Whistleblower Protection Acts • Confirmed: • Rank-in-person system • Merit principles not addressed but fairness in the system was noted • Provides for appointment and promotion by merit but evaluated by well-accepted professional standards

Organization Review	Data Confirmation
	<p>rather than rating and ranking procedures</p> <ul style="list-style-type: none"> • Pay system similar to GS • 2-year probation • Burdensome disciplinary and appeals systems • Use boards of professionals for hiring, promotion, and discipline
OPM Interchange Agreement	Confirmed HRM policies and practices meet standards of the Merit System Principles; employees can move throughout federal job market as if they were in the competitive service
Delegation of authority to standards boards	Confirmed that the line management in this rank-in-person system has the authority to make recommendations on appointments, advancements, probationary reviews, advancement based on performance and achievement
2. Tennessee Valley Authority	
MSPB study of the TVA HRM system (1989)	<ul style="list-style-type: none"> • Provides an overall assessment of the HRM program and comparison to Title 5 • Found clear evidence of merit foundation of the HRM program • Confirmed: <ul style="list-style-type: none"> • Hiring and promotion based on relative ability to do the job, taking actions without discrimination, due regard to veterans preference • Negotiated merit promotion procedures for bargaining unit positions • Compensation based on salary surveys or negotiated pay systems • All employees have right to appeal RIF actions to MSPB; veterans only can appeal adverse actions • Management employees do not have a formal grievance process • Covered by the Hatch Act • No specific whistleblower protections—IG handles
Van Riper, 1958	Confirmed the historical use of merit-based practices, e.g., set up system of unranked registers 50 years ago
TVA HRM document	<p>Confirmed current merit-based HRM practices:</p> <ul style="list-style-type: none"> • Hiring – use of classified position description, posted vacancy announcement, list of qualified candidates, formal selection/interview process;

Organization Review	Data Confirmation
	<p>includes veterans preference and negotiated procedures as appropriate</p> <ul style="list-style-type: none"> • Pay – use of salary surveys, compensation systems for managers and specialists based on performance and position in the salary range, negotiated systems for bargaining unit positions, and a customized incentive plan to recognize and reward all employees when TVA meets targeted goals • Adverse actions – provide standard due process but do not offer external appeal process
3. Federal Aviation Administration	
HRM documents	<p>Confirmed:</p> <ul style="list-style-type: none"> • Decision to follow the Merit System Principles and create systems that are fair while also increasing managerial and employee flexibility in supporting business requirements • Hiring system is a streamlined version of Title 5 with processes in place for announcing vacancies and considering applicants (included options for on-the-spot hiring in shortage categories) • Compensation systems for non-bargaining unit employees moved to a broadbanding framework with bands pegged to related government and private industry jobs • Bargaining unit pay is negotiated • Performance-based bonuses are based on both organizational and individual performance • Grievance systems are negotiated or covered under the "Guaranteed Fair Treatment" program which uses a 3-member panel to handle grievances that includes a neutral party • Driven by employee complaints, Congress recently passed legislation to re-institute option to appeal adverse actions to the MSPB
FAA IG Report (1999)	<p>The report reviewed the new systems positively from a management perspective but raised concerns about paying for negotiated pay systems as well as performance-based compensation for non-bargaining unit employees and about how they will measure productivity increases that will pay for the increased compensation costs</p>

Organization Review	Data Confirmation
OPM Interchange Agreement	Confirmed HRM policies and practices meet standards of the Merit System Principles; employees can move throughout federal job market as if they were in the competitive service
4. Office of Thrift Supervision	
HRM documents (OTS is exempt from Title 5 only for classification and compensation)	Confirmed: <ul style="list-style-type: none"> • use of equity-based classification and compensation systems through the use of job analysis, position descriptions, the OPS job evaluation guide to set salary based on points assigned to the six factors, a salary structure based on market analysis of similar position in other FIRREA agencies • positions assigned to the same grade have substantially the same overall value to the organization • limited funds for bonuses adversely affected the establishment of a pay for performance system; now merit increases are flat percentages based on ratings

C. Discussion of Data Confirmation by Organization

1) Department of Veterans Affairs, the Veterans Health Administration (VHA)

The Department of Veterans Affairs operates two distinct personnel systems, one under Title 5 and the other under Title 38. The VHA Title 38 personnel system is a rank-in-person system that is exempt from Title 5 except for the Hatch and the Whistleblower Protection Acts. Several occupations that fall under Title 38 are actually covered by Title 5 for everything but recruitment, placement and pay administration. Employees in these occupations are referred to as Hybrid employees. The Merit Systems Protection Board (MSPB) conducted a special study (USMSPB, 1991) on the Title 38 Personnel System in the Department of Veterans Affairs as an alternate approach to federal personnel management. This study provides evidence of the official recognition of the Title 38 VHA HRM system as merit-based.

There is little mention of merit principles in this study; rather the focus is on fairness and the lack of discrimination found in the system. In offering an overall perspective of the Title 38 system, the report states that

the title 38 system provides for appointment and promotion by merit. While lacking the procedural rigidity of the title 5 personnel system, which requires the creation of validated examinations, rating and related procedures, the title 38 procedures are based on evaluating well-accepted professional standards of achievement. The use of standards boards to review the qualifications of each new hire and each employee before promotion reinforces meritorious aspects of the personnel system (USMSPB, 1991, 29).

The standards boards for the various occupations are involved in qualification of candidates, setting the basic pay of each individual in that occupation, determining whether to promote that individual, and considering incentive awards involving pay adjustments. Board decisions are recommendations to be approved by the chief of that occupation and the medical center director.

Title 38 “requires no formal rating and ranking for appointment and, surprisingly, since this system is focused on the care of veterans, the law requires no veterans preference in appointments”(USMSPB, 1991, 23). Nor does Title 38 require competition for internal promotions. In selecting candidates, the VA medical centers visited in the study focused on the knowledges and skills of the individuals being considered as understood by professional peers. There are also general practices used in the hiring process, such as advertising in professional journals, review of transcripts and appraisals from prior employers, and the use of temporary appointments pending completion of the board process. For internal promotions, there are also informal procedures generally for notifying internal staff of openings in other units.

The pay system of Title 38 at its inception in 1946 was separate and independent from the rest of the civil service. That changed in 1952. Now, the “separate title 38 pay schedules are constructed on the same matrix as the General Schedule, with 10 steps in each grade with equal increments between steps” (USMSPB, 1991, 31). The hybrids are

paid under the General Schedule. Where the VA has flexibility is in its pay administration rules, such as setting special rates as needed, setting initial pay, advancement of one to five steps within grade for high performance or achievement, and a bonus system for physicians and dentists not subject to pay ceilings and other restrictions. In 1990 Public Law 101-366 provided further flexibilities including locality pay for nurses.

On adverse actions and appeals, title 38 is considered even more cumbersome and slow than title 5 according to the study. Except for the Hybrid employees, disciplinary actions and appeals are handled within VA. Permanent employees are subject to a 2-year probationary period. They then have the right to a hearing prior to the imposition of any disciplinary action and the right to an appeal to the Secretary of Veterans Affairs. Under title 38 all charges are subject to investigation and recommendation by a disciplinary board prior to the decision to impose disciplinary action.

This 1991 MSPB study provides sufficient information to clearly describe the Title 38 HRM system, which as a rank-in-person system, has a different approach to merit in the areas of hiring and staffing while still focusing on relative knowledge and ability of candidates. VA managers have greater control over personnel decisions under Title 38 with greater authority delegated to line managers. In conclusion, the study determined that the managers found the system more effective than Title 5 and more equitable to the employees especially in qualifications and pay determinations.

The VA also has an interchange agreement with OPM that ensures that their Title 38 employees have non-competitive transfer rights to civil service positions for which they are eligible. In granting the Agreement, OPM agrees that the organization's HRM policies and practices support the Merit System Principles. While their practices may be different, and in this case the rank-in-person system by definition is a different approach to personnel management, OPM's approval acknowledges that their system falls within acceptable parameters of merit under the Title 5 Merit System Principles.

As an example of the personnel authority of the standards boards under Title 38, the directive (IL 11-95-005, September 6, 1995) transmitting the delegation of Title 38 Human Resources Management Authorities to the facility directors for dental positions provides instructions for applying the authorities. Dental Professional Standards Boards are to make recommendations on appointments, advancements, probationary reviews and other actions related to dentists under EFDA's (expanded-function dental auxiliaries). The boards also review recommendations for special advancements for performance and for achievement.

The VHA HRM system is clearly distinct from that of Title 5. It was crafted for a very unique employment population, one with clear licensing and professional standards. The general functions are similar to Title 5 especially in compensation and discipline; however, the recruitment and staffing environment is very different. Equity seems to be the strong underlying value, as judged by professional peers. The lack of requirements for competition among candidates fits the scenario of a tight labor market and promotion and pay based on skill and competence levels.

2) Tennessee Valley Authority (TVA or the Authority)

The TVA offers a unique opportunity to look at an organization that is historically one of the oldest federal personnel systems under the government corporation mantle (1933). It has at least twenty-three unions representing its employees with collective bargaining agreements affecting its personnel policies and practices. Its personnel system has been studied and written about periodically over the years for its ingenuity and its responsiveness to a variety of needs (see, e.g., Avery, 1954; Van Riper, 1958). The MSPB conducted a study of the TVA HRM system and merit principles which discusses policies and practices and compares them to those of Title 5 (USMSPB, 1989). The organization is currently implementing major changes to its personnel structure and practices to be able to respond to the increased competition of the deregulated utilities industry. The positive experience I had in talking to representatives of the organization suggests that it is also an open institution, evidenced not only by their willingness to

discuss their issues with me but their posting of their HRM policies for all employees and the public to see.

The Tennessee Valley Authority (TVA) is a wholly owned government corporation not subject to most federal civil service laws and regulations; however, under its authorizing legislation, it did have to follow some basic guidelines -- hiring and promotions were to be based on relative merit and efficiency without regard to political affiliation; pay for employees in trades and labor occupations was to be based on local area pay rates; and no employee could receive a salary greater than that paid to any of the three members of the Board of Directors. Later, they were also covered under the Veterans Preference Act of 1944, the Equal Pay act of 1963, the Civil Rights Act of 1964, and the Fair Labor Standards Act of 1938. I'll review here the major elements of the MSPB study and the current TVA HRM directives that address the merit-based HRM issues.

The MSPB study (1989) provides an in-depth discussion of the merit-based nature of the TVA HRM system. Some of the most significant findings of the MSPB study are related here. In the area of hiring and staffing, TVA and civil service agencies are subject to the same basic merit system requirements. These include hiring and promotion based on relative ability to do the job, taking actions without discrimination, due regard to veterans preference, and the goal of a representative workforce" (USMSPB, 1989, 9). Vacancies are posted and all employees who notify the personnel office and meet the minimum qualifications are referred to the selecting official. The selecting official may select any candidate but is expected to select the best-qualified candidate. Unlike Title 5, however, employees may grieve nonselection for promotion. The procedures for filling bargaining unit positions negotiated with employee unions. However, TVA has mandated a candidate may not be hired ahead of another equally or better qualified candidate who is eligible for veterans preference.

Moreover, for any entry-level job (including entry-level management jobs), some entire categories of white-collar jobs, and all blue-collar jobs, any minimally qualified candidate who is eligible for veterans preference based on a military service-

connected compensable disability of at least 10 percent must be hired before any other candidates, regardless of the other candidates' relative qualifications. Even with these restrictions, however, selecting officials within TVA still generally have more discretion in filling their jobs than do their civil service counterparts. Merit system compliance within TVA rests largely on the individual integrity of each selecting official" (USMSPB, 1989, 10).

In the area of compensation, the "TVA has its own authority to fix compensation subject to a statutory ceiling; has no legal limit on the total amount of compensation it may pay an employee; may pay a bonus to management employees who fill shortage category or hard-to-fill jobs; negotiates pay rates for bargaining unit employees" (USMSPB, 1989,17). TVA uses salary survey data collected from businesses and industries which it considers to be its direct competition for management employees in setting managerial pay. The pay grades have three key rates – a minimum, a midpoint, and a maximum. Nonexecutive employees may be paid any rate between the minimum and maximum for their range. There are no salary ranges for blue-collar jobs. Instead, specific craft positions have fixed hourly or annual rates determined through an annual negotiation process and based on wage and salary surveys of appropriate sources. For white-collar bargaining unit positions, salaries are negotiated (by the choice of TVA) based on a locality comparison (USMSPB, 1989, 22). For position classification, TVA has the flexibility to create its own classification system and has given the unions a significant role in classifying jobs. The organization is able to totally revamp its classification systems without seeking legislative change; but it must negotiate changes affecting bargaining unit positions.

All TVA employees have the right to appeal reduction-in-force (RIF) actions to MSPB; but the right to appeal adverse actions is restricted to TVA employees who have veterans preference. This right does not extend to employees in executive grades. Nor do management employees have a formal grievance procedure (USMSPB, 1989, 40). TVA employees are subject to the Hatch Act. The concept of keeping partisan political activity out of the corporation's business was also one of the cornerstones of the original TVA Act. The corporation has had a strong policy setting standards for political activity since 1936" (USMSPB, 1989, 42). There are no specific whistleblower protections.

“The Office of the Special Counsel has no jurisdiction over TVA. ... OIG is the central authority for protecting employees who engage in whistleblowing activity and the office charged with investigating their allegations or expressed concerns” (USMSPB, 1989, 44).

MSPB concludes their report stating that “What this report does clearly illustrate is that a merit system can have many different forms. TVA’s system is one that provides a great deal of management discretion bounded by general guidelines and, through employee unions, one that allows a significant degree of employee involvement. Moreover, the corporation’s ability to make relatively rapid and significant changes in its approach to human resource management ... can be of significant value in meeting new or changing organizational demands or pressures” ((USMSPB, 1989, 49). From this study, it is evident that the TVA HRM system comprises components and practices similar to those of Title 5; however, there is greater flexibility to craft policies and to make changes in concert with law but without external approval and oversight.

Historically, the TVA has been ahead of its time in crafting personnel policies that support merit without overloading the system with regulations and procedures. Foreshadowing some of the “demonstration project” approaches to staffing today, Van Riper (1958) describes some of the staffing practices almost 50 years ago:

Under a system of "unranked registers" applicants are still ranked, but only in broad groupings or categories such as "Outstanding," "Well Qualified," "Qualified," etc. With selective certification it is possible to give examinations for relatively broad categories of skills. Then the appointing officer may be permitted to prescribe more detailed requirements for individual positions, followed by a "selective certification" of those with the needed specialized qualifications by the personnel agency from the registers of more generally qualified applicants (Van Riper, 1958, 323).

For a look at today’s TVA HRM policies and practices, I turned to their directives/guidelines on the various HRM topics. The “TVA Principles and Practices Manual” covers both broad directions for the future and daily business practices including HRM policies and practices.

- For recruitment, there is a focus on competence by attracting and recruiting the most talented and qualified workforce through college job fairs, advertisements, the internet, external contingency-based recruiting sources, armed forces, and TVA employee referrals. They use Resumix (a software package that can store and search resumes and produce lists of eligible candidates based on selected criteria) to process resumes for referral.
- For filling vacant positions, TVA generally promotes or transfers current employees if they are well qualified. Their hiring process is captured in the following four bullets:
 - The steps of the hiring process include: identifying the vacancy, developing the job description, classifying the position, preparing and posting the vacancy announcement, developing a list of qualified candidates, selecting candidates for interviews to participate in the selection process, and conducting the selection process. Steps are similar for filling a position with external candidates.
 - Selection factors to be considered for current TVA employees include: merit and efficiency – candidates’ education, training, experience, ability and previous work performance as well as TVA’s organizational needs and objectives; non-discrimination and affirmative employment; restrictions on employment of relatives.
 - Negotiated agreements must be followed for bargaining unit positions.
 - There are also provisions for re-employment lists, recall lists, and veterans preference.
- For pay, TVA uses salary surveys of competitive rates for similar work to determine its pay rates and establish its salary budgets as follows:
 - Compensation awards for managers, specialists and excluded positions are based on the individual’s performance, position in the salary range established for his or her job classification, and the compensation plan budget.
 - Pay rates for represented positions are negotiated between TVA and the Tennessee Valley Trades and Labor Council, the International Brotherhood of Teamsters, and the Salary Policy Employee Panel.

- The Performance Incentive Plan is a customized incentive plan designed to recognize and reward all employees when TVA meets targeted goals. The goals emphasize high performance, teamwork, innovation and continuous improvement. When the goals are met, employees are eligible to receive lump-sum awards.
- Other topics include political activity participation, relatives, and expressing concerns and differing views which identifies the Inspector General as the contact for any charges of reprisal or discrimination for whistleblower types of activities.

The TVA has a strong merit-based system both historically and presently. But, of course, merit ultimately is in the eye of the beholder. This system is sustained by its historical evolution, the role of collective bargaining in developing and monitoring the HRM system, the strong value placed on EEO in the environment, and the importance placed on supporting both whistleblower protection because of the nuclear component of their operation and restrictions on political activity and nepotism. The down side, however, appears to be the lack of grievance options for non-bargaining unit employees and the limited external appeal protections for non-bargaining and non-veteran employees. They also leave a lot of flexibility to managers and supervisors to select the best candidate from whatever numbers of qualified candidates are referred with limited oversight.

3) Federal Aviation Administration (FAA)

The FAA represents one of the most recent agencies to gain legislative exemptions from major portions of Title 5. Section 347 of the 1996 DOT Appropriations Act directs the Administrator of the Federal Aviation Administration to develop and implement a personnel management system that addresses the unique demands on the agency's workforce. Such a new system shall, at a minimum, provide for greater flexibility in the hiring, training, compensation, and location of personnel. The provisions of Title 5 U.S. Code shall not apply to the new personnel management system developed and implemented pursuant to subsection (a), with the exception of (1) section 2302(b), relating to whistleblower protection/ (2) section 3308-3320, relating to veterans

preferences; (3) section 7116 (b)(7), relating to the limitations on the right to strike; (4) sections 7204, relating to anti-discrimination; (5) chapter 73, relating to suitability, security, and conduct; (6) chapter 81, relating to compensation for work injury; and (7) chapters 83-85, 87, and 89, relating to retirement, unemployment compensation, and insurance coverage. Other parts of Title 5 continue to apply but are less related to HRM practices.

Many other agencies and the federal HRM community have been watching the FAA move to a less regulated HRM environment with curiosity, envy (at times), and interest in learning what might be done with such freedom. There is still an evolving HRM system but we can now see the major components falling into place. To reinforce what I learned about the FAA through the OPM field study, I reviewed several documents related to the HRM system, including the personnel system document put into place in 1996, a publication to describe the new system to employees called “People Systems,” the new compensation system implemented in 1998—the Core Compensation Plan, the new Human Resource Policy Manual effective February 1, 1999 (applicable to non-bargaining unit employees), and the report of the Inspector General on the new personnel system (1999).

The FAA, although exempt from the Merit System Principles by legislation, has made it abundantly clear that the new personnel system will be grounded in those Title 5 principles. “The FAA people systems will, by *choice*, also continue to follow some parts of title 5 such as those covering merit principles and prohibited personnel practices” (“People Systems,” p. 1). The same pamphlet identifies six principles that are guiding the FAA efforts to create a new personnel system. One specifically addresses fairness. The organization will “strive to create personnel systems, processes, and practices that are fair,” while at the same time increasing “managerial and employee flexibility to make decisions that support the agency’s strategic and business plans. ... We will continue to emphasize fairness and workforce diversity” (“People Systems,” p. 2-3).

The FAA hiring system is a modified, streamlined version of Title 5. Central Registers (managed by FAA) operate much like the examining and selection registers managed by the Office of Personnel Management but are developed and maintained by FAA. Veterans preference is given to eligible applicants. Other features include the following:

- Vacancy announcements (open for a minimum of 5 workdays) are used for individual jobs or groups of jobs and target advertising by location and by audience to get the best applicants. The area of consideration may be limited to a certain category of employees and geographic locations.
- On-the-spot hiring is used for occupations or locations that have met specific hard-to-fill or shortage criteria and for making noncompetitive hires similar to VRA, coop, and the disabled.
- There are three methods for internal selections – 1) competition through vacancy announcements where interested employees are rated, referred, and selected; 2) automatic consideration where all qualified employees are referred to a selecting official when there are a sufficient available in the area of consideration (but not for first selection to a supervisory position or a new career field); or, 3) no competition for such assignments at the same or lower grade level or promotion for six months or less).

In 1998 a new compensation went into place for non-bargaining unit employees. (Note that the FAA is bargaining with its unions over the pay of organized employees.) The new plan replaces the traditional grade-and-step base pay method with a simplified structure of pay bands pegged to similar jobs in government and private industry. The plan directly links compensation with the performance of employees and the success of the organization as a whole. The following information is extracted from the FAA New Personnel Management System brochure, “Compensation: A key component of FAA’s new personnel management system,” dated June 1998:

- The new system is designed to provide more flexibility in hiring, pay and placement; recognize employee contributions; increase productivity; and

enhance the organization's intellectual capital while ensuring fairness to employees.

- Job series are grouped together into nine job categories based on the similar nature of work and pay in the external market place. Within each category, there are a standard number of career levels (three or five) reflecting increasing degrees of responsibility and complexity. Each level is assigned to a pay band; grades and steps are eliminated.
- The current 15-grade pay schedule is being replaced by a set of 12 pay bands. The bands have a substantially higher pay maximum and no steps. The minimum and maximum for each pay band is reviewed periodically and adjusted when necessary by comparing FAA pay levels to those of relevant public and private sector firms employees performing the same or similar work. Pay bands do not include locality pay, which is computed separately as a percent of base salary.
- There are two types of annual performance-based pay increases. Organizational Success Increases is an annual increase to base pay given to most employees provided the FAA meets its performance goals. The Superior Contribution Increase is an additional increase available to employees who provide superior contributions to the organization. Managers assess the relative contributions of their employees and grant SCI's to employees ranked in the top 15% of their organization based on performance and contributions.
- Base salaries for newly hired employees may be set anywhere within the pay band.

The compensation system is an open, equity-based system that is attempting to build more pay for performance incentives into its pay system. There may be a question of the availability of funds to handle both this program and the multiple negotiated pay systems for covered employees. And, the evidence of a merit-based system does not necessarily mean that the employees are supportive of the changes.

The FAA Grievance Procedures dated December 1, 1996, for non-bargaining unit employees are covered in the Personnel Reform Information Bulletin #017, titled “Guaranteed Fair Treatment.” It describes the FAA’s fair treatment policy for handling disciplinary actions, reductions in pay or grade, and removal actions, as well as grievances and appeals. The Administrator, through the Appeals Panel, has the authority to adjudicate appeals of covered actions from employees. Judicial review of the Panel’s decisions is available under 49 U.S.C 46110. This document delineates the FAA’s due-process-based discipline, grievance, and appeals system. It spells out the time frames for advanced notice, replies, and decisions for various actions.

Guaranteed Fair Treatment encourages dispute resolution at the lowest possible level and attempts to complete the process within three months. These procedures apply to non-bargaining unit employees only; bargaining unit employees will continue to follow their negotiated procedures. The grievance procedure will have two stages—problem solving and formal. If an employee chooses to appeal a disciplinary or performance action, instead of going to the Merit Systems Protection Board the appeal will be presented to a three-member panel consisting of a management representative, an employee representative, and an arbitrator. A majority vote of the panel will form the decision, which will be final and binding. Employees have not been satisfied, however, with the loss of their right to appeal adverse actions to the MSPB. As mentioned earlier, the President signed a law in April 2000 restoring the FAA access to the MSPB. Employees now have to choose which forum to use.

In summary, the FAA has crafted a full-blown HRM system, modeled on Title 5 but using the best-practices approach to streamline the system, encourage performance and productivity through compensation, and ensure fair treatment through negotiated or administrative grievance and appeals procedures. During the interview I had with OPM representatives, one of the participants had just served on the team to review the FAA HRM system to assure it supported the Merit System Principles. His comment was that the team was surprised how such a new system seemed to look like the old system. There is clearly greater flexibility; but between negotiated processes and progressive HRM

structures and practices based on fairness and equity the new system looks and feels like the old but with new flexibilities and, most important, greater local ownership. The FAA Inspector General report (1999) reviewed the system positively. The major concern The IG raised is how the organization will pay for the new compensation costs and how they will measure improved productivity from the new system that supposedly balances the increased negotiated payroll costs. The FAA has a very strong union environment. Most of the systems discussed here are negotiable for bargaining unit employees. The FAA is committed to developing the new people systems in the context of a labor-management partnership.

4) The Office of Thrift Supervision (OTS)

The OTS is one of the banking regulatory agencies that falls under the FIRREA (Financial Institutions Reform, Recovery, and Enforcement Act of 1989). OTS serves as an example of an agency that is partially exempt from Title 5. Its particular exemptions are in the areas of classification and compensation; otherwise, the organization is covered by Title 5 HRM requirements. So, the question is: what kind of classification and compensation schemes do they follow? To get some idea, I reviewed their HRM written policies (Directives) on the topics of job evaluation, salary administration, and performance planning and appraisal system. The overall approach to classification and compensation is sound and clearly defined for merit purposes. Specific supporting features include:

- job analyses, position descriptions based on the OPM Handbook of Occupational Groups and Series , and the use of the OTS Job Evaluation Guide to set salary based on points assigned to each of six factors.
- appeals can be filed with the position evaluation appeal committee.
- a single OTS salary structure consisting of 30 grades and salary ranges, based on the results of a market analysis of similar positions in the other FIRREA agencies. All positions assigned to the same salary grade are viewed as having substantially the same overall value to the organization. Salary ranges include a minimum, midpoint and maximum.

- information on starting salaries, salary increases based on performance and other adjustments, and bonuses.

The major difference between the OTS compensation system and Title 5 is the freedom and obligation under FIREEA to set pay in alignment with the competition. Both pay and benefits for OTS employees, while determined in a rational and merit-based fashion, exceed that of Title 5 organizations. Compensation appears to be the driver for many organizations to request exemptions from Title 5 in order to better compete in the market place to attract and retain talented staff. The major flaw in the process was the expectation that bonus funds would be available. To date, those funds have been very limited. Merit increases are now flat percentages based on ratings received.

D. Recap – Review of the Data Confirmation Process

The multiple case data collection methodology recognizes that the selected cases in the study are unique HRM systems that have a similar institutional framework. While the findings in each case are not necessarily generalizable, common features or practices can be aggregated into a larger picture that informs us about the trends and patterns of practice in such organizations. The data came primarily from the HRM representatives in each organization. To test the credibility of the findings, additional data were collected in the four categories of analysis for four of the studied organizations – the Veterans Health Administration, the Federal Aviation Administration, the Tennessee Valley Authority, and the Office of Thrift Supervision. I reviewed selected documents as available for each organization to further assess the findings of the field study in the areas of merit values, hiring and staffing, classification and compensation, and employee protections. The MSPB studies were particularly valuable in that they had thoroughly reviewed the personnel systems of both the TVA and the VHA. The FAA and the OTS HRM documentation provide good confirmation of their policies and practices. This review substantiated the data that the field study elicited for these organizations. There were no anomalies. The results offer substantial evidence that the organizations in question have rational, clearly delineated HRM systems that value and pursue merit-based policies and practices. In the next chapter I analyze the overall findings and compare them with the

model of merit-based HRM developed in Chapter II. The questions that begin to take shape from the findings involve open competition and oversight. Open competition is not a particular problem in the tight labor market organizations are currently facing. What happens, however, in a buyers market where agencies can be more selective? External oversight and accountability are very limited. How, at a minimum, can the public be assured the organizations are following their own rules?

Section III

Analyzing the Present and Framing the Future

Section III Analyzing the present and framing the future

It is important at this stage of the dissertation to revisit the research question: To what extent do federal organizations fully or partially exempt from Title 5 HRM requirements reflect merit in their HRM policies and practices? The research findings as summarized in Table 6 show that the Title 5-exempt organizations in the study reflect substantial merit-based policies and practices in their HRM systems. The weakest component of the findings may actually be in the lack of clearly articulated statements about merit as a value or guiding principle even for some covered by the Merit System Principles. But in its place appeared an emphasis on systems that assure fair treatment and standards of equity that lie at the heart of merit.

This section of the dissertation places the findings in a context for analysis and moves from there to a discussion of the “so what?” of the research. Chapter VII provides a comparison of the findings to the Model of Merit-based HRM developed in Chapter II and contains an analysis of the categories of interest – merit values, hiring and staffing, classification and compensation, and employee protections -- as well as two more of growing interest – collective bargaining and oversight and accountability. In Chapter VIII, the dissertation comes to conclusion with a discussion of the themes that appeared throughout the research and recommendations for federal HRM policy.

Chapter VII Analysis of the Findings and Application of the Merit Model

In this chapter, the Model of Merit-based HRM developed in Chapter II is compared to the findings on the Title 5-exempt organizations and some of the patterns and anomalies of merit found in the research are presented. The results show that the HRM systems of the exempt organizations, with the exception of Sallie Mae, all address in a variety of ways the core elements of what would be considered a merit system. Such elements include merit-type values, competitive hiring and promotions processes, equity-based classification and compensation schemes, and due process and related employee protections. These organizations also maintain policies and programs in what are now conventional human resource practices in any large public or private organization (i.e., training and development, performance management systems, benefits, rewards, and family-friendly practices). The survey data establish an understanding of merit practices in less regulated environments, which helps to assess what is essential in constituting public personnel systems that possess both the integrity of a merit ethic and the flexibility to respond to an organization's political and business demands.

A. Title 5-exempt Organizations and the Model of Merit-based HRM

Until the OPM field study, there was very little information available about the HRM systems of the Title 5-exempt organizations. Many Title 5 agencies looked with envy at the exempt organizations and their freedom from central management control. There is an implicit assumption that such organizations are free to create and manage their own human resources programs. There is also an implicit assumption that these systems are merit-based since their authorizing legislations usually direct that they craft their own merit systems. However, there has not been a general model of what constitutes a merit system to use as a gauge of merit in alternative federal HRM systems. From the scholarly literature on the history of the federal merit system, the laws and judicial decisions directly impacting on federal HRM, public-oriented and other HRM textbooks, OPM demonstration project waivers, and interviews with representatives of OPM, NAPA, and MSPB as well as studies done by the three organizations, a general

model was crafted that describes or defines a merit-based HRM system. The heart of the model, showing the context and core elements of merit systems, is repeated here in Figure 4.

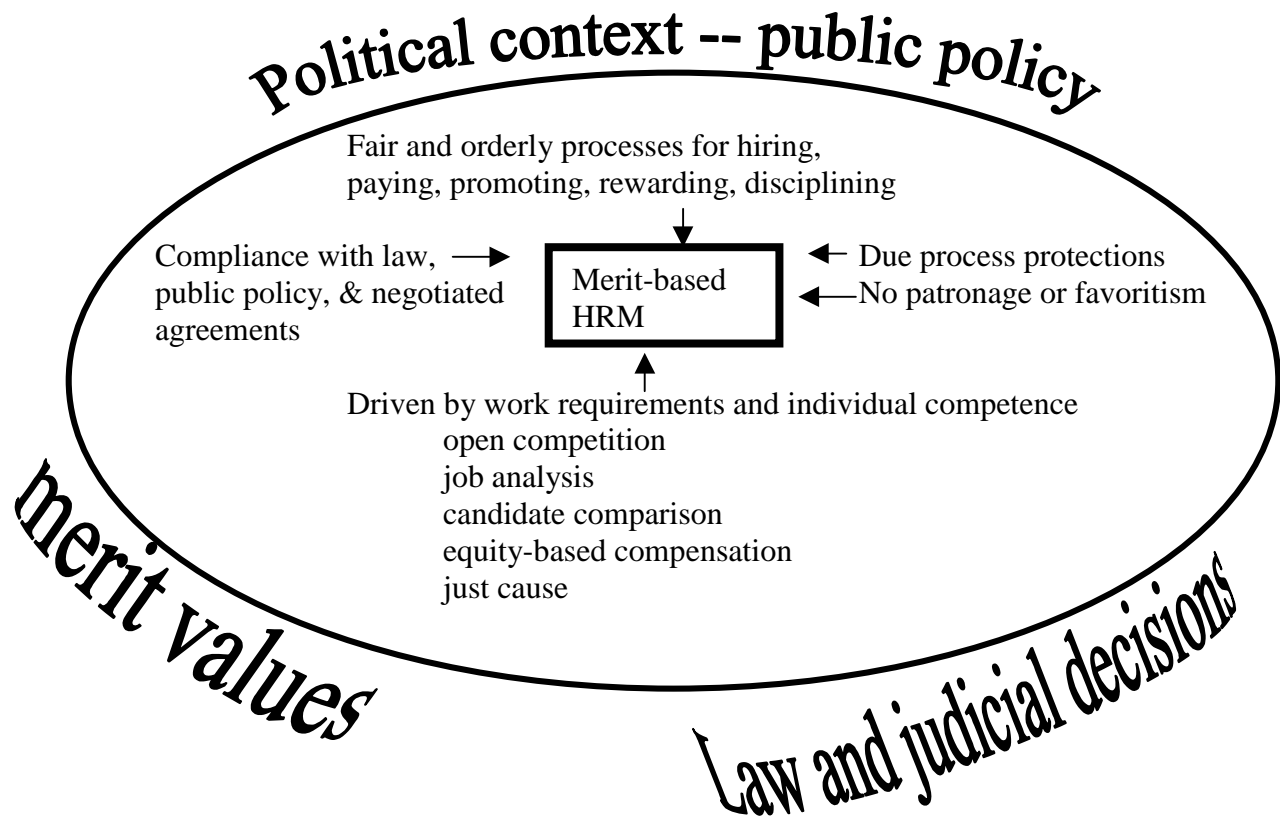


Figure 4 Context and Core Elements of Merit-based HRM Systems

The context of a merit-based system leads to a discussion of the Title 5-exempt organizations in terms of political environment and public policy, merit values and principles, and the legal environment. Eighteen of the nineteen participants in the study clearly considered themselves federal organizations. Their employees are in-fact federal employees. As such, they operate in a political context and must respond to public policy issues in the HRM arena, such as remaining political neutral in the workplace, maintaining a representative workforce free of discrimination, and providing family and worker friendly policies. Their operating charters are their authorizing legislation or the legislation that approved their exemption from all or part of Title 5. They have greater flexibility to craft HRM programs and systems without the approval of a central

management agency; but they are subject to congressional oversight and must be able to defend their policies and practices within a political and legal framework.

Merit values of some sort would logically serve as the foundation ethic of a merit-based system. The findings in this category will be discussed later in this chapter; but for the model comparison, the clear message from eighteen of the organizations was that fairness and equity are key values of their systems whether in support of merit or perhaps by the emphasis on non-discrimination. The terms “fairness and equity” were articulated by many of the organizations. Even those who said they were covered by the Title 5 Merit System Principles used the terms fairness and equity more easily than the term merit. In any event, merit is in; patronage is out. That much seems to be a given at the federal level. The question of favoritism, however, is very much on the minds of many employees. Merit as a value promotes competence and eschews racial, ethnic, gender and other forms of favoritism or discrimination. The one organization that did not fall into this overall context was the Government-sponsored entity, Sallie Mae. Merit is not a given value in their HRM system, except as it applies to compensation. The key component of the Sallie Mae HRM system is the requirement that it be in compliance with all employment-related laws. However, Sallie Mae like all other large organizations is impacted by the legal component of the merit context.

The growth of employment and civil rights laws and the judicial involvement in HRM cases have increased the legalization of the HRM field in general. Law and judicial decisions are influencing HRM structure and practices, institutionalizing the field across all sectors. The specific mention of merit per se may not be important as demonstrating through practice that the HRM systems supports fair and equitable policies and practices in a political and legal context.

The next step is a look further into the model at the components that form and drive a merit-based system. The traditional framework for a merit-based system is a fair and orderly process, or, in OPM terms, a “rational system.” Given the nature of large organizations today, most HRM systems would meet this test – well-defined, consistent

systems for managing their human resources. The Summary Matrix of the findings by organization (appendix C) shows that all of the participating organizations have specific policies and practices for hiring, compensation, and discipline. (The full OPM study provides an even broader picture of the HRM systems in these organizations, showing the full range of conventional HRM practices and functions at play in these organizations.) Along a continuum of formal to informal practices and procedures, most of the eighteen organizations stated that they use a variety of sources for advertising vacancies; use job analysis to identify and categorize work; compare candidates and group them for consideration and selection; base compensation on some combination of internal and external equity; use progressive discipline and have disciplinary systems based on just cause. With a few exceptions, they provide due process protections as well. Some exceptions are driven by unique institutional needs, such as the CIA director's authority to fire without due process procedures for purposes of national security.

The greatest difference from Title 5 is in the grievance and appeals process for non-bargaining unit employees. Less than half of the organizations have access to an external appeals process. While there is no requirement in law for such access, Title 5 employees value the option to appeal to the MSPB. As already noted, the FAA employees petitioned for four years to have Congress restore their access to the MSPB. Over half of the studied agencies have collective bargaining agreements, all of which have negotiated HRM procedures the organizations must follow. Patronage appears to be a thing of the past on any substantive scale. The respondents stated specifically that political pressure was not an issue in filling jobs or taking other personnel actions. However, my personal experience says that periodically individuals do get recommended by the political leadership, which is sometimes accommodated assuming the individual is a competent candidate. My educated guess is that this occurs as well in other organizations.

This comparison to the model of merit-based HRM systems shows that overall the exempt organizations have fashioned fair and orderly HRM systems that can stand up to this systemic portion of a test of merit. Only Sallie Mae, as a government-sponsored

enterprise, stands somewhat apart – law is the driver to ensure the system is appropriately compliant. There is no direct political connection to the personnel system and merit has no context other than pay for performance and general competence. Hiring and termination have less competition and protection respectively but other HRM components have the same look and feel as most HRM systems, public or private.

The second part of the model shows future trends that appear to be influencing merit systems especially as they move to more decentralized and deregulated environments. Figure 5 displays this part of the model for further discussion.

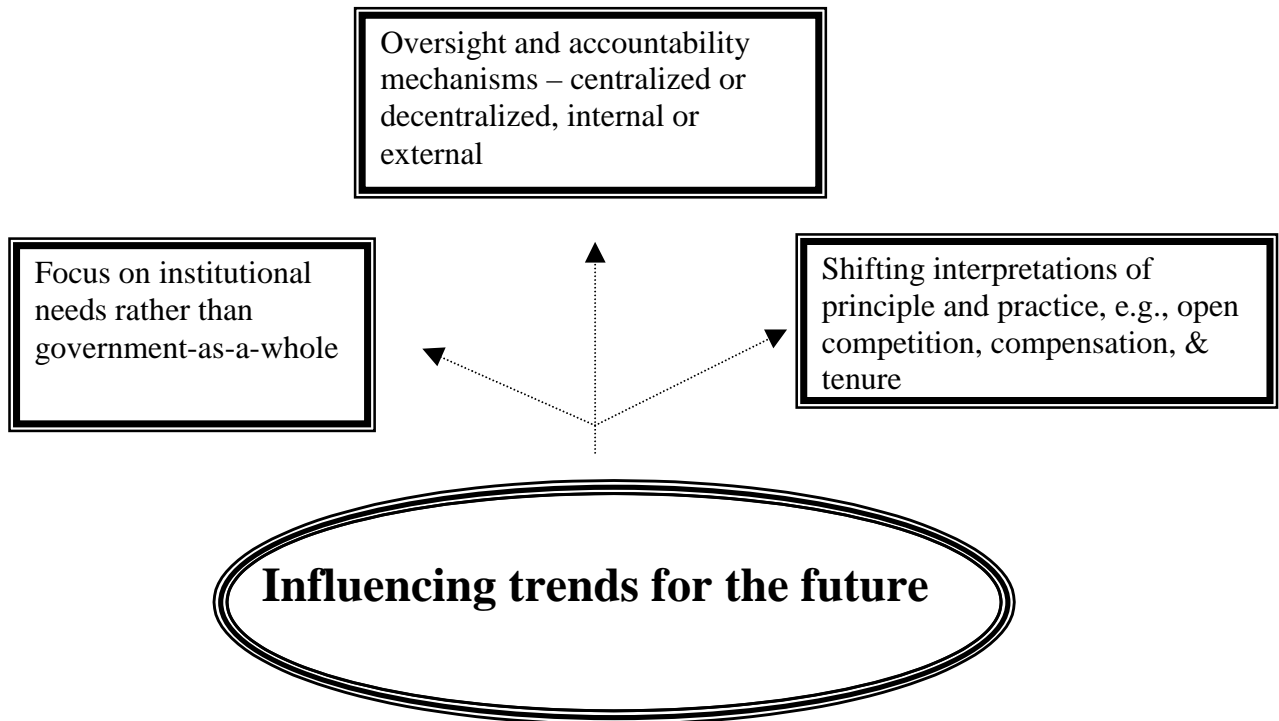


Figure 5 Influencing Trends for the Future

Two of the three future trends cited here for merit systems are already significantly evident in the Title 5 exempt organizations. By the very existence of their Title 5 exemptions and their ownership of their HRM systems, the studied organizations craft their HRM policies and practices to meet their institutional/local needs rather than a federal wide system. It is for this reason that their freedom and flexibilities are so

appealing to the Title 5-covered agencies. It is also for this reason that we should take advantage of learning from their experiences. In the same vein, the issue of how to interpret and apply the traditional merit concepts of open competition, compensation, and tenure is less of a concern to those with exemptions in these areas. While the HRM policies protect and promote the traditional intent, the needs of the organization are taken into consideration in crafting specific practices. For example, most of the organizations are using the internet as well as targeted advertising to reach appropriate candidates but may limit the areas of consideration as needed. There are fewer restrictions on the area of consideration than under Title 5. They are not bound to submit vacancies to a central repository as Title 5 agencies are. The question of open competition may reflect a more local and occupational interpretation just as it has in compensation where most of the organizations already have moved to broadbanding, giving line management greater authority in classifying jobs and setting pay. The key component, however, is that the exempt organizations can test HRM ideas and adjust them to fit the organization's needs so that within a broad federal merit framework.

The third area of future impact in merit systems is the new emphasis on oversight and accountability. The merit system as it evolved over time became a management control mechanism. Managers did not have to take responsibility for maintaining a merit-based HRM environment, the system did that for them. As federal agencies move toward a more deregulated environment, important questions loom about how to ensure accountability. This is a gray area for the Title 5-exempts. While I didn't find accountability to be an evident component of a merit-based system, in a public context oversight and accountability of federal management systems is important for maintaining and responding to the public trust. There is limited and inconsistent external oversight of the Title 5-exempt HRM systems. While this does not diminish the merit-based nature of these systems as found in the research, it does call for more consideration. The next section addresses the patterns and anomalies of merit in the exempt organizations and what this may mean for federal HRM in a less regulated world.

In closing this discussion on the Merit Model and Title 5-exempts, it is important to note that within the federal HRM community, there is no reason that one size must fit all or that a central agency like OPM must define specific instructions for timeframes or reporting mechanisms. Specific parameters are rarely contained in HRM-related laws or judicial decisions. The model therefore identifies the context and components but not specific procedures – the Title 5-exempt organizations with some exceptions can stand up to the model, the ultimate legal question being whether they can demonstrate they follow their own procedures as required of federal agencies in Executive Orders 10987 and 10988 (Hays and Kearney, 1995, 148) as well as in any legal process. However, the perception of fairness and equity is often in the eye of the beholder and a multiplicity of interpretations of “open competition” and “due process” as well as increased discretion in HRM decision making for supervisors and managers may call for increased communication with employees and unions to maintain a balance between the needs of the employees and the goals of the organization.

B. Patterns and Anomalies of Merit in the Findings

If I were to cast a net over the common HRM policies and practices of the Title 5-exempt organizations in the study, only a few anomalies or outliers would fall out as not meeting a merit standard. Given the development of HRM as a management process, large institutions build very similar HRM systems. The federal merit system has historically been ahead of its time in developing personnel practices based on fairness and equity. The private sector has followed suit in the face of increasing employment and civil rights laws. The question here is: how different do the merit practices of the exempt organizations look from those of Title 5 and of what significance do those differences have? The research data captured the broad picture of HRM in these organizations rather than an in-depth analysis of any one component. This discussion focuses on the four categories of analysis – merit values or principles, hiring and staffing, classification and compensation, and employee protections, and provides additional comments on collective bargaining and oversight and accountability.

1) Merit Principles or Values

At one level, this is the fuzziest area of the findings – a number of the respondents were uncertain whether or not their organizations were covered and the language of the CSRA 1978 leaves room for interpretation. At another level, however, with the exception of Sallie Mae the study participants were very clear about merit values serving as the foundation of their HRM systems. Their statements were supported by the data gathered in the HRM areas of hiring, compensation, and due process. However, only a few of the organizations actually have the Merit System Principles highly visible in their statement of values. For others, the words - fairness and equity - were an integral part of the conversation.

The organizations in the field study are legally bound by Merit System Principles only if covered by the Civil Service Reform Act of 1978 (CSRA) or their authorizing legislation. The CSRA excluded government corporations, any executive agency or unit that conducts foreign intelligence or counterintelligence activities (including the CIA, the DIA, and the NSA), and the General Accounting Office from the Merit System Principles (USMSPB 1985, 31). In the study, however, all but one of the nineteen organizations stated that they either follow the spirit of the Merit System Principles or base their systems on similar values of fairness and equity in their personnel policies and practices. For the most part, their HRM practices support these assertions; however, it is not possible nor useful to separate practices driven by merit-based values and those established to reflect the fairness and equity called for in civil rights and other laws or in bargaining agreements.

Three situations were noted in the study where organizations specifically state their support for the Title 5 Merit System Principles in their HRM literature. These include organizations that 1) are recent entrants into the exempt category, 2) have Interchange Agreements with OPM, or 3) are struggling with civil rights issues. The FAA, for example, received authority to create its own personnel system in 1996 with exemptions from most of Title 5 including the Merit System Principles. From the beginning, their literature and pronouncements have stated that their “newly emerging

HRM system should be consistent with those principles” (USOPM, 1998, D-2). The Library of Congress, in settlement of an EEO complaint calling for fair treatment in employment, established a formal merit-based HRM system that mirrors Title 5 staffing regulations. The Nuclear Regulatory Commission, which has an Interchange Agreement with OPM to enable their employees to transfer to competitive service agencies, maintains a highly visible merit staffing system based on their organizational values and the Merit System Principles (USOPM, 1998, D-1, 2). Both NRC’s labor-management partnership and EEO Advisory Committees help monitor the system, suggesting other issues may also be driving the visible display and support of the Merit System Principles.

Throughout the history of the federal merit system in the traditional civil service agencies, personnel staff and managers alike did not have to grapple with what merit meant. The system itself managed merit through narrow procedures and external oversight. Exempt organizations, on the other hand, had to deliberately create merit-based systems. They had to consciously embrace merit as an operating value or set of principles. This may be a significant difference between the exempt organizations and the traditional agencies. OPM today is struggling to educate managers and supervisors in the Merit System Principles to aid in decision making and better support more decentralized HRM practices. In a number of the exempt organizations, HRM appears to be more integrated with the management system than in Title 5 agencies.

Representatives of NAPA and MSPB thought that patronage is not a serious issue in federal personnel management today and that it is a given that federal HRM systems would be merit-based. MSPB did raise the concern, however, about long term effects of not ensuring that HRM systems had policies and procedures that promoted and monitored merit. A more flexible system may over time become less focused on merit and more open to abuse. A representative from the state of Georgia expressed the same concerns over their elimination of the merit system there. Others, however, hold that the legal context of HRM today and collective bargaining are the new arbiters of merit, reducing the need for a central controlling system or organization.

The exempt organizations clearly provide lessons in managing fair and equitable HRM systems in less regulated environments. They possess some self-regulating features inherent in their organizing principles – merit-based values to ensure that employees have trust in the system, employment and civil rights laws and adjudication mechanisms, unions representing large segments of the workforce, and for some a more demanding accounting of institutional performance. Patronage or its absence was not an issue of concern to those who participated in the study. Merit values were not generally seen as a protection against the return of a spoils system but as both a good business practice and as protection from legal challenges. The Postal Service uses the “voice of the employee” as one of the components of their balanced scorecard productivity and compensation system, along with the voice of the business and the voice of the customer. A major concern to the organization is that employee satisfaction affects productivity.

2) Hiring and Staffing

Historically, the heart of a merit system is open competition in employment – what you know, not who you know. The OPM representatives discussed this as one of the most troubling aspects of the Merit System Principles under Title 5. They also found in a recent study (USOPM, April 1999) that the Title 5-covered federal agencies are not using the OPM centralized national jobs database as has been mandated for announcing federal job vacancies. The exempt organizations in the field study did not make a pretense of trying to reach all citizens in announcing vacancies. In fact, some like the heavily unionized TVA and Postal Service generally try first to fill from within the organization through internal job postings or skills banks. All of the organizations (again, the GSE is an exception) have a vacancy announcement system, which they use in broad or targeted recruiting. They use a variety of mechanisms to attract candidates from campus recruiting, to advertising in professional journals and local or national newspapers, to internet databases and organizational web sites, to employee referrals (sometimes with a bonus attached). The exempt organizations focussed on ensuring good coverage for recruitment of local and targeted audiences rather than a concern about national notification. Their web pages today open their jobs to a large audience of those who have access to this media as do the interactive voice response telephone

employment/job lines that some organizations, such as the VA use. In a deregulated environment, the interpretation of merit concepts becomes more locally determined than in a centralized system.

The vacancy announcement and candidate selection process is perhaps the most regulated of all HRM functions (with adverse actions a close second) under Title 5. Historically, the personnel system was created to ensure people were hired for their competence and to eliminate the practice of patronage; but the process has grown so regulated and cumbersome that it is equated with all that is bad and inflexible about federal personnel management and the antithesis of effective and efficient management (and, some would say, even of merit). The system has never been as pure as one might have thought, however. Since 1883, there have been restrictions and benefits applied to different populations for political and social reasons. Therefore, to some degree, open competition has always been political. Today, the question of how open is open reflects a tension between the democratic expectation of opportunity for citizens with the cost and efficiency of filling jobs in a reasonable timeframe.

Many of the government corporations were established to give more hiring flexibility to organizations. Looking at their hiring practices today, however, I did not find anything that resembled at-will employment. Of course, the devil is always in the details and I did not investigate their practices in depth or evaluate the consistency with which they follow their own procedures. The MSPB studies of the TVA and the VHA as well as the IG report of the FAA system give us some assurance that the practices are integrated into their management philosophies. Unions and strong legal environments also mitigate the likelihood that organizations would flagrantly use non-merit-based practices. By contrast, the GSE did not describe a set of procedures for hiring, stating they based hiring on a resume review.

To ensure fairness and equity in the hiring process, most of the organizations have policies and practices that include advertising vacancies and some means of comparing candidates (rating and ranking). There are a variety of practices in the hiring process,

some being more specific in rating and ranking procedures, others less so. There is greater use of categorical ranking rather than numerical but examples of both exist. The primary difference from Title 5 organizations was the elimination of the “rule of three” and the more limited application of veterans preference unless mandated by law. Several organizations use categorical groupings rather than numerical ratings and some use panels in the interview and selection process. The unionized organizations have negotiated specific merit processes for each bargaining unit, creating multiple merit hiring processes within each organization just as it does for Title 5 agencies. The MSPB (USMSPB, 1999; 1995) has proposed that larger numbers of candidates be referred to the selecting official rather than the three that Title 5 calls for. The exempt organizations normally refer larger numbers of candidates.

Use of formal centralized testing in selection has been greatly diminished under Title 5 as agencies find any other means they can to hire more quickly. Testing fell into disfavor when so many examinations were effectively challenged for bias and hiring authorities were delegated to Headquarters and operating units. Among the Title 5-exempts, however, there is greater use of testing than expected. The Foreign Service, the Postal Service, the Foreign Agricultural Service (for foreign service positions) and the Metropolitan Washington Airport Authority all use formal tests that have survived challenge or not been challenged. Again, the MSPB (USMSPB, 1999) suggests that organizations use formal tests more often to better identify candidates likely to be successful in the specific field/occupation. At issue is the investment in resources to develop and administer such examinations. Some organizations, just as they do under Title 5, use assessment centers to evaluate candidates.

Veterans preference needs to be addressed here. It is a major feature of Title 5, dictating practices and procedures in the hiring and reduction-in-force processes. Providing some preference to veterans has been public policy since before the Pendleton Act. Since 1944 veterans preference has been mandated by law for some types of personnel actions in the competitive service and in some exempt organizations as well; but the specific details about how to apply preference are not prescribed. The exempt

organizations in the study have mixed practices on veterans preference with some fully following Title 5 point procedures and some awarding no preference to veterans at all. In the middle are organizations that provide an advantage to veterans where they are competitive with non-veterans; but the practices are loosely articulated (and may be loosely applied).

Veterans preference is a sensitive, tension-filled subject in federal employment. There is no reference to veterans preference in the Merit System Principles and many feel that such a policy actually violates merit. I discussed the findings of the OPM study with Bernie Rosen, former head of the Civil Service Commission and current professor emeritus at American University. He felt strongly that a personnel management system that did not provide veterans preference could not be considered a merit system and he was wary of programs that did not give specific procedures for applying preference. He would not be persuaded in our discussion that the Merit System Principles did not include veterans preference as a point of merit policy nor would he accept that some exempt organizations were not bound by law to provide such preference. From his perspective veterans preference is and always has been a public policy issue of the highest order.

From the perspective of OPM, veterans preference is not the only area of concern in more deregulated hiring processes. I interviewed the staffer from the OPM Chicago Regional Office who conducted a review of the new FAA HRM system to determine whether to recommend continuation of the FAA Interchange Agreement with OPM. The review focused in particular on hiring practices. The review resulted in a positive determination; but OPM's concerns revolve around what "could" happen if the new approaches described here are abused in the future.

- a. The use of residence to restrict external area of competition – in OPM's view this is non-meritorious because it is not open but it is legal. Possibly over time this could be used more frequently than strict job needs require, thus moving further away from open competition.

- b. Opening vacancy announcements for as little as one day – with the internet and fax machines it is possible to do this but OPM is concerned that the concept of open competition is seriously diminished. This option is supposed to be used only in rare cases but there are no oversight controls in place. OPM cautions that FAA has an obligation to have a sufficient, well-qualified, diverse applicant pool.
- c. Practice of referring unranked lists with no preference eligibles where the selecting official can select any one without determining who may be the best qualified – OPM is concerned there may not be any record of comparison among the candidates and no reason for selection. There is no accountability if this is used for management to ensure selecting officials are choosing wisely and without favoritism or discrimination.
- d. The use of on-the-spot hiring authority – selecting officials can hire a candidate at hand for shortage category positions and for special hiring categories such as the disabled. OPM's concern is the implicit elimination of other candidates who may have sent applications to different offices or who were not known personally by a selecting official.

These concerns are worthy of consideration as a new understanding of open competition evolves from its traditional context. Even within Title 5 agencies, the practices are not purely carried out. In particular, the on-the-spot or direct hire practices for shortage category occupations and the Schedule A special hiring authorities face the same potential problems that OPM noted in the FAA process. The key issue may be a redefinition of what we mean by “open” in modern government.

Overall in the hiring and staffing area, except for the rule of three and veterans preference, the issues are very much the same for Title 5 and Title 5-exempt organizations. To have hiring systems that are fair and defensible in any arena of challenge means having formal systems that allow candidates to compete in what is perceived to be a level playing field. An important finding from the research is that the exempt organizations are generally similar to the covered agencies – recruiting and hiring require formal processes to be defensible and ensure merit. The *Griggs* decision has

dictated for the public and private sectors alike the importance of the link between selection instruments and processes and the job to be performed. Yet, most organizations, public and private, have difficulty in identifying and selecting high quality candidates that fit the organization's needs. There is also tension between the options of building an internal competitive workforce rather and recruiting from the outside. The advantage that the Title 5-exempt organizations have over the traditional agencies is the flexibility to experiment with and change practices to fit changing needs without getting approval of outside authorities. This was evident in each of the areas of HRM studied and was especially significant in classification and compensation.

3) Classification and Compensation

Among the Title 5-exempt organizations, classification and compensation are the HRM functions from which most organizations have sought and received relief from Title 5. Compensation is the key issue and classification generally follows in a quest to gain greater flexibility in assigning employees and setting pay. OPM and Congress have long recognized that in certain locations and occupations the federal government pay scale does not attract and retain quality candidates. Locality pay and special pay scales have been in place for a number of years now under Title 5. But the option to change or modify these systems as needed has remained the domain of the exempt organizations. Generally, the exempt organizations have "established pay systems that are more flexible and better fit their unique environments and organizational needs (pay-for-performance systems, broad bands, variable pay and others)" (USOPM, 1998, D-5).

Even with such flexibility, some organizations have chosen to follow Title 5. The federal classification and compensation systems are fair and defensible. To create unique systems requires the resources to develop and maintain classification and compensation policies and practices that are rational, fair and open, and tied to the work of the organization and/or the rank or skill level of the individual. New classification systems are based usually on benchmarking, factor evaluation systems, or other job analysis assessments, often with occupations grouped into categories rather than a massive list of series as Title 5 has developed. For compensation, some organizations (e.g., FDIC prior

to its recent negotiations to move to a pay-for-performance system) continue to follow Title 5 but increase the pay scale by some percentage. Some organizations have employees under both Title 5 and their own legislative authority and must choose to have two compensation systems or to apply Title 5 to both. The Smithsonian uses the same pay system for both Title 5 and Trust employees; the Veterans Health Administration has a separate compensation system for Title 38 employees but follows Title 5 for Hybrid and competitive service employees. Most of those with their own systems use Hay- or market-based approaches to compensation that combine both internal and external equity. A large number of the exempt organizations have established broadbanding systems with variable pay tied to performance. Most of the OPM demonstration projects have also tested broadbanding systems. At the present, this appears to be the classification and compensation approach of choice for the future; OPM expects to propose legislation to open this option to Title 5 agencies.

The exempt organizations have generally reduced the number of position descriptions by grouping or banding positions and occupations together. Position descriptions (PDs) are often available electronically so that managers and supervisors can select an appropriate PDs or build their own from appropriate job tasks/requirements. In some cases, classification authority has been delegated to line management (e.g., FAA), occupations are grouped into categories (e.g., OFHEO), or classification is based on skill sets rather than positions (e.g., NSA). Rank-in-person systems like the CIA, the Foreign Service, and the VHA Title 38 employees have more limited classification systems. They place value on the capability the individual brings to the organization and develops throughout his or her career. The exempt organizations overall ground their classification in use a mix of internal and external benchmarks in determining the comparative value of the work.

The exempt organizations also have the flexibility and freedom to experiment and modify or abandon new approaches to compensation; however, in unionized environments such changes are negotiable. The issue here long term is the cost of negotiated pay. The FAA IG audited the FAA's personnel reform (FAA OIG Report,

1998), including compensation. While the IG reported that the new negotiated pay systems offer greater flexibility in attracting and retaining qualified personnel at key locations, they reported that the agreement with the air traffic controllers union will add almost \$900,000 to payroll costs over five years. This doesn't count the costs of the new systems for non-bargaining unit employees and the negotiations underway at that time with two other large unions. The FAA responded that the costs would be offset through eliminating alternate work schedules, expanding controller duties, adding incentives to reduce sick leave usage and thereby unscheduled overtime, and reducing official time for union representatives. The potential for bargaining pay may also increase the number of organized employee units as employees move to protect their own cut of the organization's resources. This is discussed further under collective bargaining below.

As a side note, the cost of moving away from the traditional federal pay system is an issue for future analysis and discussion. In a 1993 report on "Broad-Banding in the Federal Government," OPM noted that an analysis "of salary trends in three demonstration projects have shown that mean salaries rose more under broad-banding than under the system of traditional grades" (14). Over a 10-year period, the Navy bands in the China Lake project showed a 2.35 increase in average salary relative to comparison sites. A three-year study of the National Institute for Standards (NIST) and Technology and the Air Force Pacer Share projects revealed a four-percent cost for NIST and cost increases ranging from three percent for blue-collar employees to 10 percent for white-collar employees. The increases varied by occupational groups. For Navy, professional salaries were 5.5 percent higher, technician pay was 1.9 percent higher, and administrative and support staff salaries were essentially cost neutral. At NIST, salary increases were highest for those in the administrative occupations where costs increased by 10 percent more than the comparison sites.

Rather than treating the workforce as a single unit, the Title 5-exempt organizations frequently have multiple compensation systems that address different employee groups (bargaining units, non-bargaining unit, executive). This raises the question that goes to the heart of the traditional merit system – can we pay people

differently and still consider the system merit-based? During the OPM interview, the executives suggested that compensation may be experiencing the greatest philosophical change of any of the federal merit functions. Locality pay has already breached the historical perspective of a uniform pay system. The Title 5-exempt organizations demonstrate the reality that OPM is just beginning to acknowledge – federal organizations can and do have different pay systems without necessarily diminishing equity in recognizing job worth and employee contribution.

Compensation goes to the heart of the institution’s ability to manage its human resources. One size does not fit all. What is important is the basis on which the system is built and the consistency with which it is applied. External and internal equity is the foundation on which merit-based compensation systems are built; but how that equity is defined and operationalized may be local rather than national in nature. Individuals may not be equal in terms of market value. What they bring and contribute to the organization is now being considered in the compensation they receive. Compensation raises the specter of treating people differently based on their contribution to the accomplishments of the organization. Here we tread on the concerns over discrimination. The historical federal personnel system sought to treat people the same – a national pay scale based on longevity (in fact if not in intent). Employees know what others get paid and what bonuses or awards they receive. Fairness is often perceived as equal. However, in a performance-based environment, there is a need to measure and recognize contribution as an individual and as a team. This calls for a shift from the traditional perspective. I did not look into this in the Title 5-exempt organizations; the only issue raised about pay-for performance came from the union resistance to changing longevity-based systems. Shifting emphases in compensation approaches may be another topic for future research.

Balancing fairness, openness, and equity is essential in crafting alternative compensation systems. Many of the Title 5-exempt organizations have moved in this direction. Their models are worth extrapolating to the larger federal environment. Yet, there is a caution in this as in all such recommendations. Once authority is granted, how it is unclear what the outcomes will be. Mike Causey reported in “The Federal Diary”

(The Washington Post, August 16, 1999) that the VA “nurses would get the same year 2000 pay raise as other federal workers under legislation introduced by Sen. Mike DeWine (R-Ohio). Some of the nurses haven’t had a raise in years.” Politics has stepped in to limit the flexible authority that the VHA in this instance has in compensation.

4) Employee Protections

One of the areas the government reinvention project would like to improve in terms of responsiveness to the needs of the organization is the ability to discipline and terminate employees. The perception is that outside of Title 5 organizations are freer to act as necessary without undue restrictions. The reality is that, while OPM has dictated specific regulations for Title 5 agencies, all federal organizations are obligated to provide due process protections to employees who have a liberty and property right in their employment (see the cases cited in Chapter I). A key point here for future consideration is the type of appointment/tenure employees have and the rights each conveys since the appointment may trigger due process obligations.

Given the legal foundation for due process, it is not surprising that the exempt organizations in the study with few exceptions provide due process procedures for adverse personnel actions. Even where the organization has legislative exemptions, due process is built into the HRM systems. The GAO report on the personnel practices of three intelligence agencies, CIA, NSA, and DIA found that “although the intelligence agencies are exempt from key adverse action statutes, their regulations (at CIA) and actual practices (at NSA and DIA) are similar to those of other federal agencies. ... The internal regulations at NSA and DIA are almost identical to standard federal regulations. Further, our review of case files indicates that NSA and DIA are closely following their regulations” even though they, too, have statutory authority to summarily remove employees in national security cases (USGAO, 1996 March, 28).

The most important difference between Title 5 and non-Title 5 organizations appears in the right to grieve and/or appeal adverse action decisions. All Title 5

employees have access to the MSPB to appeal adverse actions. In Title 5-exempt organizations, only those employees eligible for veterans preference have access to MSPB, except for veterans at the CIA who have no general right to appeal to the MSPB. For other employees, those covered by union agreements have access to negotiated grievance procedures, which includes the opportunity to take the case before an outside arbitrator. Employees not covered by union agreements have no access to external adjudicators. The grievance/appeal chain usually ends within the organization; however, most employees ultimately have access to the EEOC and the courts. The MSPB (USMSPB, 1989) found that TVA managers did not have a grievance process. The report recommended that TVA institute a grievance mechanism for this group. In checking with the TVA for this research (Jan 4, 2000), I found that their HRM system still does not provide a grievance process for managers and non-bargaining unit employees. For cases involving Hatch Act violations or Whistleblower Protection Act reprisal charges, the organizations not covered by Title 5 stated that their IG Office would be the appropriate resource for employees. There appeared to be little knowledge about how well this was publicized to employees. Most of the organizations promoted the use of internal dispute resolution mechanisms and early problem solving interventions.

Overall, the data reveal that most employees in the exempt organizations have fewer protections than those under Title 5, primarily and significantly due to the lack of appeal rights to the MSPB. Generally, this reduces the time it takes to process an adverse action in the exempt organizations for non-bargaining unit employees. Even where organizations provide standard due process procedures – advance notice, opportunity to reply, written decision – each organization can fashion its own timeframes. It is also possible to build some more neutral appeal procedure into the grievance process. The FAA offers employees the opportunity to take their case to a three-member panel with each side selecting a member and mutually agreeing on a third. FAA employees view this option as less satisfactory than being able to appeal to the MSPB and sought to have Congress reinstate their right to appeal to the MSPB. Jerry Shaw in the FedManager email newsletter, Tuesday, March 28, 2000, describes the results of their efforts:

If H.R. 1000 ... is signed by the President later this week as expected, and FAA employees have their right to appeal adverse actions to the MSPB reinstated ... In effect, H.R. 1000 seeks to "undo" part of a previous law that exempted the FAA from Title 5, and required FAA employees to contest adverse actions through the agency's grievance procedure or the "Guaranteed Fair Treatment" process. The "Guaranteed Fair Treatment" process was developed as a substitute for the MSPB appeals process. However, in the past four years or so, since the Guaranteed Fair Treatment process has been in place, there have been numerous complaints about it, such as the fact that there was no provision for discovery. Many FAA employees viewed the new process as unfair, and urged Congress to restore their right to appeal adverse actions to the MSPB.

Under employee protections, the exempt organizations demonstrate a pattern of providing due process and grievance procedures to most employees; but only a small number of employees have the opportunity to appeal outside of the organization. There is also significant variation in channels for handling Hatch Act violations and Whistleblower reprisals which tend to be handled by the Inspectors General.

5) Collective Bargaining

Closely related to employee protection programs are labor relations programs. Of the 19 organizations in the study, 12 have collective bargaining units or other employee representative organizations. At least five of the Title 5-exempt organizations have multiple unions. The TVA has the largest number of collective bargaining units, a whopping twenty-three, and the Postal Service has the largest covered federal workforce, numbering well over 700,000. The management officials we spoke with report that the general experience of these organizations with labor relations is mixed, just as it is under Title 5. Some have historically good relationships with their unions and some have had stormy ones. Most of the study organizations are participating in partnership activity even though only those covered by Title 5 are covered by the President's executive order on labor-management partnerships. Some of these partnerships preceded the executive order.

The scope of bargaining is broader for non-Title 5 organizations than for those covered under Chapter 71 of Title 5, including bargaining over pay and benefits

(USOPM, 1998, D-13). Of particular note are those organizations trying to move toward pay-for-performance systems, which have reported meeting strong union resistance in establishing such systems for bargaining unit employees. FDIC officials recently negotiated a performance-based pay system for bargaining unit employees. Initially, the costs will be higher under the agreement but it is worth it so that the long-term goal of moving away from a seniority-based pay system can be achieved. The initial price is the granting of payouts to employees who are rated satisfactory.

Overall, the large number of unions in these organizations means that their role in curbing the authority of management is particularly important. On the one hand, union influence and the collective bargaining process often reinforces the adherence to merit-based practices in these organizations. On the other, a strong union voice restricts the use of flexible authorities while increasing the potential for agency employees to unionize. Most recently, under the FAA's legislative release from Title 5, the attorneys in the office of the FAA's chief counsel voted to choose the American Federation of State, County and Municipal Employees to be their bargaining agent in a move to ensure that their pay remains competitive with that of the air traffic controllers who now are bargaining compensation (The Washington Post, 6/14/99, B7).

Collective bargaining adds a new dimension to merit. Mosher states that civil service systems and collective bargaining "arise from different ideologies, espouse different aims and values, [and] pursue different procedures" (1982, 202). Legislation and regulation are no longer the sole determinants of HRM policy, where elements of the HRM policies and practices are negotiable or grievable. In such environments, equity issues may be resolved more through negotiation/arbitration than through a set of merit principles. At the postal service, The Washington Post reports that in a recent arbitration decision the letter carriers will be paid by the third year of the contract at a higher rate than the postal clerks for the first time since 1907 (9/21/99, A17). Unions tend to demand benefits and greater protections for employees than the law or regulations prescribe. Unions also generally support the status quo, longevity and seniority, and clear job structures and reporting chains. They usually resist greater discretion for supervisors

without a balance in employee protections. The fairness and equity concerns underlying much of the union perspective mirror similar issues under merit; however, the scope of concern is a narrow constituency-based focus rather than the larger principles of merit or efficiency for an effective government and the larger public interest.

6) Oversight and Accountability

The OPM study also sought to identify to what extent these Title 5-exempt organizations hold themselves accountable for effective HRM systems and adherence to the Merit System Principles or other corporate values and policies. The findings reveal there is limited external oversight of the overall HRM programs and merit systems among the exempt organizations. Most organizations identified the Merit System Protection Board (MSPB), the General Accounting Office GAO, and their Inspector General (IG), as organizations that periodically look at their operations. But there was no systematic regulatory review of the HRM operations from an external source for organizations outside the Title 5 environment. In these organizations HRM is strongly identified with the overall central management systems, more responsive to the changing needs of the organization than to an externally imposed HRM system authority.

Some exempt organizations enter into interchange agreements with the Office of Personnel Management (OPM). Such agreements authorize OPM to review their merit systems in exchange for an agreement that enables the organization's employees to transfer to other federal agencies without applying as nonfederal candidates. The organizations in this study with interchange agreements include the Nuclear Regular Commission, the Federal Aviation Administration, and the Veteran's Health Administration --Title 38 employees. OPM, however, conducts a more general review of such organizations than it does in Title 5-covered organizations at the time of renewal.

On the issue of management accountability, central HRM staffs provide policy direction and oversight to subordinate HRM units. Some organizations indicated they grant greater delegations to line management and periodically review management

practices under delegated HRM authority. They expect line managers to be responsible for HRM as part of their managerial responsibilities with less reliance on the HRM staff. Most significantly, such delegations fall in the area of selection where managers are required to justify in writing the reasons for selection sufficient to withstand challenge. There was a distinct difference in perspective, that is a greater sense of ownership, in those organizations where managers play a more integral role in HRM activities than in traditional Title 5 organizations that depend on the dedicated HRM staff to implement and manage the personnel system.

The Central Intelligence Agency's internal regulations, for example, assign HRM responsibilities to specific management positions and bar prohibited factors in panel rankings, selections, and promotions. In this rank-in-person system, panels of managers identify determine promotion eligibility and senior line managers select from the promotion lists. Similarly, the VHA, as a rank-in-person system, places primary responsibility for qualifications, placement and pay on panels of managers and occupational experts. An MSPB report (USMSPB, 1991) describes smaller HRM staff operations at VHA with line management having responsibility for what would be staffing and classification under Title 5. In addition, at VHA each manager develops specific work-area outcomes consistent with the organization's mission. Collectively these outcomes represent the organization's performance improvement plan. The Peace Corps managers have full authority to write position descriptions and classify positions as well as to rank applicants and make/justify selections.

Although more traditional in operations, the Library of Congress expects managers to assume responsibility for meeting requirements set out in the staffing plan and for meeting the time frames of the selection process. These requirements are included in their performance evaluations. The Federal Deposit Insurance Corporation includes HRM accountability factors in their supervisor and executive performance evaluations. Their leadership sets the tone and sends the accountability message downward throughout the organization. The Tennessee Valley Authority noted that with its upcoming efforts at strategic work force planning and management, it will expect its

line managers to become responsible for predicting and planning for their future human resources needs and to take more responsibility for day-to-day HRM activities. Finally, at the United States Postal Service, accountability is managed through the Balanced Scorecard approach and through variable pay. The Balanced Scorecard relates to achievement in financial, customer, and employee goals for the year.

HRM oversight and accountability in Title 5-exempt organizations offer very little to match the OPM role in the Title 5 arena. While they appear self-regulating there is no mechanism for assuring that the organizations maintain merit-based systems and consistently follow their own rules and regulations. The upside to this concern is that at least those organizations that participated in the study have come close to managing their own accountability, most likely through internal control mechanisms. For a larger deregulated environment, such mechanisms may need to be more formalized.

In conclusion, the research data reveal a clear and distinct pattern of merit-based practices in the Title 5-exempt organizations. The greater latitude that is provided to these organizations has resulted in a variety of agency-specific versions of a merit-based approach to personnel management in the federal sector. The predominant merit values underlying these HRM are fair treatment and equitable standards. While the Title 5 Merit System Principles do not apply to all of the systems, most of the organizations would acquit themselves well if rated against them. The role of collective bargaining and the effect of civil rights legislation are two strong elements that support merit practices without the necessity of additional regulation or the stringent control of a central authority. So what do the findings on the HRM systems of Title 5-exempt employees mean for federal HRM, and where do we go from here? In the final chapter concludes with a discussion of several themes the research generated and potential implications and recommendations for federal HRM policy.

Chapter VIII Conclusion: Where do we go from here?

As the research has shown, there is no definitive set of policies and practices that must exist to constitute a merit-based personnel system. Rather, there exists a set of values and conditions within a political and legal context that frames merit-based systems as a subset of the larger HRM field. Merit, expressed as the values of fairness and equity, is re-establishing its place as the overarching principle of federal HRM. But merit in practice is being redefined from a centralized control system to limit patronage in federal employment to a more decentralized management process that embodies fairness and equity in a political environment.

Merit in practice may no longer have a universal meaning, politically or legally. It may be defined locally through labor contracts or practices that the organization defines to promote merit and enhance the business of the organization. Even within an organization there may not be a collective understanding of merit. Instead, there may be multiple understandings based on common relationships or associations such as location, occupation, status or position in the organization. These are subtle changes occurring within the fabric of the employment system that are shaping the meaning and perception of merit in federal HRM. In this concluding chapter, I discuss the themes emerging from the research that are influencing merit in principle and in practice during this period of government-wide change and suggest recommendations for future federal HRM policy.

A. Themes Drawn From the Research

The findings from the research show that the HRM systems of Title 5-exempt organizations substantially reflect the characteristics of the merit-based HRM model. In doing so, they offer the federal HRM community both a confirmation that merit principles and practices can and do exist in less regulated environments and that multiple, more flexible and more local merit systems can serve the political and business needs of federal organizations. Yet, far from being radically different, they tend for the most part to mimic the policies and practices of Title 5 agencies (and the larger field of HRM) without some of the more restrictive procedures and with greater flexibility to change

their systems to meet organizational needs. Throughout the research, as I looked at merit-based HRM through the lens of the Title 5-exempt organizations, five themes began to appear: the institutionalization of HRM , the legalization of HRM, equal employment opportunity and merit, collective bargaining and HRM, and oversight and accountability of HRM systems.

1) The Institutionalization of HRM

As a growing field of study and management process, HRM has developed an institutional character, replicating its functions, systems, and services -- recruitment, staffing, job analysis, compensation and benefits, performance appraisal, work-force training and development, discipline and grievance processes, worker-friendly policies, quality of life concerns -- throughout almost all large public and private organizations. HRM is a broadly significant activity that affects the capability of organizations to achieve objectives. It also directly affects every individual in the workplace. The HRM system creates constitutive rules that define roles, relationships, and behaviors in the workplace. The institutional attributes of HRM include shared meanings, commonly understood structures and routines, comparable processes and activities, common vocabularies and grammars, and “symbolic frameworks, perceived to be both objective and external, that provide orientation and guidance” (Scott, 1995, 41). While some are more broadly constructed and others are narrowly drawn, HRM policies and practices now provide an accepted set of functions, roles and responsibilities, and legal defense mechanisms integrated as essential elements of institutional management.

Some of the same practices that the public sector initially promulgated to ensure merit and eliminate patronage (such as the posting of vacancies, bidding/posting procedures for employees, equal pay for substantially equal work, and some process to ensure fair treatment) today are evident in many personnel systems. The wisdom of such employment practices is clear in today’s litigious environment whether the purpose is merit, legal compliance, or business efficacy. These practices are being institutionalized through the replication of HRM concepts and systems across all types of organizations

and are reflected in the merit principles and practices that promote fairness and equity in federal employment.

On a final note, in talking to the representatives of the Title 5-exempt organizations, I gathered some additional insight about their HRM structures and roles. All are organized in a variety of ways to provide similar functions and services, such as recruiting, staffing, classification/compensation, benefits, training, labor relations, employee relations, and family-friendly programs. They may provide different levels of service and be organized differently or even contract out some of the work; but the framework is the same. What I found to contrast with my Title 5 experience was the exempt organization's sense of responsibility for and ownership of their HRM system. There were virtually none of the complaints about "the system" that are typically heard in Title 5 organizations. The HRM representatives in a number of the organizations described their roles as meeting the changing needs of the organization while at the same time ensuring that personnel policies and practices were fair and equitable. They and the line managers are responsible for creating and implementing practices that meet the requirements of law – not an outside party like OPM.

2) The Legalization of HRM

At one time, public and private personnel practices bore little resemblance to each other with merit at one end of the personnel spectrum and at-will employment at the other. Today, most large organizations have established personnel policies and practices that recognize their legal obligations to the workforce. Only the smallest of private organizations lie outside the reach of the growing body of civil rights and employment law. Both legislation and case law are defining the parameters of personnel management. With this growing legalization and institutionalization of HRM as a field of study and practice, public sector HRM is evolving into a subset (however unique) of the larger discipline of HRM. That uniqueness lies in the constitutional protections, affirmed in case law, that recognize public employees have liberty and property rights in their jobs, retain substantive constitutional rights, and are to be protected from patronage in personnel decisions.

The increasingly legal context of the workplace continues to narrow the gap between the public and private sectors. The Civil Rights Laws of 1964, 1972 and 1991, the Fair Labor Standards Act, the Family and Medical Leave Act, and others are creating policies and practices that broaden the rights of all workers. Faced with litigation over fairness and equity issues, the private sector is more cautious and defensive in its employment practices. The kinds of behaviors and attitudes, policies and practices that support a merit-based system are also valid for defense in employment and diversity-based litigation. As the private sector builds more protective mechanisms into its personnel systems, the federal sector is starting to decentralize and deregulate its HRM authorities. The Title 5-exempt organizations represent a middle ground on the public-private continuum; but may actually have less formal oversight than some private sector organizations do. The Department of Labor conducts oversight reviews of personnel policies and practices in organizations with federal contracts similar to the types of oversight OPM and MSPB have conducted in federal agencies. There is limited oversight of the HRM systems of the Title 5-exempt programs.

In looking at federal HRM from a legalization perspective, Chris Argyris (1994) differentiates between legal-legalistic and administrative-legalistic frameworks to clarify the role I believe that legalization is playing in the institutional sense. The legal-legalistic framework is “characterized by (a) decisions being increasingly dominated by a concern for enforcing what is mandated by law and (b) infusing organizational governance activities with the aspirations and constraints of the legal order. The causal connection between the legal laws and the behavior within the system ... when implemented correctly represents a match between intentions of society and the consequential actions of organizations” (Argyris, 1994, 347-348). This framework places HRM in an appropriate legal context. By contrast, the administrative-legalistic framework includes “(a) adaptation of excessively cumbersome or inappropriate administrative control processes, (b) magnification of the control procedure, and (c) unnecessarily high levels of formalization and standards of uniformity. ... Thus, from a legal point of view, there is a mismatch between the intentions of the law and the reactions of the organization” (Argyris, 1994, 348). This perspective may describe the legalistic structure of the current

merit system that is so debilitating in a management and business sense. The challenge is to separate the two and build an HRM framework that supports the former.

3) EEO and Merit

While this topic is actually a continuation of the legalization process, the significant impact of EEO and civil rights on HRM is worth a separate discussion. The dramatic increase in civil rights and employment legislation and related case law is driving all HRM systems to create regulations and procedures that protect the organization, whether public or private, from litigation over personnel-related decisions; however, this trend implies and demands more than protectionism. The legal doctrines fully support and are merged with the demands of professional, merit-based personnel practices. The implications of *Griggs, et al. v. Duke Power Co. (1971)* make the connection clear (401 U.S. 424, in Thompson, 1991, 267-272). Personnel-related decisions must be tied to job-related requirements and validated personnel processes. *Griggs* utilizes the vehicle of EEO adjudication to establish firm requirements for fully professional, merit-based human resources management. From this point, HRM and EEO became intertwined.

Defensible HRM decisions based on job requirements and fair and equitable processes are key to preventing and/or surviving litigation. EEO is also a driver for increased education in the workplace, both for line management and employees, to reduce litigation and improve the working relationships within the organization. The emphasis on fairness and equity in personnel systems is evident in all of the interviews conducted with the Title 5-exempt representatives. It is also a key feature of the public and general personnel textbooks reviewed. In almost all cases, these values were connected to EEO and how people are treated in the workplace. This frame of reference is much more immediate today than references to patronage even though that is still covered in the public-oriented texts.

4) Collective Bargaining and Merit

An increasingly strong element in the fashioning of merit-based practices in federal HRM is the influence of labor organizations. In the federal government, 59 percent of all employees are represented by a union (The Washington Post, 9/27/99, A17); therefore, collective bargaining even under Title 5 directly affects merit practices. For example, internal promotion plans are negotiable. Where more than one bargaining unit exists, an agency often has multiple sets of selection and promotion procedures to administer. Of nineteen Title 5-exempt organizations studied, eleven have one or more unions representing segments of the workforce. Their HRM systems reflect a variety of interests through negotiated or “partnered” policies and practices. The scope of bargaining is broader for most Title 5-exempt organizations in areas such as bargaining over pay and benefits (USOPM, 1998, D-13). One of the concerns over creating more flexible HRM systems relates to cost. Where pay is bargained, salary costs historically have increased as experienced by the FAA, the Postal Service, and the FDIC. The number of bargaining units may increase as well, if FAA is any example. Two new bargaining units have recently been established reportedly to ensure that the covered employees get their share of salary increases in comparison to agreements forged with the air traffic controllers.

The research suggests then that organizations with greater HRM flexibility may face greater collective bargaining challenges, which at the same time may serve also to ensure employee rights are protected through enhanced merit-based practices. One of the comments heard over the years is that federal sector labor relations would be more cooperative if the unions could bargain over pay. While I did not go very deeply into this issue in this research, the evidence that many of the organizations have very contentious relationships with their unions does not support this position. Only the TVA with twenty-three unions appears to have developed a more workable relationship with the unions, which are highly involved in establishing and monitoring personnel practices that affect bargaining unit members.

5) Oversight and Accountability in Less Regulated Environments

Title 5 invests responsibility for oversight of HRM and the merit principles in the OPM and the MSPB. There is no similar external oversight body for the Title 5-exempt HRM systems, collectively or by organization. The inspectors general can and do play such a role within the context of their larger missions, as the FAA OIG report (1998) shows. The research also shows that OPM, MSPB, and GAO do some investigation in to the merit systems of these organizations; however, there is no consistent plan for such assessments and not all organizations are visited. In conversation with the exempt HRM representatives, this is an area that they would rather not see changed. Some accept limited OPM oversight when they choose to enter into Interchange Agreements with OPM to ensure their employees can transfer to Title 5 agencies. The agreements open the organization to OPM review of their merit processes; but to date, they have not experienced any intrusion into the establishment or management of their HRM systems.

The Merit Model shows the potential trend toward increased oversight of decentralized and deregulated organizations. OPM is requesting authority from OMB to manage such oversight. While the lack of oversight is a concern in the Title 5-exempt environment, there are several points to consider before suggesting that procedural oversight is the approach to take. First, the findings of OPM, MSPB, and GAO have been positive in the merit reviews reported in this research. Second, there may be more internally imposed controls under management accountability than this research revealed. Third, process and procedural evaluation would begin to mimic the type of control OPM has exerted historically that removes ownership from the line management and places it on the HRM staff. The OPM executive interviewed on this issue is drafting a guide that would assess the overall HRM system against the Merit System Principles rather than conduct a process evaluation. OPM appears to be trying to strike a balance between oversight as a control and compliance mechanism and oversight as a public accountability mechanism. Such accountability may also call for ensuring the organization is consistently following its own HRM policies and practices.

In keeping with greater flexibility, oversight and accountability must be built into the up-front framework of the personnel system then managed a part of the organization's accountability systems. The OPM study on accountability in federal agencies (USOPM, 1997) concluded that "Accountability needs to be placed where HRM authority lies. ... Assessment of effective HRM needs to be focused more than ever before on line managers, creating what has been called 'accountability for results'" (USOPM, 1997, 37).

B. Implications for Federal HRM Policy

The research question for this dissertation sought to determine the merit-based nature of federal organizations exempt from all or part of Title 5 HRM requirements. The results of the research provide a picture of what merit-based HRM might look like in a less regulated environment. That information then serves as a potential starting point for discussing how to balance merit-based principles and practices with the greater efficiency and customer service goals of a more flexible, business-like federal environment.

This research fills a void in both the literature and practice by

- building a model that defines what constitutes a merit-based HRM system outside of the dictates of Title 5 and identifies trends that would influence HRM in less regulated environments;
- collecting information about key HRM practices in 19 Title 5-exempt organizations;
- drawing an aggregate picture of merit practices in such organizations from the data; and,
- identifying themes and recommendations that may guide further development of alternative merit systems.

So, where do we go from here? What implications does the research have for the larger federal HRM community and civil service reinvention? The political and institutional mandate under the National Partnership for Reinvention and the Government Performance and Results Act is to create efficient and effective services that meet the needs of the customers in flatter organizational structures and networks. Merit is not

really part of the conversation. It is assumed that merit-based competitive systems will continue to serve as the foundation of federal HRM. The reinvention effort appears to be aimed, instead, at identifying the best hiring and placement, compensation and benefits, and performance management practices (among others) that can fit into the current regulations. Local level experimentation, rather than macro-level change, is being targeted in demonstration projects and pilot performance-based organization legislation. However, a change in focus from rule-driven merit system to one focusing on Merit Systems Principles and management accountability is beginning to emerge (USOPM 1996). But without a coherent vision of merit for modern American governance, the principles as currently articulated risk one of three potential fates: being re-interpreted in the historic control model, ignored in the name of good business practices, or left to the vagaries of judicial decisions and collective bargaining. None of these create the commitment that Lane and Wolf (1990) highlight as the critical linking of public employees to the governance community.

At present, merit is broadly defined by the set of Merit System Principles delineated in the Civil Service Reform Act of 1978, listed in Chapter I. While there is little disagreement over the importance of these principles, there is little agreement over how to operationalize them in HRM policies and practices that support an efficient and responsive government (Ingraham 1995). The research on the Title 5-exempt organizations gives us a framework for both. In a less regulated environment with limited external oversight, these organizations manage HRM systems largely consistent with the Merit System Principles. Their focus is not on the principles but the values they support, in particular, fairness and equity. The data showed evidence of merit-based policies and practices in key HRM areas, including hiring and staffing, classification and compensation, and employee protections. What the findings tells us is that there are already multiple merit-based HRM systems in the larger federal community. The idea of multiple merit systems may not fit our traditional image of “the merit system” as if it were one uniform entity; but the Title 5-exempts already represent a success in this area. The idea of multiple merit systems, in fact, fits the looser network of organizational and management relationships called for in today’s complex political, economic and social

environments. At the same time it raises legitimate concerns about accountability to the public that has traditionally been the responsibility of the central management agencies, such as OPM. Organizations can define merit in their HRM systems and be held accountable for their outcomes.

Public HRM is changing as public organizations are changing. In a recent speech, Janice LaChance, OPM director, stated that

At OPM, we have been anticipating the specific nature of work and the work force of the 21st century . . . We already see the trends for the next millennium. And the theme is 'Adapt or Be Pushed Aside.' So organizations will have to become more diverse and flexible -- they will no longer be able to do everything themselves, but will distribute work across a group of sources or a group of suppliers. Organizations will no longer have a permanent work force, or even a temporary work force, instead they will have what I call a "situational work force." Needed work will be done by a blend of core employees in cross-functional teams and by temporary employees, consultants, and contractors, as necessary. Full-time, lifelong jobs and job descriptions are already disappearing, and instead, employees are increasingly being called upon to be generalists -- omnivores in the new world order, with the tools to survive and flourish at many different tasks and in many different environments. Fewer jobs will fit into a neat job description. And our core government employees will be called upon to perform one role today and another tomorrow (electronic newsletter at www.fedweek.com -- FedWeek, Sept 1, 1999).

To support and manage this changing environment, the merit systems of today and tomorrow cannot be regulated through a centralized set of laws, regulations, policies and practices. As a representation of fairness and equity in public employment, *merit* must serve as a *foundation of public management not an addition to it*. Historically, public personnel management defined merit in practice through specific applied processes and procedures. As we move to a less regulated environment, we face a number of challenges in our effort to integrate merit with modern management systems. Of primary importance, is the issue of oversight and accountability. If the past held personnel systems accountable through the oversight by central management organizations, *the future will require agencies to define and defend the legal components of their HRM systems and the merit practices on which they are based*. The flexibility to create responsive HRM systems increases an organization's legal and administrative

vulnerability along with opportunity and responsiveness. Traditional public HRM accountability falls to the HRM staff; in a deregulated and decentralized environment, line management bears more direct responsibility and accountability.

A culture that values and respects diversity, fairness, and individual achievement is essential to building a merit-based HRM system. Today, there are many “voices” in the workplace. Such growing diversity demands that organizations capture the spirit as well as the legal requirements of merit-based HRM policies and practices. In the future, merit practices may bear a local perspective within a national framework. Management and union voices alike need to be heard to build an understanding of and acceptance for the values, policies and practices of the organization’s HRM systems and services, both those that serve the business of the organization and those that serve the public interest. The political and practical definitions of some historical merit components such as open competition, compensation, and tenure are evolving in practice. Engaging in conversation on these issues with the leadership and employees of the Title 5 exempt organizations might help us more intentionally frame the discussion and direction the new definitions will take.

C. Recommendations

Based on the dissertation results, I suggest the federal HRM leadership consider the following six recommendations as viable avenues for positioning federal HRM for an integrated role in modern government:

- 1) *Redefine the meaning of merit in the context of modern government.* A clear statement of overriding values and principles is necessary to guide delegated and decentralized action. We can start with the values of fairness and equity that are already widely embraced for HRM systems in a legal environment. To that we can add competence. In a tight labor market with political pressure to serve the customer, employee competence is an important business driver. What is still missing then is the value of commitment to the public interest.

The concept of commitment is central to current theories of HRM in the private sector as a replacement for the traditional emphasis on control (Walton, 1985). But in democratic governance, the idea of commitment goes beyond employee identification with the mission. Public service commitment necessarily requires the creation and development of an intense relationship of the individual with the larger issues of community, constitutional government, democratic values, the public service as a vocation more than a job, and a sense of the greater common good (Lane and Wolf, 1990, 125-161).

Historically, public personnel management defined merit in practice through specific, centrally-directed policies and procedures. Managers were not indoctrinated in merit as a value system; they merely learned how to use the system. What was missing was the understanding of the moral and ethical context of merit in public management. In a more independent and flexible HRM environment, the values must be held in common while the practices may be locally derived and managed. Our obligation is to ensure that public personnel systems serve the public and the workforce that represents the larger civic community. We also have to come to grips with how we define the federal workforce. If we envision a workforce composed of permanent, contingent and contract workers, we need to design the HRM umbrella to acknowledge the rights and restrictions, costs and value, expectations and roles placed on these various components. Issues of tenure and benefits as well as ethic for the public service become part of the discussion and policy.

- 2) *Authorize federal agencies to create and defend their own HRM systems* within a broad merit framework with latitude to make changes as needed. I was impressed with the sense of ownership and enthusiasm expressed by the HRM representatives of the Title 5-exempt organizations. This perspective contrasts sharply with the Title 5 environment. Even recognizing that there is risk involved in moving to such a different environment, this is *the* moment to take that risk. The political leadership is demanding improved organizational performance. Line managers and employees

alike are more sensitive to the need to improve individual and group performance. Taking responsibility for developing, monitoring, and defending their HRM system leads to greater ownership of and accountability for HRM as a management process. Greater accountability leads to a better understanding of the legal and political context of HRM and its relationship to the public interest. With such an approach, HRM can be more seriously integrated into the management of the organization and democratic governance. Ingraham (1995) acknowledges, and reinforces for effect, that not all public organizations are alike. They vary by size and structure, function, and internal processes. They need to conduct their own audits of the HRM policies and practices that have grown incrementally over time and link their processes to their products and services.

- 3) *Broaden the roles of OPM and MSPB* in (a) creating a government-wide merit-based HRM framework that addresses the requirements of the law and public policy but does not dictate practice and (b) conducting systems-level reviews of merit systems. Agencies can then defend their systems in accordance with the merit framework and be held accountable for following their own policies and practices. Such a framework requires a political consensus on the ethic that merit should bring to federal human resources management systems. Ingraham (1995) clearly states that merit is inherently political. The central management agencies are agents of the political leadership as well as executive management. The institutional leadership called for here starts with the political context in which federal HRM functions. A conscious effort through political conversation about what merit values will serve the management process of government is critical to mediating the tensions in public personnel management. The central management agencies of government in OPM and MSPB as well as OMB and GAO can serve to carry this conversation forward and propose models of merit for action at the organizational level.
- 4) *Maintain a central government-wide HRM system under OPM* as legally defensible alternative, benchmarked as a state-of-the-art HRM system that can be used by agencies as desired. A number of the exempt organizations have chosen to use or

follow elements of the Title 5 system to ensure they had a legally accountable personnel system, to reduce the resources and costs necessary for developing and maintaining more independent operations, and to treat employees similarly. Building and maintaining merit-based personnel systems requires an investment in resources that many agencies will not have in order to create, monitor, and defend new HRM systems in an increasingly legal and litigious environment.

- 5) *Recast the labor-management relationship in the federal sector.* The current process is not healthy or productive in moving agencies forward to better serve the employee, the customer, and the general public. The political perspective on unionism in a decentralized environment is not clear. The primary issue from this research is the question of negotiating pay. In organizations funded through appropriations, Congress needs to assess the impact of local pay and benefits collective bargaining. The FAA experience will be an important example of how pay can be managed when such negotiations also appear to be driving the expansion of bargaining units and therefore even greater obligation to bargain over pay. In terms of the role unions play in the management of HRM for covered employees, the TVA experience may be worth examining. They appear to share more HRM policy decision making with the unions than we do under Title 5.

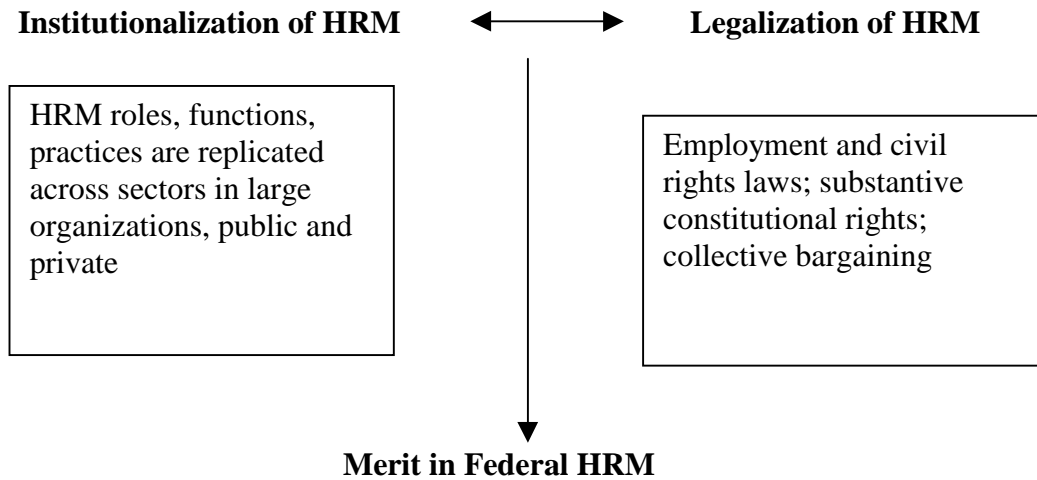
- 6) *Educate, educate, educate.....* Linking back to the first recommendation, we are challenged to create a new orientation for organizational leadership. In a period of change, uncertainty and ambiguity, quality leadership becomes crucial for maintaining organizational equilibrium. The current management cadre grew up in a more passive personnel management environment where the personnel staff took care of most personnel issues. New levels of discretion, accountability and liability follow increased deregulation and decentralization of personnel authority to line organizations and their management. Training and education for supervisors and managers needs to promote a new emphasis on the values inherent in a merit system, values expressed in terms of the realities and complexities of modern government.

In times of change such as we are now experiencing, Margaret Wheatley (1992) suggests that to release the underlying order in a chaotic environment, managers need to provide employees with the highest order of technical expertise and clear values in order to foster independent action. Management training and education in public service must create an institutional leadership that intuitively understands how to balance governmental values, such as merit, with the business needs of the organization. In fact, we need an institutional culture in the public sector that expressly values the role of government in a democracy and the relationship between the agency and the citizen. In daily operations, that translates into a language that understands the values and their operating policies and practices that underlie the federal HRM system.

D. Conclusion

In closing, my final thoughts look toward the blending of the historical value of merit in federal management with the performance-based needs of modern government. The requirements of the twenty-first century demand a model of public sector HRM that is founded on a recognition of the special demands of democratic governance – openness, fairness, equal opportunity – the special character of the public service. Public sector HRM systems must be integrated management systems grounded in a public policy ethic that values and incorporates merit into policy and practice rather than merit-based administrative systems that support (or thwart) effective management of public programs. Despite the collapse of the traditional merit system, this research shows that the basic concept of merit survives and flourishes in professional practice. Across the spectrum of public sector organizations, there are examples of how organizations fully or partially exempt from Title 5 are better integrating their HRM programs with their institutional needs while maintaining merit-based systems. Our challenge is to build a framework around this loose network of independent, merit-based HRM systems and tie them together in a broad model of accountability. This framework then becomes the new model of merit-based HRM for the federal community. A model of what federal HRM may look like is revealed in figure 6.

New Model for Federal HRM



Political context: reflects the democratic process in the implementation of public policy and, through its workforce, the government's capacity to act

Values: fairness, equity, competence, commitment

HRM framework:

- formed by law, public policy, and negotiated agreements,
- reflects a fair and orderly process for managing human resources,
- based on work-related requirements and a person's ability to perform and advance, and,
- includes protections against arbitrary and capricious action, discrimination and favoritism, and violations of substantive constitutional rights.

Integrated management process: serves the strategic and operational business needs of the organization

Accountability and oversight:

- local ownership of the HRM system within a larger national framework
- operational integrity – performance accountability
- internal/external audit of approved local system

Evolving issues: shifting interpretation of traditional concepts to meet needs of modern government, e.g., open competition, tenure, equal pay for equal work; growing tension between employee protections and management effectiveness and efficiency

Figure 6 New Model for Federal HRM