

Feds vs. Contractors Debate Continues at Senate Hearing

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The debate over federal outsourcing continued as Senate lawmakers on May 20 heard from labor and federal officials on the best ways to rebalance the federal employee-to-contractor ratio to satisfy the administration's effort to reduce the government's reliance on private contractors.

The Senate Homeland Security and Governmental Affairs federal workforce subcommittee performed the status check on the issue two months after the Office of Management and Budget's Office of Federal Procurement Policy issued a proposed policy letter which suggested a broader designation of what constitutes an "inherently governmental" function that must be performed by federal workers.

The March policy letter suggested that agencies use the definition included in the Federal Activities Inventory Reform Act, which says that such jobs are "so intimately related to the public interest as to mandate performance by government employees." Comments on the draft letter are due June 1, with a final rule to be issued thereafter.

In prepared testimony submitted to the panel, Colleen Kelley, president of the National Treasury Employees Union, said that OMB needs to go even further and repudiate the presumption in the 2003 revisions to the A-76 Circular that a government function is commercial in nature unless affirmatively shown otherwise.

"This presumption is not only bad policy, but it is at odds with the FAIR Act's definition," Kelley said. "If the FAIR Act includes any presumption at all, it presumes the opposite—namely, that a function is inherently governmental (because it is performed by the government) unless a contrary showing is made."

In addition, Kelley claimed OMB needs to revise two of the tests outlined in the policy letter draft—the "nature of the function" and "exercise of discretion" tests—that an agency can use to determine whether a function is inherently governmental. Both are too restrictive and will not help in reducing the number of government contractors, she said.

Daniel Gordon, OFPP administrator, testified that OMB does not expect the letter to lead to a great downsizing in the contractor workforce. Such a shift would be up to the agencies themselves, which may decide to hire additional federal employees to better manage the existing number of private contractors, Gordon said.

"We do not anticipate that the content of the draft policy letter will lead to a widespread shift away from contractors," Gordon said. "Rebalancing does not require an agency to in-source, provided the agency can hire, retrain, or reassign sufficient federal employees with the requisite skills at managing contractors to maintain control of their activities."