



Highlights of GAO-06-381, a report to congressional requesters

## Why GAO Did This Study

A federal employee conversion occurs whenever an individual changes from one personnel status or service to another without a break in federal government service of more than 3 days. This report focuses on conversions of individuals from noncareer to career positions. Federal agencies must use appropriate authorities and follow proper procedures in making these conversions. GAO was asked to determine for departments and selected agencies (1) the number and characteristics of all noncareer to career conversions occurring during the period from May 1, 2001, through April 30, 2005, and (2) whether appropriate authorities were used and proper procedures were followed in making these conversions at the GS-12 level and above.

## What GAO Recommends

GAO recommends that (1) OPM review the 18 conversions GAO identified where it appears that certain agencies did not use appropriate authorities and/or follow proper procedures and determine whether additional actions are needed, and (2) determine whether conversions to career excepted service positions should be subject to OPM's review. OPM generally agreed with these recommendations.

[www.gao.gov/cgi-bin/getrpt?GAO-06-381](http://www.gao.gov/cgi-bin/getrpt?GAO-06-381).

To view the full product, including the scope and methodology, click on the link above. For more information, contact George H. Stalcup at (202) 512-6806 or [stalcupg@gao.gov](mailto:stalcupg@gao.gov).

## PERSONNEL PRACTICES

# Conversions of Employees from Noncareer to Career Positions, May 2001 - April 2005

## What GAO Found

Twenty-three of the 41 departments and agencies selected for review reported converting 144 individuals from noncareer to career positions from May 1, 2001, through April 30, 2005. The other 18 departments and agencies reported making no conversions during this period. Four agencies accounted for 95, or 66 percent, of the 144 reported conversions: the Departments of Health and Human Services (36), Justice (23), Defense (21), and Treasury (15). Of the 144 reported conversions, almost two-thirds were from Limited Term Senior Executive Service (SES) positions (47) and Schedule C positions (46). Limited Term SES appointments may be made for up to 36 months and can include federal employees who previously held career positions. Schedule C appointments are generally noncompetitive and are for positions graded GS-15 and below that involve determining policy or that require a close confidential relationship with key agency officials. Of these 144 individuals, 64 were converted to career SES positions, 47 to career competitive service positions, and 33 to career excepted service (non-Schedule C) positions.

Agencies used appropriate authorities and followed proper procedures in making the majority (93) of the 130 conversions reported at the GS-12 level or higher. However, for 37 of these conversions it appears that agencies did not follow proper procedures or agencies did not provide enough information for us to make an assessment. For 18 of the 37 of these conversions, it appears that agencies did not follow proper procedures. Some of the apparent improper procedures included: selecting former noncareer appointees who appeared to have limited qualifications and experience for career positions, creating career positions specifically for particular individuals, and failing to apply veteran's preference in the selection process. Seven of the 18 conversions were subject to OPM review and approval; 2 because they fell within the presidential election pre-appointment review period as prescribed by OPM and 5 because they were to SES level positions. For the remaining 19 conversions, agencies did not provide enough information for GAO to fully assess the process used by the agency in making the conversion. This was largely attributable to the types of appointments involved. Sixteen of these 19 conversions were to career excepted service (non-Schedule C) positions at the Department of Justice. For appointments to excepted service positions, OPM does not require agencies to follow OPM's competitive hiring provisions or to maintain records of the rating, ranking, and selection process, as it requires for competitive service appointments (although most of these conversions are subject to the merit system principles). These unique hiring procedures and limited documentation requirements for excepted service positions resulted in GAO having insufficient information to reconstruct the Department of Justice's decision-making process to convert these individuals. For the remaining three cases, the Department of Health and Human Services could not locate certain files.



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United States Government Accountability Office  
Washington, D.C. 20548

May 1, 2006

The Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
House of Representatives

The Honorable Danny K. Davis  
Ranking Minority Member, Subcommittee on  
Federal Workforce and Agency Organization  
Committee on Government Reform  
House of Representatives

According to the Office of Personnel Management (OPM), a federal employee conversion occurs whenever an individual changes from one personnel status or service to another without a break in federal government service of more than 3 days. There are many types of conversions. This report focuses on one type of conversion; i.e., converting individuals from noncareer to career positions. These conversions represented less than 1 percent of the total number of career conversions across the government from May 1, 2001, through April 30, 2005.<sup>1</sup> The types of positions this report covers and a definition of each is listed in the background section.

Federal agencies must use appropriate authorities and follow proper procedures in making the conversions. Most of these authorities and procedures are found in Title 5 of the U.S. Code. Title 5 of the U.S. Code includes the merit system principles,<sup>2</sup> which are broad principles governing federal personnel management, such as that all applicants for federal employment should receive fair and equitable treatment. Other examples of statutory requirements include granting of veteran's preference<sup>3</sup> and the

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<sup>1</sup>Although our report includes conversions from the Legislative branch to the Executive branch and of conversions from one agency to another, the total number of governmentwide conversions includes conversions from noncareer to career within an agency. This difference does not have a material effect on the comparison.

<sup>2</sup>5 U.S.C. § 2301(b).

<sup>3</sup>5 U.S.C. §§ 3309-20.

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prohibition on certain personnel practices<sup>4</sup> such as discriminating for or against an applicant for employment on the basis of political affiliation. In addition to these statutory requirements, agencies must follow OPM regulations, which set out required procedures for making appointments to career positions, such as providing public notice of all vacancies in the career Senior Executive Service (SES).<sup>5</sup> Agencies are not required to follow OPM's competitive service hiring guidance for career excepted service (non-Schedule C) positions; however, agencies must follow merit system principles and apply veteran's preference when making most of these appointments.

OPM also has oversight authority to ensure that federal agencies are following the merit system principles when hiring. As one aspect of carrying out these duties, OPM has traditionally required agencies to seek its pre-appointment approval for the conversion of certain noncareer appointees (Schedule C and Noncareer SES) into certain career positions (competitive service and career SES) during a presidential election review period. Schedule C appointments are generally noncompetitive and are usually for positions graded GS-15 and below that involve determining policy or that require a close confidential relationship with the agency head or other key officials of the agency. Noncareer SES appointees are responsible for formulating, advocating, and directing administration policies. The specific duration of each presidential election review period is defined every 4 years by OPM. For the most recent presidential election, OPM defined the pre-appointment review period from March 18, 2004, through January 20, 2005. OPM does not include conversions to career excepted service (non-Schedule C) positions in this pre-appointment review process. In addition, pursuant to the statutory requirement to maintain an oversight program over delegated activities, OPM conducts periodic audits of agencies' examining and hiring activities to ensure they are consistent with the merit systems principles and other laws and regulations.<sup>6</sup>

This report responds to your request that we determine for departments and selected agencies (1) the number of all conversions from noncareer to career positions occurring during the period from May 1, 2001, through

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<sup>4</sup>5 U.S.C. § 2302.

<sup>5</sup>5 C.F.R. § 317.501(b)(2).

<sup>6</sup>5 U.S.C. § 1104(b)(2).

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April 30, 2005; and for each of these conversions, the characteristics of the noncareer positions previously held by these individuals and the career positions to which they were converted, and (2) whether appropriate authorities were used and proper procedures followed in making these conversions at the GS-12 level and above.

We have regularly reported on conversions from noncareer to career positions in the past.<sup>7</sup> In our most recent review, we reported on conversions during the period from October 1998 through April 2001. In addition, in June 2005, we provided you with information on the number of individuals who were converted from noncareer to career positions during the period from May 1, 2001, through December 31, 2003, as reported to us by departments and selected agencies.<sup>8</sup> We reported that 77 individuals holding noncareer positions were converted to career positions during that time frame at 18 of the 41 selected departments and agencies covered in our review. The remaining 23 departments and selected agencies reported no conversions during that period. This report expands on that information to show the total number of conversions reported by the 41 selected departments and agencies for the entire period of May 1, 2001, through April 30, 2005, and the results of our review of those conversions at the GS-12 level and above.

To address our objectives, we asked 41 departments and selected agencies to complete a data collection instrument (DCI) and provide official records (Standard Form 50B) for each conversion to determine the number of individuals converted from noncareer to career positions. Appendix I lists the 41 departments and agencies we reviewed and the number of conversions reported by each. The criteria we used to select the 41 departments and agencies were (1) all 15 departments and (2) 26 agencies that had oversight or other regular responsibilities for federal workforce issues, and that were agencies of particular interest to the congressional requesters. For each conversion at the GS-12 level and above, we reviewed the merit staffing files, which document promotion and hiring decisions,

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<sup>7</sup>GAO, *Personnel Practices: Career and Other Appointments of Former Political Appointees, October 1998 – April 2001*, GAO-02-326 (Washington, D.C.: Feb. 26, 2002); GAO, *Personnel Practices: Career Appointments Granted Political Appointees from October 1998 through June 2000*, GAO/GGD-00-205 (Washington, D.C.: Sept. 18, 2000); and GAO, *Personnel Practices: Career Appointment of Former Political and Congressional Employees*, GAO/GGD-97-165 (Washington, D.C.: Sept. 2, 1997).

<sup>8</sup>GAO, *Conversions of Selected Employees from Noncareer to Career Positions at Departments and Certain Agencies*, GAO-05-584R (Washington, D.C.: June 9, 2005).

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and official personnel folders (OPF), which include salary and other information from individuals' current and previous appointments, to ensure that appropriate authorities and proper procedures were followed. Agencies are not required to follow OPM's competitive hiring procedures for career excepted service positions. Instead, they devise their own hiring procedures for career excepted service (non-Schedule C) positions. We requested written copies of such procedures from each agency that used this authority to determine (1) if agency procedures were consistent with law and regulations, and (2) whether agencies followed their own procedures. Since most of the conversions to career excepted service positions were made by the Department of Justice (DOJ), we also met with DOJ's Director of Attorney Recruitment and Management to discuss the process DOJ uses to convert individuals to career excepted service (non-Schedule C) positions.

We conducted our work in Washington, D.C. from March 2004 through March 2006 in accordance with generally accepted government auditing standards. Appendix II contains more detailed information on our scope and methodology.

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## Results in Brief

Twenty-three of the 41 departments and agencies selected for review reported converting 144 individuals from noncareer to career positions from May 1, 2001, through April 30, 2005. The other 18 departments and agencies reported making no conversions during this period. Four agencies accounted for 95, or 66 percent, of the 144 reported conversions: the Departments of Health and Human Services (36), Justice (23), Defense (21), and Treasury (15). Of the 144 reported conversions, almost two-thirds were from Limited Term Senior Executive Service (SES) positions (47) and Schedule C positions (46). Limited Term SES appointments may be made for up to 36 months and can include federal employees who previously held career positions. Of these 144 individuals 64 were converted to career SES positions, 47 to career competitive service positions, which are at the GS-15 grade level and below, and 33 to career excepted service (non-Schedule C) positions.

Agencies used appropriate authorities and followed proper procedures in making the majority (93) of the 130 conversions reported at the GS-12 level or higher. However, for 37 of these conversions it appears that agencies did not follow proper procedures or agencies did not provide enough information for us to make an assessment. For 18 of the 37 conversions, it appears that agencies did not follow proper procedures. Some of the

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apparent improper procedures included: selecting former noncareer appointees who appeared to have limited qualifications and experience for career positions, creating career positions specifically for particular individuals, and failing to apply veteran's preference in the selection process. Seven of the 18 conversions were subject to OPM review and approval; 2 because they fell within the presidential election pre-appointment review period as prescribed by OPM and 5 because they were to SES level positions.

For the remaining 19 conversions, agencies did not provide enough information for us to fully assess the process used by the agency in making the conversion. This was largely attributable to the types of appointments involved. Sixteen of these 19 conversions were to career excepted service (non-Schedule C) positions at the Department of Justice. For appointments to excepted service positions, OPM does not require agencies to follow OPM's competitive hiring provisions or to maintain records of the rating, ranking, and selection process, as it requires for competitive service appointments. These unique hiring procedures and limited documentation requirements for excepted service positions resulted in us having insufficient information to reconstruct the Department of Justice's decision-making process to convert these individuals. For the 3 remaining cases, the Department of Health and Human Services and the Department of Defense (DOD) could not locate certain files.

To help ensure that federal agencies follow appropriate authorities and proper procedures in making conversions from noncareer to career positions, we are making recommendations to the Director of OPM to

- review the 18 conversions we identified where it appears that certain agencies did not use appropriate authorities and/or follow proper procedures in making these conversions and determine whether additional actions are needed, and
- determine whether conversions to career excepted service positions should be subject to OPM review—such as through the pre-appointment review OPM conducts of other conversions during presidential election periods, and/or during OPM's periodic audits of agencies' examining and hiring activities, and if so, determine what information agencies should provide on such conversions.

We obtained comments on a draft of this report from the Director of OPM. OPM agreed with our first recommendation to review the 18 cases we

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identified where certain agencies did not use the appropriate authorities or adhere to merit system principles and veteran's preference. With respect to our second recommendation, OPM stated that it would incorporate a review of agency practices in this area during its normal review of agency delegated examining units. Because we view such action as responsive to the intent of our recommendation to enhance the oversight over conversions agencies make from noncareer to career excepted service positions, we revised the recommendation to include OPM's intended action. Appendix VI contains OPM's written comments.

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## Background

We identified seven categories of noncareer position appointments (positions from which individuals were converted as discussed in this report).

- Schedule C: Appointments are generally noncompetitive and are for excepted service positions graded GS-15 and below that involve determining policy or that require a close confidential relationship with the agency head or other key officials of the agency.
- Noncareer SES: Appointments are to positions with responsibility for formulating, advocating, and directing administration policies. Noncareer SES appointees have no tenure and serve "at the pleasure of the department or agency head."
- Limited Term SES: Appointments may be made for up to 36 months to a position with duties that will end within 36 months or an earlier specified time period.
- Limited Emergency SES: Appointments may be made for up to 18 months to meet a bona-fide, unanticipated, urgent need.
- Presidential appointees, including executive level and noncareer ambassadors: Appointees are made by the President generally to fill high-level executive positions. Appointments support and advocate the President's goals and policies.
- Noncareer legislative branch: Appointments are primarily to positions in member and committee offices.
- Other statutory at-will individuals: Sometimes called administratively determined positions. Appointments are made under specific authority

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provided to certain agencies to appoint individuals to these positions noncompetitively. Appointees serve at the pleasure of the agency head and can be removed at will. The salary levels can be determined by the agency head within certain limits.

Although noncareer appointments are generally noncompetitive, individuals holding noncareer positions may have previously held career positions. For example, Limited Term SES and Limited Emergency SES positions are often filled by federal employees who have previously held career positions and achieved career status.

We identified four categories of career position appointments (positions to which individuals were converted as discussed in this report).

- Career (competitive service): Appointments are made through a governmentwide or an “all sources” merit staffing (competitive) process, including recruitment through a published announcement, rating and ranking of eligible candidates, and establishment of OPM-created or approved qualification standards.
- Career-conditional (competitive service): Appointments are for permanent positions in the competitive service and are generally the initial positions for new hires. Appointees must complete a 1-year probationary period and a total of 3 years continuous creditable service to attain a career appointment.
- Career (SES): Appointments are to top-level policy, supervisory, and managerial positions above grade 15 of the General Schedule. Career SES positions require a further review and approval of the merit staffing process by OPM, and the proposed selectee’s executive/managerial qualifications by an OPM-administered SES Qualifications Review Board (QRB) which are composed of members of the SES from across the government.
- Career Excepted Service (Non-Schedule C): Appointments involve agency positions that are not subject to OPM’s competitive hiring examination. Agencies have authority to establish their own hiring procedures to fill excepted service vacancies. Such procedures must comply with statutory requirements such as merit systems principles and veteran’s preference, when applicable. Career excepted service individuals have adverse action appeal rights to the Merit Systems Protection Board; which is responsible for protecting the federal

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government's merit-based system of employment by hearing and deciding cases involving certain personnel actions.

As mentioned previously, the majority of authorities and procedures governing appointments to career positions are outlined in Title 5 of the U.S. Code. Merit system principles are one of the fundamental statutory rules that apply to civil service appointments. These principles require that agencies provide a selection process that is fair, open, and based on skills, knowledge, and ability.<sup>9</sup> Another statutory requirement is the prohibition on certain personnel practices, such as granting any individual a preference or advantage in the application process, including defining the manner of competition or requirements for a position to improve the prospects of any particular applicant, or failing to fulfill veteran's preference requirements.<sup>10</sup> In addition to these statutory requirements, agencies must follow OPM's regulations in Title 5 of the Code of Federal Regulations, which also outline required procedures for making appointments to career positions, such as providing public notice of all vacancies in the career SES.<sup>11</sup> For career excepted service (non-Schedule C) positions, agencies are not required to follow OPM's hiring regulations for the competitive service; however, they must apply veteran's preference and follow merit system principles when making most of these appointments.

OPM has oversight authority to ensure that agencies are following the merit system principles when hiring.<sup>12</sup> In accordance with this authority, OPM has traditionally required agencies to seek its pre-appointment approval for the conversion of certain noncareer appointees (Schedule C and Noncareer SES) into certain career positions (competitive service and career SES) during a presidential election period. OPM defines the specific duration of this period every 4 years. In a memorandum to department and agency heads dated March 18, 2004, OPM defined the most recent pre-appointment review period as beginning on March 18, 2004, and concluding on January 20, 2005, Inauguration Day. In that memorandum, OPM also reminded agencies of the need to ensure that agency personnel actions remain free of political influence and meet all relevant civil service laws, rules, and

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<sup>9</sup>5 U.S.C. § 2301(b)(1).

<sup>10</sup>5 U.S.C. § 2302(b)(6)(11)(b).

<sup>11</sup>5 C.F.R. § 317.501(b)(2).

<sup>12</sup>5 U.S.C. § 1104(b)(2).

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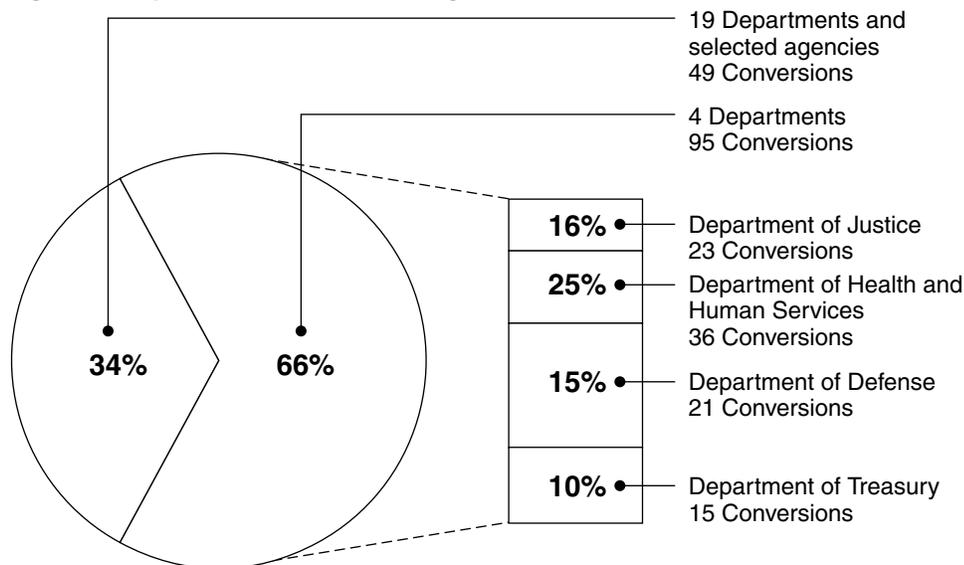
regulations and that all official personnel records should clearly document the continued adherence with merit principles and the avoidance of prohibited personnel practices. OPM also required agencies to seek its approval before appointing a current or former (within the last 5 years) Schedule C or Noncareer SES employee to the competitive service or career SES during this period. As stated previously, OPM does not include conversions to career excepted service (non-Schedule C) positions in this pre-appointment review process. Thirty-six of the 144 reported conversions covered in this review occurred during the most recent presidential election review period. In addition to conducting pre-appointment reviews during election years, OPM also reviews all career SES appointments. For these appointments, OPM first reviews the selection process to ensure merit staffing procedures were followed, then forwards the documents to an OPM-administered SES QRB that reviews and approves the executive/managerial qualifications of agency proposed selectees.

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**Agencies Made 144  
Noncareer to Career  
Conversions from May 2001  
through April 2005**

Twenty-three of the 41 agencies we reviewed reported 144 conversions of individuals from noncareer to career positions from May 1, 2001, through April 30, 2005. The other 18 agencies reported no conversions during this period. Four agencies, the Department of Health and Human Services (HHS), the Department of Justice (DOJ), the Department of Defense (DOD), and the Department of the Treasury (Treasury) accounted for 95, or 66 percent, of the total 144 conversions reported, as seen in figure 1.

**Figure 1: Departments and Selected Agencies with the Most Conversions**



Source: GAO's analysis of data reported by departments and selected agencies.

Of the 144 reported conversions, individuals were converted from the following categories of noncareer positions:

- 47 Limited Term SES positions
- 46 Schedule C positions
- 25 other statutory at-will positions
- 13 Noncareer SES positions
- 6 Limited Emergency SES positions
- 3 presidential appointee positions
- 4 legislative branch positions

The 144 reported conversions were made to the following categories of career positions:

- 64 career SES positions

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- 47 competitive service positions
  - 33 career excepted service (non-Schedule C) positions

Appendix III provides more detail on the characteristics of the noncareer and career positions to which the individuals were converted, e.g., title of positions, grades, salaries, and appointment dates.

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### **Agencies Appeared to Have Used Appropriate Authorities and Proper Procedures in Making the Majority of These Conversions**

Agencies appear to have used appropriate authorities and followed proper procedures in making the majority (93) of the 130 conversions at GS-12 level or above. However, for 18 conversions, it appears that appropriate authorities were not used or proper procedures followed. For 19 conversions, agencies did not provide us with enough information to make a determination—many of these conversions were to excepted service positions where agencies develop their own hiring procedures and have limited documentation requirements.

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### **In 93 Conversions, Agencies Appeared to Have Used Appropriate Authorities and Followed Proper Procedures**

For 93 of the 130 conversions at the GS-12 level and above, our review of the merit staffing files and official personnel files at the respective agencies indicated that the agencies generally followed the procedural requirements associated with each appointing authority called for by federal law and regulations, including merit system principles such as fair and open competition and fair and equitable treatment of applicants. For example, agencies generally complied with the competitive service examination process which is intended to ensure that merit system principles are followed. The process includes notifying the public that the government will accept applications for a job, rating applications against minimum qualification standards and assessing applicants' competencies or knowledge, skills, and abilities against job-related criteria to identify the most qualified applicants.

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### **In 18 Conversions, Appropriate Authorities and Proper Procedures May Not Have Been Followed**

For 18 conversions, it appeared that in making the conversions, agencies did not adhere to merit systems principles or may have engaged in prohibited personnel practices. We found that most of these cases involved one of several categories of improper procedures, and a few cases involved more than one. Each of these conversions is discussed in more detail in appendix IV.

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In 7 of the 18 instances, it appears agencies created career positions specifically for particular noncareer individuals, tailored career positions' qualifications to closely match the noncareer appointees' experience or pre-selected an applicant for a career position.

- In one case, it appears that Department of Homeland Security (DHS) created a career excepted service (non-Schedule C) position and appointed a former noncareer appointee to it without providing an opportunity for other potential candidates to apply.
- In two cases, correspondence between HHS officials suggested that new competitive service positions were created specifically for particular individuals holding statutory at-will positions under Title 42 of the U.S. Code.
- For two cases, it appears HHS tailored the mandatory qualifications in the vacancy announcement to closely match the Limited Term SES individuals' experience, giving them a distinct advantage in the qualifications rating process for the career SES position.
- In one case, HHS may have tailored a career position to match a Schedule C appointee's experience, giving the political appointee an unfair advantage in the competitive process.
- In one case, it appears DOD preselected a former Schedule C appointee for a career position, giving the political appointee an unfair advantage in the competitive process.

In 4 of the 18 instances, it appears agencies did not apply veteran's preference properly when converting noncareer appointees to competitive service and career excepted service (non-Schedule C) positions.

- In one case, it appears HHS selected a Schedule C appointee over an applicant with veteran's preference, who had scored higher than the noncareer appointee in the competitive examination process. Although agencies may make such selections they are required to justify such decisions in writing. It appears the agency did not document its justification.

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- In one case, documents suggest the Environmental Protection Agency (EPA) did not apply veteran's preference points<sup>13</sup> to applicants' scores, despite the presence of seven veteran's preference eligibles on the applicant roster for a competitive service position. Had the points been assigned, five of the applicants would have scored higher than the Schedule C appointee (who was eventually selected) in the competitive examination process. Additionally, it appears that the agency may have created the career position specifically for this individual.
  - In one case, it appears HHS did not apply veteran's preference points for two applicants. Had the points been assigned, the applicants would have scored higher than the Title 42 statutory-at-will employee (who was eventually selected) in the competitive examination process.
  - In one case, it appears that DOJ converted a former Schedule C employee to a career excepted service (non-Schedule C) position without providing the opportunity for veteran's preference eligibles to apply.

In 3 of the 18 instances, agencies converted individuals who appeared to have limited qualifications and/or experience relevant to the career excepted service (non-Schedule C) positions.

- In one case, DOJ converted a former Schedule C appointee even though it appears he did not meet the position's minimal qualifications as outlined in the vacancy announcements.
- In two cases, the Department of Housing and Urban Development (HUD) and DHS selected former Schedule C appointees who appeared to have limited experience relevant to the career positions.

For the four remaining conversions, agencies did not follow several different proper procedures during the appointment process:

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<sup>13</sup>By law, veterans who are disabled or who served on active duty in the Armed Forces during certain specified time periods or in military campaigns are entitled to preference over nonveterans both in hiring from competitive lists of eligibles and in retention during reductions in force. To be entitled to preference, a veteran must meet the eligibility requirements in Title 5 U.S.C. § 2108.

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- For two cases, HHS posted vacancy announcements for SES positions for less than the designated minimum time requirement for SES Merit Staffing Procedures.
  - In one case, OPM raised concerns to the Small Business Administration (SBA) that the appointment did not adhere to merit system principles during the competition. Based on our review, it appears that SBA proceeded with the conversion without fully addressing OPM's concerns.
  - In one case, OPM cited weaknesses to the Consumer Product Safety Commission (CPSC) concerning the selected candidate's qualifications for the SES position. In our view, it appears that CPSC proceeded with the conversion without fully addressing OPM's concerns.

Concerning OPM's role in these 18 conversions, 7 of the 18 conversions were subject to OPM review and approval; 2 because they fell within the presidential election pre-appointment review period as prescribed by OPM and 5 because they were to SES level positions. Of the 2 conversions subject to OPM's presidential election pre-appointment review process, in one instance, it appeared the agency did not submit the conversion to OPM for its review. In the other instance, OPM reviewed the file but did not take action before the January 20, 2005, deadline for the pre-appointment review period. Of the 5 conversions to SES level positions, an OPM-administered QRB reviewed and approved the selectee's qualifications for each of these appointments, although in one case OPM initially rejected the selectee's qualifications, then approved the selection after the agency revised and resubmitted its application.

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**In 19 Conversions, There Was Insufficient Information to Make a Determination as to Whether Appropriate Authorities and Proper Procedures Were Followed**

For 19 conversions, we did not have sufficient information to make a determination as to whether appropriate authorities and proper procedures were followed. More details on these conversions can be found in appendix V. Sixteen of these conversions were to career excepted service (non-Schedule C) positions at DOJ. For the remaining 3 conversions, agencies could not locate the required files or documents.

As mentioned previously, agencies are not required to follow OPM's competitive examination process when making appointments to career excepted service (non-Schedule C) positions. Rather, individual agencies and components within these agencies may develop their own procedures and guidelines for hiring, including documentation requirements for hiring

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decisions. Although OPM requires agencies to maintain records of the rating, ranking, and selection process for competitive service appointments, these documentation requirements do not apply to the excepted service. Agencies are, however, required to follow merit system principles and apply veteran's preference when making most appointments, including those to excepted service positions. Given the limited documentation requirements for these positions, we could not obtain adequate records from DOJ to reconstruct its hiring process. More specifically, DOJ could not provide us with documentation of their decision-making process for these appointments, such as, in some cases, a copy of the selectee's application. For the 3 remaining conversions, HHS could not locate certain files. In two cases, HHS could not locate the Official Personnel File or the merit staffing file for 2 conversions of Limited Term SES individuals to the career SES. In the other case, HHS could not locate the merit staffing files for a former Schedule C appointee that converted to a competitive service position.

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## Conclusions

As we have stated in previous reports, the ability to convert noncareer employees to career positions is an appropriate and valuable process available to agencies. However, the noncompetitive nature of the appointment process for the noncareer positions can create concerns about whether these individuals have benefited from favoritism or improper advantage when being converted to career positions, even the appearance of which could compromise the integrity of the merit system. OPM has established a process to help ensure that conversions occurring during presidential election periods and to SES level positions, meet merit system principles. While this process has in fact helped ensure that some improper conversions are prevented, questionable conversions can sometimes still occur. Also, conversions to excepted service positions are excluded from the presidential election period pre-appointment review process. While these conversions to excepted service positions are exempt from the OPM competitive examination process, they are subject to other statutory requirements, and therefore could involve some of the same concerns, as demonstrated by our review. As we discussed previously, as a part of its oversight authorities, OPM also conducts periodic reviews of agencies' examining and hiring activities to ensure they are consistent with the merit systems principles and other laws and regulations.

OPM should review the 18 conversions we identified where certain agencies appeared not to have used proper authorities or to have followed proper procedures, and take any appropriate corrective actions. Also, OPM

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should determine whether conversions to excepted service positions should be subject to its pre-appointment review during presidential election periods or its periodic reviews of agencies' examining and hiring activities, and if so, what information the agencies should provide to OPM in that regard.

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## Recommendations for Executive Action

To help ensure that federal agencies are following appropriate authorities and proper procedures in making conversions of noncareer to career positions, we recommend that the Director, OPM:

- review the 18 conversions we identified where it appears that certain agencies did not use appropriate authorities and/or follow proper procedures in making these conversions and determine whether additional actions are needed, and
- determine whether conversions to career excepted service positions should be subject to OPM review—such as through the pre-appointment review OPM conducts of other conversions during presidential election periods, and/or during OPM's periodic audits of agencies' examining and hiring activities, and if so, determine what information agencies should provide on such conversions.

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## Agency Comments and Our Evaluation

We obtained comments on a draft of this report from the Director of OPM. OPM agreed with our recommendation to review the 18 cases we identified where agencies did not use the appropriate authorities or adhere to merit system principles and veteran's preference. OPM also noted that 9 of the 18 cases we identified came from HHS where OPM recently withdrew a delegated examining authority from one of its components following an oversight review.

With respect to our recommendation that OPM determine whether conversions to career excepted service positions should be subject to the pre-appointment review OPM conducts during the presidential election periods, OPM stated it would incorporate a review of agency practices in this area during its normal review of agency delegated examining units. Because we view such action as responsive to the intent of our recommendation to enhance the oversight over conversions agencies make from noncareer to career excepted service positions, we revised the

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recommendation to include OPM's intended action. OPM's written comments are in appendix VI.

We also verified the number of conversions reported by each agency for the period from May 1, 2001, through April 30, 2005, including those that reported no conversions during this period with cognizant agency officials. In addition, we provided draft summaries of the 18 conversions on which we had questions and the 19 conversions where we could not make a determination, to the agencies that had reported them. The Department of Justice, Environmental Protection Agency, Department of Housing and Urban Development, Department of Defense, Small Business Administration, and Consumer Product Safety Commission provided technical clarifications to the discussion of their respective conversions, which we incorporated as appropriate.

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As agreed with your offices, unless you announce the contents of this report earlier, we plan no further distribution until 30 days after the date of this report. At that time, we will send copies to the Director of the Office of Personnel Management and other interested parties. In addition, this report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have questions about this report, please contact me at (202) 512-6806 or [stalcupg@gao.gov](mailto:stalcupg@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made major contributions to this report are listed in appendix VII.



George H. Stalcup  
Director, Strategic Issues

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# Executive Branch Departments and Selected Agencies Covered in This Review and Their Number of Conversions

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1. Department of Agriculture—3
  2. Department of Commerce—1
  3. Department of Defense (Office of the Secretary, Air Force, Army, and Navy)—21
  4. Department of Education—3
  5. Department of Energy—1
  6. Department of Health and Human Services—36
  7. Department of Homeland Security—3
  8. Department of Housing and Urban Development—3
  9. Department of the Interior—4
  10. Department of Justice—23
  11. Department of Labor—3
  12. Department of State—2
  13. Department of Transportation—0
  14. Department of the Treasury—15
  15. Department of Veteran Affairs—4
  16. Commission on Civil Rights—0
  17. Consumer Product Safety Commission—5
  18. Corporation for National Service—0
  19. Environmental Protection Agency—1
  20. Equal Employment Opportunity Commission—1
  21. Export-Import Bank of the U.S.—0
  22. Federal Deposit Insurance Corporation—0
  23. Federal Labor Relations Authority—0
  24. Federal Maritime Commission—0
  25. Federal Trade Commission—1
  26. General Services Administration—3
  27. U.S. International Trade Commission—0
  28. Merit Systems Protection Board—0
  29. National Aeronautics and Space Administration—3
  30. National Labor Relations Board—0
  31. Office of Government Ethics—0
  32. Office of Management and Budget—0
  33. Office of Personnel Management—5
  34. Office of Special Counsel—0
  35. Office of the U.S. Trade Representative—0
  36. Overseas Private Investment Corporation—0
  37. Peace Corps—0
  38. Pension Benefit Guaranty Corporation—0
  39. Security Exchange Commission—0
  40. Small Business Administration—2
  41. Social Security Administration—1
- Total Number of Conversions: 144**

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# Scope and Methodology

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For the purpose of this review, we identified seven categories of noncareer position appointments. These noncareer appointments were: Schedule C, Noncareer SES, Limited Term SES, Limited Emergency SES, Presidential appointees, Noncareer legislative branch, and Other statutory at-will positions. Individuals holding noncareer positions may have previously held career positions. For example, Limited Term Senior Executive Service (SES) and Limited Emergency SES positions are often filled by federal employees who have previously held career positions (prior to being appointed to the noncareer positions from which they were being converted). We identified four categories of career position appointments: Career (competitive service), Career-conditional (competitive service), Career (SES), Career Excepted Service (Non-Schedule C). Definitions of these noncareer and career positions can be found in the background section of this report. We also reviewed our prior work on conversions for information on these position categories.

The criteria used to select the executive branch departments and agencies for this review were (1) all 15 departments and (2) 26 agencies that had oversight or other regular responsibilities for federal workforce issues, and agencies that were of particular interest to the congressional requesters of the review. Under these criteria, we identified 41 departments and agencies, which are listed in appendix I.

To determine the number of individuals who converted from noncareer to career positions, we asked the 41 agencies to complete a data collection instrument (DCI) for the conversions made from May 1, 2001, through December 31, 2003, and provide the information to us by April 15, 2004. To follow up on conversions made on or after January 1, 2004, we asked the agencies to provide the number of conversions to us on a monthly basis even if the agency had no conversions, beginning on May 15, 2004, through April 30, 2005.

In the DCI, we asked the agencies to provide specific information about the conversions: the career positions to which the individuals were appointed, including the position title, pay grade, annual salary, and the date of appointment. We also asked for information on the converttee's former noncareer position. In addition, we asked the agencies to provide the Standard Form-50B (SF-50B) for all appointments. The SF-50B is the official record of the personnel action. We used the SF-50B to verify the information that agency officials provided in the DCI. We also verified the number of conversions reported by the agencies with agency officials for

the period from May 1, 2001, through April 30, 2005, including those that reported no conversions during this period.

During our review, we also cross-referenced conversions the agencies reported to us that were made during the presidential election review period from March 18, 2004, to January 20, 2005, with the information agencies reported to OPM during the same period. According to OPM, it received and reviewed 24 proposed conversions during the period.

We reviewed the authorities used and procedures followed for conversions reported to us at the GS-12 level and above. We first identified the authority that the agency cited for the appointment on the SF-50B and verified that it was the appointment authority for that conversion. We also examined the contents of the individual's official personnel file (OPF), and when appropriate, the merit staffing case files to determine if there was evidence that the criteria for using the authority was met.

To determine if proper procedures were followed, we reviewed merit staffing files and OPFs to determine what steps were taken in the application and conversion process. Merit staffing files document promotion and hiring decisions for specific career appointments. The OPF contains SF-50Bs, position descriptions, and records from individuals' previous appointments, including former noncareer positions. If we had questions concerning a conversion, we interviewed officials at the appointing agency and requested documentation to support their statements. We compared the procedures used in the conversion process to the federal personnel laws and regulations contained in Title 5 of the U.S. Code and Title 5 of the Code of Federal Regulations. We also referred to agencies' merit staffing plans. We based our analysis on our review of documents within the case file and additional supporting documents provided by the agency in response to our questions.

Agencies are not required to follow OPM's competitive hiring provisions for career excepted service positions and can establish their own hiring procedures for these positions, but they are not required to have written copies of these procedures. We requested, and when available, obtained and reviewed copies of the hiring procedures from each agency reporting using this authority to determine if proper procedures were followed. Specifically, we requested additional information from the Departments of Homeland Security, Housing and Urban Development, Treasury, and Justice (DOJ), and the Consumer Product Safety Commission (CPSC). Because each individual component in DOJ has its own appointing

authority, we contacted the following eight individual components that reported conversions: Office of the Solicitor General, Executive Office of U.S. Attorneys, Executive Office of Immigration Review, Office of Legal Counsel, Civil Rights Division, Tax Division, Criminal Division, and the Federal Bureau of Investigation (FBI). We also met with Department of Justice's Director of Attorney Recruitment and Management to discuss the process DOJ uses to convert individuals to Excepted Service (Non-Schedule C) positions. The CPSC, the Department of Treasury, and four components (Civil Rights Division, Criminal Division, FBI, and Executive Office of U. S. Attorneys) within DOJ provided GAO with written procedures. HUD and three components (Executive Office of Immigration Review, Tax Division, and Office of Legal Counsel) within DOJ reported they did not have written procedures. DHS and one component within DOJ (the Office of the Solicitor General) did not respond to our request for written procedures.

We verified the number of conversions reported by the agencies with agency officials for the period from May 1, 2001, through April 30, 2005, including those that reported no conversions during this period. In addition, we provided draft summaries of the 18 conversions where it appeared agencies did not follow proper procedures and the 19 conversions where we could not make a determination to the respective agencies. The Department of Justice, Environmental Protection Agency, Department of Housing and Urban Development, Department of Defense, Small Business Administration, and Consumer Product Safety Commission provided technical clarifications to the discussion of these conversions, which we incorporated as appropriate.

We conducted our work in Washington, D.C. from March 2004 through March 2006 in accordance with generally accepted government auditing standards.

# Noncareer Appointees Converted to Career Positions by Departments and Selected Agencies from May 1, 2001 - April 30, 2005

Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
<b>Department of Agriculture</b>				
Administrator Food Safety Inspection and Service Department of Agriculture	Noncareer SES ES-0340-00/00 \$142,500	Scientific Advisor <sup>c</sup> Food Safety Inspection and Service	GS-0601-15/10 \$123,682	02/29/04
State Director Rural Development Department of Agriculture	Schedule C GS-0301-15/04 \$110,727	Deputy Administrator Multi-Family Housing Rural Housing Service	ES-1165-00/00 \$133,342	08/22/04
Confidential Assistant Office of the Chief Financial Officer Department of Agriculture	Schedule C GS-0301-15/10 \$130,305	Deputy Chief Chief Financial Officer Forest Service	ES-0510-00/00 \$145,600	07/25/04
<b>Department of Commerce</b>				
Confidential Assistant Bureau of Industry and Security Department of Commerce	Schedule C GS-0301-09/01 \$38,406	Export Policy Analyst Bureau of Industry and Security	GS-1101-09/02 \$41,379	10/05/03
<b>Department of Defense</b>				
Disaster Response Program Manager U.S. Army Engineer District, Nashville Department of the Army	Limited emergency SES ES-0340-00/01 \$117,479	Director, Programs Management U.S. Army Engineer Division, North Atlantic Department of the Army	ES-0340-00/01 \$123,959	12/30/01
Director, Construction Engineering Research Laboratory U.S. Army Engineer Research and Development Center Department of the Army	Limited emergency SES ES-0807-00/01 \$117,479	Director, Construction Engineering Research Laboratory U.S. Army Engineer Research and Development Center Department of the Army	ES-0807-00/01 \$117,479	11/04/01
Director, Environmental Laboratory U.S. Army Engineer Research and Development Center Department of the Army	Limited emergency SES ES-0401-00/01 \$117,479	Director, Environmental Laboratory U.S. Army Engineer Research and Development Center Department of the Army	ES-0401-00/01 \$117,479	12/02/01
Principal Deputy General Counsel Office of the General Counsel Department of Defense	Noncareer SES ES-0905-00/04 \$133,259	General Counsel Defense Advanced Research Project Agency Department of Defense	ES-0905-00/04 \$138,200	06/02/02

**Appendix III  
Noncareer Appointees Converted to Career  
Positions by Departments and Selected  
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(Continued From Previous Page)

Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Confidential Assistant to the Assistant Secretary of Defense (Force Management Policy) Principal Deputy Under Secretary of Defense (Personnel and Readiness) Department of Defense	Schedule C GS-0301-12/06 \$67,749	Management Analyst Principal Deputy Under Secretary of Defense (Personnel and Readiness) Department of Defense	GS-0343-13/03 \$73,659	09/07/03
Principal Deputy Assistant Secretary (Financial Management) U.S. Air Force Headquarters Department of the Air Force	Noncareer SES ES-0505-00/06 \$142,500	Deputy Under Secretary (International Affairs) U.S. Air Force Headquarters Department of the Air Force	ES-0131-00/06 \$142,500	09/28/03
Writer-Editor American Forces Information Service Department of Defense	Schedule C GS-1082-12/03 \$61,942	Writer-Editor <sup>c</sup> American Forces Information Service Department of Defense	GS-1082-12/03 \$61,942	09/07/03
Special Assistant for Chemical Stockpile Matters Under Secretary of Defense (Acquisition, Logistics, and Technology) Department of Defense	Limited term SES ES-0301-00/01 \$131,342	Deputy Assistant to the Secretary of Defense (Chemical, Demilitarization and Threat Reduction) <sup>c</sup> Under Secretary of Defense (Acquisition, Logistics, and Technology) Department of Defense	ES-0301-00/02 \$137,543	06/29/03
Deputy Director for Transition Management Defense Human Resources Activity Department of Defense	Limited term SES ES-0201-00/03 \$137,901	Deputy Director for Program Support <sup>c</sup> Defense Human Resources Activity Department of Defense	ES-0201-00/03 \$137,901	09/08/02
Deputy Assistant Secretary of the Army for Policy and Procurement Office of the Secretary of the Army Department of the Army	Limited term SES ES-1101-00/01 \$131,342	Deputy Assistant Secretary of the Army for Policy and Procurement Office of the Secretary of the Army Department of the Army	ES-1101-00/01 \$131,342	10/05/03
Deputy Director of Training Deputy Chief of Staff for Operations and Plans Department of the Army	Limited emergency SES ES-1701-00/04 \$142,500	Deputy Director of Training Deputy Chief of Staff for Operations and Plans Department of the Army	ES-1701-00/04 \$142,500	02/09/03

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Deputy Assistant Secretary of the Army (Installations and Housing) Advisory Office of the Assistant Secretary of the Army (Installations and Environment) Department of the Army	Limited term SES ES-0340-00/03 \$142,500	Deputy Assistant Secretary of Army (Installations and Housing) Office of the Assistant Secretary of the Army (Installations and Environment) Department of the Army	ES-0340-00/03 \$142,500	11/02/03
Information Technology Manager U.S. Army Engineer Research and Development Center Department of the Army	Limited emergency SES ES-0801-00/02 \$122,971	Information Technology Manager <sup>c</sup> U.S. Army Engineer Research and Development Center Department of the Army	ES-0801-00/02 \$122,971	12/30/01
Deputy Assistant Secretary of the Navy (Infrastructure Analysis) Office of Assistant Secretary of Navy (Installations and Environment) Department of the Navy	Limited term SES ES-0301-00/05 \$142,500	Deputy Assistant Secretary of the Navy (Infrastructure Strategy and Analysis) <sup>c</sup> Office of Assistant Secretary of Navy (Installations and Environment) Department of the Navy	ES-0301-00/05 \$142,500	07/13/03
Writer-Editor Assistant Secretary of Defense (Public Affairs) Department of Defense	Schedule C GS-0301-11/03 \$52,778	Criminal Investigator Naval Criminal Investigative Service Department of the Navy	GS-1811-07/10 \$59,252	02/08/04
Special Assistant to the Director, Program Analysis and Evaluation Director, Program Analysis and Evaluation Department of Defense	Schedule C GS-0301-13/01 \$70,519	Assistant for Plans and Integration Office of the Under Secretary of Defense/Policy Department of Defense	GS-0301-13/01 \$70,519	01/25/04
Special Assistant to the Assistant Secretary of Defense/Public Affairs (Media Operations) Assistant Secretary of Defense (Public Affairs) Department of Defense	Limited term SES ES-0301-00/00 \$139,606	Senior Public Affairs Advisor Assistant Secretary of Defense (Public Affairs) Department of Defense	ES-0301-00/00 \$141,700	04/18/04

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Principal Director, Military Personnel Policy Principal Deputy Under Secretary of Defense (Personnel and Readiness) Department of Defense	Limited term SES ES-0301-00/00 \$131,342	Director, Officer and Enlisted Personnel Management <sup>c</sup> Principal Deputy Under Secretary of Defense (Personnel and Readiness) Department of Defense	ES-0301-00/00 \$131,342	08/08/04
Manager Program Engineering/Management Support Director Program Director Department of the Navy	Limited emergency SES ES-0801-00/02 \$126,255	Deputy Chief Engineer Assistant Secretary to the Navy (Research, Development and Acquisition) Department of the Navy	ES-0801-00/00 \$139,967	05/16/04
Director, IRAQ Telecommunications Reconstruction and Technical Programs Management Assistant Secretary of Defense (Networks and Information Integration) Department of Defense	Limited term SES ES-0301-00/00 \$122,400	Director, Contingency Support and Migration Planning <sup>c</sup> Assistant Secretary of Defense (Networks and Information Integration) Department of Defense	ES-0301-00/00 \$122,400	01/09/05
Director, Center of Excellence Center of Excellence in Disaster Management and Humanitarian Assistance Department of the Navy	Limited term SES ES-0301-00/00 \$124,884	Director, Center of Excellence Center of Excellence in Disaster Management and Humanitarian Assistance Department of the Navy	ES-0301-00/00 \$130,918	10/03/04
<b>Department of Education</b>				
Special Assistant Office of Postsecondary Education Department of Education	Schedule C GS-0301-15/10 \$124,783	Director, Fund for the Improvement of Postsecondary Education	ES-1720-00/06 \$142,500	06/15/03
Deputy Assistant Secretary for Process Improvement Office of Management Department of Education	Noncareer SES ES-0301-00/00 \$131,342	Deputy Chief Information Officer/Chief Technology Officer Office of the Chief Information Officer	ES-2210-00/00 \$142,500	03/15/04
Executive Assistant Office of Postsecondary Education Department of Education	Schedule C GS-0301-15/08 \$123,622	Supervisory Management/ Program Analyst Office of Postsecondary Education	GS-0343-15/08 \$123,622	11/14/04

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
<b>Department of Energy</b>				
Special Assistant to the Chief Information Officer Federal Emergency Management Agency	Schedule C GS-0301-15/03 \$104,559	Supervisory Information Technology Specialist Chief Information Officer	GS-2210-15/03 \$106,914	01/25/04
<b>Department of Health and Human Services</b>				
Confidential Assistant to the Executive Secretary The Executive Secretariat Department of Health and Human Services	Schedule C GS-0301-12/02 \$57,550	Policy Coordinator Office of the Secretary	GS-0301-12/02 \$57,550	08/26/02
Project Manager Program Support Center Department of Health and Human Services	Limited term SES ES-0301-00/03 \$137,901	Director of Operations <sup>c</sup> Program Support Center	ES-0301-00/03 \$137,901	07/28/02
Director of Human Resources Program Support Center Department of Health and Human Services	Limited term SES ES-0301-00/02 \$131,881	Director of Human Resources <sup>c</sup> Program Support Center	ES-0301-00/02 \$131,881	08/11/02
Director, Competitive Sourcing Unit Program Support Center Department of Health and Human Services	Limited term SES ES-0301-00/01 \$125,972	Director of Administrative Operations <sup>c</sup> Program Support Center	ES-0342-01/00 \$125,972	08/11/02
Special Advisor for Information Technology Food and Drug Administration Department of Health and Human Services	Limited term SES ES-2210-00/03 \$137,901	Chief Information Officer Food and Drug Administration	ES-2210-03/00 \$137,901	12/29/02
Project Manager Financial Management Program Support Center Department of Health and Human Services	Limited term SES ES-0510-00/02 \$136,006	Director, Division of Financial Operations <sup>c</sup> Program Support Center	ES-0510-00/02 \$136,006	02/23/03
Chief Information Officer Office of Budget, Technology, and Finance Department of Health and Human Services	Limited term SES ES-2210-00/03 \$165,198	Chief Information Officer Office of the Assistant Secretary for Planning and Evaluation	ES-2210-00/03 \$165,198	04/20/03

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Associate Director for Policy Centers for Medicare and Medicaid Services Department of Health and Human Services	Limited term SES ES-0340/00-01 \$131,342	Director, Hospital and Ambulatory Policy Group <sup>c</sup> Centers for Medicare and Medicaid Services	ES-0340-00/01 \$131,342	11/02/03
Program Manager E-Grants Initiative Office of the Assistant Secretary for Administration and Management Department of Health and Human Services	Limited term SES ES-0301-00/00 \$137,543	Director, Office of Grants Management and Policy <sup>c</sup> Office of the Assistant Secretary for Administration and Management	ES-1101-00/00 \$137,543	04/04/04
Director of Administrative Operations Program Support Center Department of Health and Human Services	Limited term SES ES-0342-00/01 \$137,543	Director, Office of Acquisition Management and Policy <sup>c</sup> Office of the Assistant Secretary for Administration and Management	ES-1102-00/00 \$137,543	04/04/04
Director Human Resources (Site Director) Program Support Center Department of Health and Human Services	Limited term SES ES-0201-00/00 \$136,184	Director Human Resources Center (Atlanta) <sup>c</sup> Program Support Center	ES-0201-00/00 \$136,184	05/30/04
Senior Staff Fellow Health Resources and Services Administration Department of Health and Human Services	Title 42 AD-0685-00/00 \$105,445	Public Health Analyst <sup>c</sup> Health Resources and Services Administration	GS-0685-14/10 \$110,775	06/02/04
Senior Staff Fellow Health Resources and Services Administration Department of Health and Human Services	Title 42 AD-0685-00/00 \$105,445	Public Health Analyst <sup>c</sup> Health Resources and Services Administration	GS-0685-14/10 \$110,775	06/13/04
Director, Division of State and Community Assistance, Bureau of Primary Health Care Health Resources and Services Administration Department of Health and Human Services	Title 42 AD-0685-00/00 \$117,330	Supervisory Public Health Analyst <sup>c</sup> Health Resources and Services Administration	GS-0685-15/07 \$120,280	07/25/04

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Special Assistant to the Deputy Director for Office of Child Support Enforcement Administration for Children and Families Department of Health and Human Services	Schedule C GS-0301-14/03 \$90,891	Information Management Dissemination Coordinator <sup>c</sup> Office of the Assistant Secretary for Planning and Evaluation	GS-0301-14/03 \$90,891	09/19/04
Senior Staff Fellow Food and Drug Administration Department of Health and Human Services	Title 42 AD-0415-00/00 \$79,319	Biologist Food and Drug Administration	GS-0401-13/04 \$79,319	10/17/04
Human Resources Payroll Enterprise Manager Program Support Center Department of Health and Human Services	Limited term SES ES-2210-00/00 \$132,261	Director Human Resources Systems <sup>c</sup> Program Support Center	ES-0301-00/00 \$140,196	10/31/04
Director, Business Technology Optimization Initiative Program Support Center Department of Health and Human Services	Limited term SES ES-0301-00/00 \$143,498	Director, Business Technology Optimization <sup>c</sup> Program Support Center	ES-0301-00/00 \$145,600	12/12/04
Research Fellow National Institutes of Health Department of Health and Human Services	Title 42 AD-0601-00/00 \$72,918	Statistician (Research) National Institutes of Health	GS-1530-14/01 \$85,210	12/12/04
Secretary Regional Representative Office of the Regional Director Department of Health and Human Services	Schedule C GS-0301-15/07 \$122,471	Regional Administrator Administration of Aging Department of Health and Human Services	GS-0101-15/07 \$122,471	01/23/05
Clinical Research Nurse National Institutes of Health Department of Health and Human Services	Title 42 AD-0610-01/00 \$70,725	Nurse Specialist (Research) National Institutes of Health	GS-0610-12/02 \$72,291	03/06/05
Clinical Research Nurse National Institutes of Health Department of Health and Human Services	Title 42 AD-0610-01/00 \$67,371	Nurse Specialist (Research) National Institutes of Health	GS-0610-11/10 \$68,209	03/06/05

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Research Fellow National Institutes of Health Department of Health and Human Services	Title 42 AD-0401-00/00 \$65,816	Technical Lab Manager <sup>c</sup> National Institutes of Health	GS-0601-12/03 \$67,077	03/06/05
Scientific Review Administrator National Institutes of Health Department of Health and Human Services	Title 42 AD-0403-00/00 \$115,955	Health Scientist Administrator <sup>c</sup> National Institutes of Health	GS-0403-15/05 \$117,809	03/06/05
Health Scientist Administrator National Institutes of Health Department of Health and Human Services	Title 42 AD-0601-00/00 \$50,328	Health Scientist Administrator <sup>c</sup> National Institutes of Health	GS-0601-12/01 \$62,886	03/06/05
Research Fellow National Institutes of Health Department of Health and Human Services	Title 42 AD-0602-00/00 \$69,071	Health Scientist Administrator <sup>c</sup> National Institutes of Health	GS-0601-13/01 \$74,782	03/20/05
Biologist National Institutes of Health Department of Health and Human Services	Title 42 AD-0401-00/00 \$87,154	Health Scientist Administrator <sup>c</sup> National Institutes of Health	GS-0601-14/01 \$88,369	03/20/05
Health Scientist Administrator (Biological Sciences) National Institutes of Health Department of Health and Human Services	Title 42 AD-0601-00/00 \$110,005	Health Scientist Administrator National Institutes of Health	GS-0601-14/09 \$111,936	03/20/05
Senior Advisor International Technology Transfer National Institutes of Health Department of Health and Human Services	Title 42 AD-0601-00/00 \$107,013	Senior Advisor for International Technology Transfer <sup>c</sup> National Institutes of Health	GS-0601-15/02 \$107,413	04/03/05
Health Scientist Administrator National Institutes of Health Department of Health and Human Services	Title 42 AD-0601-00/00 \$60,888	Health Scientist Administrator National Institutes of Health	GS-0601-13/01 \$74,782	04/03/05
Senior Clinical Fellow National Institutes of Health Department of Health and Human Services	Title 42 AD-0602-00/00 \$136,078	Medical Officer (Pediatrics) <sup>c</sup> National Institutes of Health	GS-0601-14/10 \$114,882	04/17/05

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Administrative Officer National Institutes of Health Department of Health and Human Services	Schedule A GS-0341-09/02 \$44,810	Administrative Officer National Institutes of Health	GS-0341-11/01 \$52,468	04/17/05
Health Scientist Administrator National Institutes of Health Department of Health and Human Services	Title 42 AD-0601-00/00 \$59,310	Health Scientist Administrator <sup>c</sup> National Institutes of Health	GS-0601-12/01 \$62,886	02/06/05
Health Scientist Administrator National Institutes of Health Department of Health and Human Services	Title 42 AD-0601-00/00 \$90,532	Health Scientist Administrator National Institutes of Health	GS-0601-15/01 \$103,947	03/20/05
Expert National Institutes of Health Department of Health and Human Services	Title 42 AD-0601-00/00 \$88,697	Technology Transfer Specialist National Institutes of Health	GS-0601-14/03 \$94,260	03/20/05
Associate Director, Office of Operations Management Centers for Medicare and Medicaid Services Department of Health and Human Services	Limited term SES ES-0340-00/00 \$132,262	Deputy Director, Office of Operations Management Centers for Medicare and Medicaid Services	ES-0340-00/00 \$132,262	08/08/04
<b>Department of Homeland Security</b>				
Deputy Assistant Secretary for Legislative Affairs Immediate Office of the Secretary Department of Homeland Security	Noncareer SES ES-0301-00/00 \$131,342	International Programs Coordinator <sup>c</sup> Immigration and Customs Enforcement	GS-0301-15/10 \$112,346	03/30/04
Staff Assistant Federal Emergency Management Agency Department of Homeland Security	Schedule C GS-0301-13/02 \$70,559	Program Specialist <sup>c</sup> Federal Emergency Management Agency	GS-0301-13/02 \$71,357	04/06/03
Policy Director for Immigration Border and Transportation Security Department of Homeland Security	Schedule C GS-0301-15/02 \$107,413	Management and Program Analyst <sup>c</sup> U.S. Visitor and Immigration Status Indicator Technology Program Office	GS-0343-15/02 \$107,413	02/06/05

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
<b>Department of Housing and Urban Development</b>				
Administrative Staff Assistant Office of the Secretary Department of Housing and Urban Development	Schedule A GS-0303-09/01 \$40,044	Staff Assistant <sup>c</sup> Office of the Secretary	GS-0303-09/01 \$40,044	08/04/03
Project Assistant Office of the Secretary Department of Housing and Urban Development	Schedule A GS-0301-07/01 \$31,397	Office Assistant <sup>c</sup> Office of Public and Indian Housing	GS-0303-07/01 \$31,397	05/09/02
Special Assistant Office of General Counsel Department of Housing and Urban Development	Schedule C GS-0301-13/04 \$79,319	Attorney-Advisor Office of General Counsel	GS-0905-13/04 \$79,319	10/31/04
<b>Department of the Interior</b>				
Associate Solicitor for Land and Water Resources Office of the Associate Solicitor Department of the Interior	Noncareer SES ES-0905-00/01 \$131,342	Regional Solicitor, Rocky Mountain Region Office of the Solicitor	ES-0905-00/01 \$133,707	04/06/03
Counselor to the Solicitor Immediate Office of the Solicitor Department of the Interior	Noncareer SES ES-0905-00/00 \$145,600	Regional Solicitor, Intermountain Region Office of the Solicitor	ES-0905-00/00 \$145,600	07/20/04
Executive Director, Office of Historical Trust Accounting Immediate Office of the Secretary Department of the Interior	Schedule A GS-0501-15/10 \$130,305	Executive Director, Office of Historical Trust Accounting Immediate Office of the Secretary	ES-0501-00/00 \$145,600	08/16/04
Special Assistant Region 9—Washington, D.C. Director—U.S. Fish and Wildlife Service Department of the Interior	Schedule C GS-0301-14/03 \$94,260	Fish and Wildlife Administrator Chief, Domestic Grants Branch, Region 9—Washington, D.C. U.S. Fish and Wildlife Service	GS-0480-14/03 \$94,260	03/06/05
<b>Department of Justice</b>				
U.S. Attorney United States Attorney's Office Eastern District of Tennessee Department of Justice	Presidential Appointee AD-0905-01/00 \$113,500	Assistant U.S. Attorney (Criminal) United States Attorney's Office Eastern District of Tennessee	AD-0905-29/00 \$113,333	04/29/01

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
U.S. Attorney United States Attorney's Office Eastern District of Missouri Department of Justice	Presidential Appointee AD-0905-01/00 \$122,400	Assistant U.S. Attorney (Financial Fraud) United States Attorney's Office Eastern District of Missouri	AD-0905-29/00 \$113,670	05/01/01
U.S. Attorney United States Attorney's Office Western District of Oklahoma Department of Justice	Presidential Appointee AD-0905-01/00 \$118,400	Assistant U.S. Attorney (Criminal) United States Attorney's Office Western District of Oklahoma	AD-0905-26/00 \$86,036	08/12/01
Special Assistant to the Assistant Attorney General Civil Rights Division Department of Justice	Schedule C GS-0905-14/01 \$74,697	Attorney Advisor Office of Legal Counsel	GS-0905-14/01 \$74,697	09/17/01
Attorney Advisor Civil Division Department of Justice	Schedule C GS-0905-13/03 \$73,659	Trial Attorney Civil Rights Division	GS-0905-14/01 \$81,602	11/02/03
Counselor to the Assistant Attorney General Criminal Division Department of Justice	Limited term SES ES-0905-00/02 \$131,881	Trial Attorney (General) Office of the Solicitor General	GS-0905-15/10 \$119,682	04/07/02
Deputy Director, Office of Public Affairs Office of Public Affairs Department of Justice	Schedule C GS-1035-15/01 \$87,864	Public Affairs Specialist <sup>c</sup> Federal Bureau of Investigation	GS-1035-15/02 \$95,129	12/09/02
Attorney Advisor Office of the Assistant Attorney General Department of Justice	Schedule C GS-0905-12/01 \$55,694	Assistant U.S. Attorney United States Attorney's Office Eastern Virginia	AD-0905-21/00 \$57,970	09/08/02
Director, Executive Office for United States Attorneys Executive Office for United States Attorneys Department of Justice	Noncareer SES ES-0905-00/04 \$133,700	General Counsel <sup>c</sup> Federal Bureau of Investigation	ES-0905-00/06 \$138,200	09/22/02
Attorney Advisor Executive Office for United States Attorneys Department of Justice	Schedule C GS-0905-15/01 \$95,987	Assistant U.S. Attorney United States Attorney's Office Western Washington	AD-0905-25/00 \$96,313	06/29/03
Special Assistant to the Attorney General Criminal Division Department of Justice	Schedule C GS-0905-15/10 \$124,783	Assistant U.S. Attorney United States Attorney's Office Eastern New York	AD-0905-29/00 \$131,317	06/15/03

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Special Assistant to the Assistant Attorney General Criminal Division Department of Justice	Schedule C GS-0301-14/01 \$81,602	Assistant U.S. Attorney United States Attorney's Office Eastern Virginia	AD-0905-21/00 \$63,128	06/01/03
Special Assistant to the Assistant Attorney General Criminal Division Department of Justice	Schedule C GS-0301-12/01 \$58,070	Trial Attorney Criminal Division	GS-0905-12/01 \$58,070	12/28/03
Research Assistant Office of Public Affairs Department of Justice	Schedule C GS-0303-08/01 \$34,772	Writer-Editor <sup>c</sup> Federal Bureau of Investigation	GS-1082-07/05 \$36,687	03/23/03
Counsel to the Assistant Attorney General Civil Rights Division Department of Justice	Schedule C GS-0905-15/03 \$102,386	Trial Attorney Civil Rights Division	GS-0905-15/03 \$102,386	03/09/03
Chief of Staff Criminal Division Department of Justice	Noncareer SES ES-0905-00/01 \$129,874	Assistant U.S. Attorney United States Attorney's Office Western North Carolina	AD-0904-29/00 \$122,111	01/12/03
Counselor to the Assistant Attorney General Civil Rights Division Department of Justice	Noncareer SES ES-0905-00/03 \$142,500	Trial Attorney Civil Rights Division	GS-0905-15/10 \$124,783	11/02/03
Senior Advisor to the Assistant Attorney General Tax Division Department of Justice	Schedule C GS-0905-15/04 \$110,256	Immigration Judge Executive Office for Immigration Review	IJ-0905-00/02 \$128,127	04/04/04
Counsel to the Director Executive Office for United States Attorneys Department of Justice	Schedule C GS-0905-15/01 \$100,231	Trial Attorney Tax Division	GS-0905-15/01 \$100,231	05/30/04
Attorney Advisor Executive Office for United States Attorneys Department of Justice	Schedule C GS-0905-15/04 \$110,256	Assistant U.S. Attorney United States Attorney's Office Massachusetts	AD-0905-24/00 \$112,526	08/08/04
Principal Deputy Director Office of the Assistant Attorney General Department of Justice	Noncareer SES ES-0340-00/01 \$131,342	Attorney Advisor Criminal Division	GS-0905-15/10 \$135,136	02/06/05

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Deputy General Counsel for Postsecondary and Regulatory Service Office of the General Counsel Department of Education	Noncareer SES ES-0905-00/01 \$125,972	Assistant U.S. Attorney (Criminal) United States Attorney's Office Western North Carolina	AD-0905-29/00 \$113,563	02/06/05
Associate Director Domestic Policy Council The White House	3 U.S.C. 105 AD-0301-00/00 \$61,000	Immigration Judge Executive Office for Immigration Review	IJ-0905-00/01 \$113,904	03/20/05
<b>Department of Labor</b>				
Special Assistant Office of Disability Employment Policy Department of Labor	Schedule C GS-0301-15/03 \$102,386	Deputy Wage and Hour Administrator (Operations) Employment Standards Administration	ES-0301-00/01 \$131,342	11/16/03
Confidential Assistant Office of the Secretary of Labor Department of Labor	Schedule C GS-0301-11/02 \$48,018	Staff Assistant Women's Bureau	GS-0301-09/09 \$48,644	02/10/02
Senior Advisor for Policy and Research Individual Benefits Security Administration Department of Labor	Limited term SES ES-0110-00/00 \$140,569	Chief Economist and Director of Policy and Research <sup>c</sup> Employee Benefits Security Administration	ES-0110-00/00 \$140,569	09/05/04
<b>Department of State</b>				
Program Specialist—Staffing Office of the U.S. Representative Department of State	22 U.S.C. 287 (e) Excepted Appointment GG-0301-09/08 \$46,596	Program Analyst U.N. Resources Management	GG-0343-11/04 \$50,287	11/04/01
Special Advisor Office of Assistant Secretary Department of State	Schedule C GS-0130-15/01 \$87,864	Foreign Affairs Officer Crime Programs Divisions	GS-0130-14/07 \$89,638	09/09/01
<b>Department of the Treasury</b>				
Director, Human Resources System Office Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/03 \$137,901	Director, Office of Human Resources Enterprise Solutions <sup>c</sup> Departmental Offices	ES-0301-00/04 \$138,200	10/06/02
Executive Director, Customs Modernization Office U.S. Customs Service Department of the Treasury	Limited term SES ES-0340-00/02 \$131,881	Executive Director, Customs Modernization Office U.S. Customs Service	ES-0340-00/02 \$131,881	12/01/02

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Director, Business Practices Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/01 \$125,972	Director, Enterprise Information Technology Business Planning Departmental Offices	ES-0301-00/01 \$125,972	12/01/02
Director, Office of International Enforcement Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/02 \$137,543	Senior Advisor Departmental Offices	GS-0301-15/10 \$124,783	03/02/03
Senior Advisor (Enforcement Operations) Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/01 \$131,342	Senior Advisor Departmental Offices	GS-0301-15/10 \$124,783	03/02/03
Director, Business Process Reengineering Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/01 \$125,972	Deputy Assistant Secretary for Departmental Offices Operations Departmental Offices	ES-0301-00/01 \$131,342	07/27/03
Transition Executive for Strategy Internal Revenue Service Department of the Treasury	Limited term SES ES-1811-00/04 \$142,500	Director, Strategy Internal Revenue Service	ES-1811-00/04 \$142,500	09/21/03
Project Director Internal Revenue Service Department of the Treasury	Limited term SES ES-0340-00/02 \$142,500	Project Director Internal Revenue Service	ES-0340-00/02 \$142,500	11/02/03
Director Business Systems Modernization Office Internal Revenue Service Department of the Treasury	5 U.S.C. 9503 AD-0340-00/00 \$181,400	Director Competitive Sourcing <sup>c</sup> Internal Revenue Service	ES-0340/04 \$138,200	04/07/02
Special Assistant Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/01 \$131,342	Deputy Assistant Secretary for Headquarters Operations Departmental Offices	ES-0301-00/00 \$137,910	10/03/04
Director Stakeholder, Partnership, Education, and Communications Internal Revenue Service Department of the Treasury	5 U.S.C. 9503 AD-0340-00/00 \$135,500	Director Stakeholder, Partnership, Education, and Communications Internal Revenue Service	ES-0340-00/00 \$142,500	01/25/04

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Deputy to the Deputy Assistant Secretary (Workforce Management) and Director, Office of Workforce Solutions, Development and Equal Employment Opportunity Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/01 \$131,342	Deputy (Workforce Management)/Director, Office of Workforce Solutions, Development and Equal Employment Opportunity <sup>c</sup> Departmental Offices	ES-0301-00/00 \$131,342	02/22/04
Director, Departmental Offices Modernization Project Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/00 \$131,342	Departmental Budget Director <sup>c</sup> Departmental Offices	ES-0301-00/00 \$131,342	06/13/04
Director, Office of Budget Formulation Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/01 \$131,342	Deputy Chief Financial Officer Internal Revenue Service	ES-0505-00/00 \$131,342	06/13/04
Director, Workforce Technology Departmental Offices Department of the Treasury	Limited term SES ES-0301-00/00 \$137,543	Director, Human Resource Connect Program Office <sup>e</sup> Departmental Offices	ES-0301-00/00 \$144,420	11/14/04
<b>Department of Veterans Affairs</b>				
Purchasing Agent Office of Procurement U.S. House of Representatives	Legislative Branch \$92,271	Contract Specialist VA Medical Center	GS-1102-11/10 \$56,322	01/08/02
Scheduler/Office Manager/Legislative Assistant U.S. House of Representatives	Legislative Branch \$45,000	Secretary VA Medical Center	GS-0318-07/01 \$32,447	01/25/04
District Director U.S. House of Representatives	Legislative Branch \$86,200	Veterans Service Representative Virginia Regional Office	GS-0996-07/10 \$39,779	12/15/02
District Representative U.S. House of Representatives	Legislative Branch \$74,000	Correspondence Analyst <sup>e</sup> VA Medical Center	GS-0301-12/03 \$67,476	02/06/05

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
<b>Consumer Product Safety Commission</b>				
Special Assistant Office of Chairman Stratton Consumer Product Safety Commission	Schedule C GS-0301-15/10 \$130,305	Director, Office of International Programs and Intergovernmental Affairs <sup>c</sup> Office of the Executive Director	ES-0340-00/00 \$131,342	04/04/04
Executive Assistant to the Chairman Office of Chairman Stratton Consumer Product Safety Commission	Schedule C GS-0301-13/10 \$97,213	Public Affairs Specialist Office of Information and Public Affairs	GS-1035-13/10 \$97,213	02/06/05
General Counsel Office of Chairman Stratton Consumer Product Safety Commission	Schedule C GS-0905-15/10 \$135,136	Associate Executive Director for Compliance and Administrative Litigation Office of Compliance	ES-0905-00/00 \$149,200	01/09/05
Special Assistant (Legal) Counselor to the Chairman Office of Chairman Stratton Consumer Product Safety Commission	Schedule C GS-0301-15/01 \$103,947	General Attorney Office of General Counsel	GS-0905-15/01 \$103,947	04/03/05
Special Assistant (Legal) Office of Chairman Stratton Consumer Product Safety Commission	Schedule C GS-0301-15/10 \$130,305	General Attorney Office of General Counsel	GS-0905-15/10 \$135,136	02/06/05
<b>Environmental Protection Agency</b>				
Information Management Specialist Office of Administrative Services Environmental Protection Agency	Schedule C GS-0301-14/04 \$88,764	Management Specialist <sup>c</sup> Office of Administrative Services	GS-0301-14/04 \$89,764	05/18/03
<b>Equal Employment Opportunity Commission</b>				
Confidential Assistant Office of the Chairwoman Equal Employment Opportunity Commission	Schedule C GS-0301-09/07 \$43,984	Employment Survey Program Specialist Office of the Chairwoman	GS-0301-09/07 \$43,984	09/09/01
<b>Federal Trade Commission</b>				
Special Advisor to the Chairman Chief of Staff Commissioner's Office Federal Trade Commission	Limited term SES ES-0905-00/00 \$145,600	Chief of Staff Commissioner's Office	ES-0905-00/00 \$145,600	05/30/04

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
<b>General Services Administration</b>				
Chief Technology Officer Office of Citizen Services and Communication General Services Administration	Schedule C GS-0301-15/10 \$124,783	Deputy Associate Administrator for Citizen Services <sup>c</sup> Office of Citizen Services and Communications	ES-0340-00/01 \$131,342	06/29/03
News Analyst Office of the Secretary Department of Commerce	Schedule C GS-0301-12/02 \$57,550	Program Analyst Office of Citizen Services and Communications	GS-0343-13/01 \$68,283	01/12/03
Confidential Assistant Office of Intergovernmental Affairs and Public Liaison Department of Justice	Schedule C GS-0303-10/02 \$43,705	Special Assistant to the Regional Administrator Office of Regional Administrator	GS-0301-11/01 \$47,245	10/21/02
<b>National Aeronautics and Space Administration</b>				
Manager, Federal Human Resources Information Systems (Systems Integration) Office of Human Resources and Education National Aeronautics and Space Administration	Limited term SES ES-0201-00/01 \$145,600	Director, Workforce and Diversity Management Office Workforce and Diversity Management Office	ES-0301-00/00 \$145,600	03/21/04
Special Assistant to the Director NASA's Independent Verification and Validation Facility Office of the Director National Aeronautics and Space Administration	Limited term SES ES-0801-00/01 \$131,342	Assistant Director for Safety and Security Office of the Director	ES-0801-00/02 \$137,543	10/19/03
Triana Project Manager Flight Programs and Projects Director National Aeronautics and Space Administration	Limited term SES ES-0801-00/02 \$137,543	Deputy Associate Director <sup>c</sup> Earth Observing System Development Flight Programs and Projects Directorate	ES-0801-00/02 \$137,543	08/24/03
<b>Office of Personnel Management</b>				
Project Director for Human Capital Performance Office of the Director Office of Personnel Management	Limited term SES ES-0340-00/04 \$138,200	Associate Director Agency Merit System Accountability and Human Resource Programs <sup>c</sup> Office of the Director	ES-0340-00/04 \$138,200	12/01/02

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Noncareer Position		Career Position		
Title, office, and agency	Type of noncareer appointment, grade, and salary <sup>a,b</sup>	Title and office	Career grade and salary <sup>a,b</sup>	Date converted
Senior Advisor for Retirement and Insurance Human Resources Products and Services Office of Personnel Management	Limited term SES ES-0301-00/02 \$137,543	Assistant Director Retirement and Insurance Support Services <sup>c</sup> Human Resources Products and Services	ES-0340-00/02 \$137,543	06/15/03
Senior Advisor for Executive and Management Development Programs Human Resources Products and Services Office of Personnel Management	Limited term SES ES-0301-00/02 \$137,543	Deputy Associate Director Natural Resources Human Capital Management <sup>c</sup> Human Capital Leadership and Merit System Accountability	ES-0340-00/02 \$137,543	07/20/03
Senior Advisor for Employee and Family Support Policy Strategic Human Resources Policy Office of Personnel Management	Limited term SES ES-0301-00/03 \$142,500	Deputy Associate Director Employee and Family Support Policy <sup>c</sup> Strategic Human Resources Policy	ES-0340-00/03 \$142,500	07/13/03
Senior Advisor for Learning and Knowledge Management Office of the Director Office of Personnel Management	Limited term SES ES-0301-00/04 \$142,500	Director, Federal Executive Institute Human Resources Products and Services	ES-0340-00/04 \$142,500	07/20/03
<b>Small Business Administration</b>				
Special Assistant to the Administrator Office of the Administrator Small Business Administration	Schedule C GS-0301-13/04 \$82,259	Administrative Resources Coordinator <sup>c</sup> Region IX	GS-0301-12/10 \$85,744	03/06/05
Associate Deputy Administrator for Capital Access Office of Capital Access Small Business Administration	Noncareer SES ES-0340-00/00 \$158,194	District Director Region III	GS-0340-15/10 \$131,839	03/13/05
<b>Social Security Administration</b>				
Special Assistant to the Commissioner Office of the Commissioner Social Security Administration	Schedule C GS-0301-13/02 \$77,274	Public Affairs Specialist Communications	GS-1035-14/01 \$88,369	03/06/05

Source: GAO.

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**Appendix III**  
**Noncareer Appointees Converted to Career**  
**Positions by Departments and Selected**  
**Agencies from May 1, 2001 - April 30, 2005**

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<sup>a</sup>Salary includes locality pay

<sup>b</sup>Salary at time of conversion

<sup>c</sup>Newly established position

Legend:

AD: Administratively determined; rate set by agency.

EJ: The Department of Energy Organization Act Excepted Service. Code is for use by the Department of Energy only.

ES: Senior Executive Service

GG: Grade similar to General Schedule

GS: General Schedule

IJ: Immigration Judge Schedule. The code is for use by the Department of Justice only.

IR: Internal Revenue Service Broadband Classification and Pay System Positions only. Code is for use by the Internal Revenue Service (Department of Treasury) only.

NH: Business Management and Technical Professional. DOD Acquisition Workforce Demonstration Project. Code is for use by the Department of the Air Force, Department of the Army, Department of Defense, and Department of the Navy only.

SK: Securities Exchange Commission individuals formerly under the GS, GM, and EZ pay plans. Code is for use by the Securities and Exchange Commission only.

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# Conversions Where Appropriate Authorities and Proper Procedures May Not Have Been Followed

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For 18 of these conversions, it appears that agencies did not follow proper procedures or may have violated other statutory or regulatory requirements. OPM has oversight authority to ensure that agencies are following the merit system principles when hiring. In accordance with this authority, OPM has traditionally required agencies to seek its pre-appointment approval for the conversion of certain noncareer appointees (Schedule C and Noncareer SES) into certain career positions (competitive service and career SES) during a presidential election review period. OPM defined the most recent pre-appointment review period as beginning on March 18, 2004, and concluding on January 20, 2005, Inauguration Day. Additionally, career SES positions require a further review and approval of the merit staffing process by OPM, and the proposed selectee's executive/managerial qualifications by an OPM-administered SES Qualifications Review Board (QRB) which are composed of members of the SES from across the government.

Seven of the 18 conversions were subject to OPM review and approval; 2 because they fell within the presidential election pre-appointment review period as prescribed by OPM and 5 because they were to SES level positions. Of the 2 conversions subject to OPM's presidential election pre-appointment review process, in one instance, it appeared the agency did not submit the conversion to OPM for its review. In the other instance, OPM reviewed the file but did not take timely action before the January 20, 2005, deadline for the pre-appointment review period. Of the 5 conversions to SES level positions, an OPM-administered QRB reviewed and approved the selectee's qualifications for each of these appointments, although in one case a QRB initially rejected the selectee's qualifications, then a different QRB approved the selection after the agency revised and resubmitted its application.

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**Appendix IV  
Conversions Where Appropriate Authorities  
and Proper Procedures May Not Have Been  
Followed**

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Case 1:	Department of Defense (DOD)
Positions:	<p>From Schedule C Appointment, GS-0301-13/01, Special Assistant to the Director, Program Analysis and Evaluation</p> <p>To GS-0343-13/01, Assistant for Plans and Integration, Office of Assistant Secretary for Defense, Homeland Defense</p>
Issue:	Preselecting an applicant for a career position
Details:	<p>The eventual selectee served as a Schedule C Special Assistant to the Principal Deputy Under Secretary of Defense for Policy from December 2001 through August 2002. In September 2002, she was reassigned to another Schedule C position as a Special Assistant to the Director, Program Analysis and Evaluation. Official records indicate the eventual selectee occupied this position until her conversion to the career position of Assistant for Plans and Integration on January 25, 2004. However, according to her resume, the eventual selectee assumed the duties of the career position beginning in March of 2003. Based on her description, as the Assistant for Plans and Integration, the eventual selectee: (1) developed and integrated force employment and planning policy guidance related to homeland defense; (2) developed, organized, and coordinated policy guidance working groups with other DOD components related to homeland defense activities; (3) ensured policy oversight for force employment issues; and (4) provided recommendations to the Deputy Assistant Secretary for Force Planning and Employment and the Assistant Secretary of Defense for Homeland Defense.</p> <p>The agency contracted with OPM's Philadelphia field office to advertise and rate applications for the career position of Assistant for Plans and Integration in the Office of the Assistant Secretary of Defense for Homeland Defense. On November 20, 2003, OPM sent DOD a selection package containing a certificate listing eight eligible candidates in the order of their rating and their applications. Based on documents OPM provided to us, a 10-point compensable veteran<sup>1</sup> had the highest rating, and the eventual selectee was listed fourth. In a December 2, 2003, memorandum to</p>

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<sup>1</sup>Five-point preference is assigned to honorably separated veterans who served on active duty in the armed forces under certain circumstances. Ten-point preference is given to those honorably separated veterans who qualify as disabled veterans or are Purple Heart recipients. 5 U.S.C. §§ 2108, 3309.

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the selecting official, the Principal Director, Organizational Management and Support referred to the eventual selectee by name as the agency's "primary candidate." On December 30, 2003, the selecting official interviewed the veteran's preference eligible, who voluntarily declined consideration for the position at that time. On the same day, the agency selected the former Schedule C appointee to the career position.

**Conclusions:**

We did not receive a complete merit staffing file from DOD for this conversion. Based on the available documents, there is some evidence that DOD may have pre-selected the former Schedule C employee for the position. Pre-selecting an applicant for a career position would violate the statutory prohibition against granting unauthorized advantages to individuals in the hiring process. Since we were unable to review the resumes of all the applicants, we could not make a determination as to the comparative qualifications of the candidates, including the veteran's preference eligible that declined the position.

**OPM's Role:**

Since this conversion did not occur in the presidential election review period, it was not subject to OPM's pre-appointment review.

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Case 2:	Department of Health and Human Services (HHS)
Positions:	<p>From Statutory At-Will, Title 42 U.S.C. § 209(g), AD-0602-00/00, Research Fellow, National Institutes of Health</p> <p>To GS-0601-13/01, Health Scientist Administrator, National Institutes of Health</p>
Issue:	Creating career positions specifically for particular individuals
Details:	<p>The eventual selectee worked as a statutory-at-will Title 42 Research Fellow at the National Institutes of Health for almost 5 years prior to applying for the career position of Health Scientist Administrator. According to her resume, as a research fellow, she was assigned to a variety of work details involving both scientific and administrative duties within the Basic Neurosciences Program at the National Institute for Neurological Disorders and Stroke.</p> <p>On December 18, 2004, the selecting official expressed interest in hiring the eventual selectee (identifying the individual by name) as a program officer and requested the creation of a full-time equivalent position for that purpose. This request to hire the eventual selectee was approved by agency officials in an electronic mail correspondence dated December 22, 2004. On January 12, 2005, the health scientist administrator position was created in the Division of Basic Neuroscience and Behavioral Research. According to the position description, as health scientist administrator, the individual would be responsible for organizing an extramural research program to support the study of neurobiology as it relates to chemical addiction and neuroimmunology in AIDS research. The agency advertised the position, 19 individuals applied, and four candidates were certified as eligible for consideration. The eventual selectee had the lowest rating of the four candidates (one candidate subsequently declined prior to the selection being made), but was selected for the position on February 1, 2005.</p>
Conclusions:	The documents provided to us suggest the position may have been created specifically to hire the eventual selectee. This would represent a pre-selection of an applicant, which would violate the statutory prohibition against granting unauthorized advantages to individuals in the hiring process.

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OPM's Role:

Since this conversion did not occur in the presidential election review period and did not involve a Schedule C or Noncareer SES appointee, it was not subject to OPM's pre-appointment review.

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Case 3:	Department of Health and Human Services
Positions:	From Statutory At-Will, Title 42 U.S.C. § 209(f) AD-0403-00/00, Scientific Review Administrator, National Institutes of Health  To GS-0601-15/05, Health Scientist Administrator, National Institutes of Health
Issue:	Creating career positions specifically for particular individuals
Details:	<p>The eventual selectee served in a statutory-at-will Title 42 position as Scientific Review Administrator from March 2001 to March 2005. Prior to this, the eventual selectee had served within the Division of Extramural Activities at the National Institute for Allergy and Infectious Diseases (NIAID) for several years in a competitive position. She listed the following responsibilities for the statutory at-will position on her resume: (1) performed special scientific reviews and lead the initiation, planning, management, and oversight of division activities related to international research funding and resource management, (2) represented the division director at meetings that discuss extramural international grants, contracts, and capacity sustainability in developed and developing countries, (3) helped develop policies that affect foreign research funding and methods to improve financial management of international awards, and (4) managed the NIAID Select Agent process to assist with the biodefense program.</p> <p>On April 9, 2004, agency officials, including the selecting official, circulated a position description for the recruitment of a director for the Office of International Extramural Activities. The routing slip stated that this position description was to recruit the eventual selectee by name. On June 24, 2004, a new interdisciplinary competitive service position was created in the Division of Extramural Activities. On January 12, 2005, the agency advertised the new position as Director, Office of International Extramural Activities. The position description stated that the director, among other duties, would: (1) lead the initiation, planning, management, and oversight of division activities related to international research funding and resource management, (2) be the senior advisor and management official concerning the management of international research awards, (3) help develop policies and systems that affect foreign research funding, and assist international parties to design contract management systems, and (4) be the expert advisor to the NIAID on biodefense issues. The agency advertised the</p>

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position; three applicants applied; and only the eventual selectee was certified as eligible for consideration. The agency selected her for the position on February 4, 2005.

**Conclusions:**

Two factors taken together create the appearance that the individual may have been preselected for this position, including: (1) the routing slip circulated within the agency specifically identifying the eventual selectee by name, and (2) clear and extensive overlap/similarities between responsibilities previously cited by the eventual selectee and the duties listed in the description of the newly created position. Pre-selecting an individual or applicant for a competitive position grants an unauthorized preference to an individual in the employment process, and is a violation of federal law.

**OPM's Role:**

Since this conversion did not occur in the presidential election review period and did not involve a Schedule C or Noncareer SES appointee, it was not subject to OPM's pre-appointment review.

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Case 4:	Department of Health and Human Services
Positions:	<p>From Schedule C, GS-0301-14/03, Special Assistant to the Deputy Director for Office of Child Support Enforcement, Administration for Children and Families</p> <p>To GS-0301-14/03, Information Management and Dissemination Coordinator, Office of the Assistant Secretary for Planning and Evaluation</p>
Issue:	Failure to apply veteran's preference
Details:	<p>Prior to appointment to the career position, the eventual selectee served for over 2 years as a Schedule C Special Assistant to the Deputy Director in the Office of Child Support Enforcement. According to the special assistant position description, the eventual selectee served as a principal source of advice and counsel to the Deputy Director/Commissioner on various assignments, projects and work groups involving program policies, reviews, evaluations, plans, and approaches that affected the Office of Child Support Enforcement.</p> <p>On April 4, 2004, HHS created, and 2 weeks later, advertised the Information Management and Dissemination Coordinator position in the Immediate Office of the Assistant Secretary for Planning and Evaluation. The position description provided that the coordinator would be the senior advisor for the office's information dissemination and communication program, leading content and technical aspects of the development and use of technology-based solutions.</p> <p>Eleven applicants were certified as eligible for consideration, including three veteran's preference eligibles. After preference points were allocated, both the eventual selectee and a veteran's preference eligible candidate received the highest scores of 100 points on the rating tool. In accordance with law,<sup>2</sup> the veteran's preference eligible candidate was listed first on the certificate of eligibles, but the agency passed over this candidate to choose the selectee for the position on September 19, 2004. Agencies may pass over veteran's preference eligible candidates based on</p>

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<sup>2</sup>5 U.S.C. § 3313.

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suitability grounds,<sup>3</sup> or may ask OPM to disqualify an eligible candidate due to medical reasons.<sup>4</sup> However, in exercising their authority, agencies must file written reasons<sup>5</sup> for passing over a veteran's preference eligible, either with OPM or with a delegated examining authority.<sup>6</sup> The selection certificate contained a handwritten notation referring to a veteran's preference objection letter. However, no such letter or approval from the examining office<sup>7</sup> was contained in the file provided to us.

**Conclusions:**

Based on the available documents, it appears the agency did not follow, or did not properly document that it followed, statutorily-required veteran's preference hiring procedures for competitive service appointments.

**OPM's Role:**

Since this conversion involved a former Schedule C appointee and took place during the presidential election review period, this conversion was subject to OPM's pre-appointment review. The agency should have referred the case to OPM prior to appointing the selectee to the position. Based on available documents from both HHS and OPM, there is no indication whether this referral or review occurred.

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<sup>3</sup>5 C.F.R. § 731.103(a)

<sup>4</sup>5 C.F.R. § 339.201.

<sup>5</sup>5 U.S.C. § 3318(b)(1).

<sup>6</sup>OPM has delegated most of the examining and hiring process to individual agencies, but agencies must follow OPM's Delegated Examining Operations Handbook in making appointments to the competitive service. 5 U.S.C. § 1104.

<sup>7</sup>According to OPM's Delegated Examining Operations Handbook, if an appointing official wishes to pass over a preference eligible, he or she must file written reasons with an appropriate agency official, who must rule on whether the reasons are sufficient to justify the passover. 5 C.F.R. § 731.103(a).

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Case 5:	Department of Health and Human Services
Positions:	From Statutory At-Will, Title 42 U.S.C. § 209(f) AD-0401-00/00, Biologist, National Institutes of Health  To GS-0601-14/01, Health Scientist Administrator National Institutes of Health
Issue:	Failure to apply veteran's preference
Details:	<p>The eventual selectee served as a Title 42 Biologist in the Office of Policy Analysis for over 2 years prior to applying for the career position. Based on her resume, in the Biologist position the eventual selectee carried out a range of responsibilities related to scientific program reporting, strategic planning, and program evaluation.</p> <p>On February 8, 2005, HHS advertised a career position of Health Scientist Administrator in the Office of Policy Analysis. The position description listed responsibility for scientific planning, program reporting, and the development of materials on biodefense research efforts.</p> <p>Eleven applicants applied for the position, including a 5-point compensable veteran and a 10-point compensable veteran.<sup>8</sup> Applicants were assigned scores based on their online responses and a computer-based scoring system. Agencies are required to assign additional points to qualifying veteran's scores during the rating and ranking process.<sup>9</sup> Based on the applicant listing HHS provided, applicant scores were not adjusted for veteran's preference. Had the adjustment for veteran's preference been made, both the 5-point and 10-point compensable veterans would have rated higher and been listed ahead of the eventual selectee on the certificate of eligibles. In the absence of veteran's preference points, three individuals (the eventual selectee, another nonveteran, and the 10-point compensable veteran) were referred to the selecting official, and because veteran's preference points were not assigned, the eventual selectee had</p>

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<sup>8</sup>Five-point preference is assigned to honorably separated veterans who served on active duty in the armed forces under certain circumstances. Ten-point preference is given to those honorably separated veterans who qualify as disabled veterans or are Purple Heart recipients. 5 U.S.C. §§ 2108, 3309.

<sup>9</sup>5 U.S.C. §§ 3309, 3313.

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the highest score on the certificate of eligibles. Selection was made on March 1, 2005.

**Conclusions:**

Based on the documents provided to us, it appeared that HHS did not apply veteran's preference points for two applicants. Had HHS assigned veteran's preference points, both of the veterans would have ranked higher than the eventual selectee on the final rating sheet, and the agency would have had to file written reasons for passing them over.

**OPM's Role:**

Since this conversion did not occur in the presidential election review period and did not involve a Schedule C or Noncareer SES appointee, it was not subject to OPM's pre-appointment review.

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Case 6:	Department of Health and Human Services
Positions:	From SES Limited Term Appointment, ES-301-00/01, Director, Competitive Sourcing Unit, Program Support Center  To ES-0342-01/00, Director, Office of Administrative Operations, Program Support Center
Issue:	Tailoring of career position qualifications to match an individual's experience
Details:	<p>Prior to the conversion, the eventual selectee served for 6 months in the SES Limited Term Position. According to the position description, as Director he was responsible for designing HHS's implementation of the Competitive Sourcing Initiative and serving as the Acting Director of the Administrative Operations Service (AOS). In his resume, the eventual selectee emphasized his role as Acting Director of AOS, stating that he was responsible for providing HHS and other federal customers nationwide administrative and technical services in areas such as (1) building operations, surplus real property, leasing, security, property management, warehousing, logistics and management services; (2) printing, duplicating and typesetting; (3) operation of reference libraries; (4) mail distribution and handling; (5) claims service for Public Health Service components nationwide under specific statutory authorities; (6) acquisition service; (7) pharmaceutical, medical, dental supplies to federal agencies and other related nonfederal customers; (8) technical graphics and photography services; and (9) a wide range of technology and telecommunications services.</p> <p>On May 24, 2002, HHS advertised the SES Director of AOS position, open to qualified federal employees. In both the position description and the vacancy announcement, one of the mandatory professional/managerial qualifications specified for the position was "experience in delivering and managing a wide range of administrative support services to a diverse, complex, and large customer base requiring such services such as (1) building operations, surplus real property, leasing, security, property management, warehousing, logistics and management services; (2) printing, duplicating and typesetting; (3) operation of reference libraries; (4) mail distribution and handling; (5) claims service for PHS components nationwide under specific statutory authorities; (6) acquisition service; (7) pharmaceutical, medical, dental supplies to federal agencies and other</p>

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related nonfederal customers; (8) technical graphics and photography services; and (9) a wide range of technology and telecommunications services.” An agency panel rated the eventual selectee and two other candidates as highly qualified for the position, then referred all three to the selecting official. Four other candidates were also referred to the selecting official as qualified applicants based on their SES status. The selecting official, who was also the eventual selectee’s supervisor at that time, selected him for the position on July 8, 2002. Although an internal agency memo directs the selecting official to provide a brief statement of the rationale for hiring individuals, no such documentation was in the file we were provided on this selection.

**Conclusions:**

Based on the documents, it appears the agency may have tailored the qualifications for the career position for the purpose of improving an individual’s prospects for employment. Further, one of the mandatory technical qualifications specified for the new position appeared to be tailored to the selectee’s previous experience. Such a situation could both unnecessarily limit the applicant pool, but also provide an individual an unfair advantage. Including such a specific qualification without prior consultation with OPM would also violate qualifications standards regulations for General SES positions.<sup>10</sup> There was no evidence within the file to suggest the agency consulted with OPM prior to setting the qualifications standards.

**OPM’s Role:**

The selectee’s executive qualifications were approved by an OPM-administered QRB on July 30, 2002.

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<sup>10</sup>5 C.F.R. §§ 318.402(c), 318.403.

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Case 7:	Department of Health and Human Services
Positions:	<p>From SES Limited Term Appointment, ES-0301-00/00, Program Manager, E-Grants Initiative, Office of Assistant Secretary for Administration and Management</p> <p>To ES-1101-00/00, Director, Office of Grants Management and Policy, Office of Assistant Secretary for Administration and Management</p>
Issue:	Tailoring of career position qualifications to match an individual's experience
Details:	<p>The eventual selectee was appointed Program Manager of the E-Grants Initiative, a SES Limited Term position, on March 24, 2002, and held the position for approximately 2 years. Prior to this appointment, the eventual selectee had been a career civil servant at the National Institutes of Health in various positions from 1981 through 1999, prior to leaving to work in the private sector, then being rehired as an excepted service consultant to HHS in 2001. On February 10, 2002, the eventual selectee was reinstated to a career position at HHS. According to his application, as Program Manager of the E-Grant Initiative, the eventual selectee led the management and development of Grants.gov and built consensus through outreach to grantors and grantees as well as making presentations to OMB, HHS leadership and the Federal Chief Financial Officers (CFO) Council. Beginning in June 2003, the role of acting director for the newly created Office of Grants Management and Policy was added to the eventual selectee's responsibilities in the SES Limited Term position.</p> <p>On October 10, 2003, HHS created, and then 3 weeks later advertised, the director position open to all sources. According to the vacancy announcement, the duties and responsibilities within the Immediate Office of the Director were to support government electronics grants, including outreach to grantors and grantees, and interfacing with OMB, the Federal Council and HHS leadership. Additionally, the director would also be responsible for the Division of Grants Policy and the Division of Grants Oversight and Review. As a mandatory professional/technical qualification for this position, applicants were required to possess progressively responsible management experience in the E-Grants Initiative that demonstrated in-depth knowledge of outreach efforts and interfaces with OMB, Federal CFO Council, and HHS leadership on Grants.gov, and</p>

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included at least one year of specialized experience in the E-Grants Initiative at the GS-15 or equivalent level.

There were two printed rosters listing the seven applicants included in the merit staffing file we were provided. The first roster listed five candidates as qualified, with hand-written annotations towards the not qualified category for 4 of these 5. The second roster listed only the eventual selectee as qualified and only he was referred to the rating panel. Since there were no documents included for the other applicants within the file, a review of the referral process to the rating panel was not possible. The selecting official, who was the selectee's supervisor at the time, chose him for the position on January 30, 2004.

**Conclusions:**

Based on the documents, it appears the agency may have tailored the qualifications for the career position for the purpose of improving an individual's prospects for employment. First, the duties defined closely correlated with those performed by the eventual selectee in the Limited Term SES Program Manager position. Further, one of the mandatory professional technical qualifications appeared to be tailored to the selectee's experience. In addition, the requirement of in-depth knowledge of the E-grants program likely excluded any nonfederal applicants. Including such a specific qualification without prior consultation with OPM would violate qualifications standards regulations for General SES positions. There was no evidence within the file to suggest the agency consulted with OPM prior to setting the qualifications standards. Defining the scope or manner of competition or the requirements for any position for the purpose of improving or injuring the prospects of any particular person for employment would violate federal law.<sup>11</sup>

**OPM's Role:**

The selectee's executive qualifications were approved by an OPM-administered QRB on April 2, 2004.

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<sup>11</sup>5 U.S.C. § 2302(b)(6).

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Case 8:	Department of Health and Human Services
Positions:	<p>From Schedule C Appointment, GS-0301-12/02, Confidential Assistant to the Executive Secretary, The Executive Secretariat</p> <p>To GS-0301-12/02, Policy Coordinator, Office of the Secretary of Health and Human Services</p>
Issue:	Tailoring of career position qualifications to match an individual's experience
Details:	<p>The eventual selectee served as a Schedule C Confidential Assistant to the Executive Secretary for a year and a half prior to applying for the career position. Before this, the eventual selectee worked for the Secretary for almost 4 years as a policy analyst when the Secretary was Governor of Wisconsin. According to his resume, as the Confidential Assistant to the Executive Secretary, the eventual selectee (1) directly supported the Secretary of HHS by coordinating briefing materials, (2) provided relevant information regarding meetings, briefings, and speaking engagements, (3) reviewed and produced documents requiring the Secretary's approval, (4) developed the Secretary's daily calendar, (5) facilitated meetings with the administrative staff of the office, and (6) analyzed policy decisions for their potential impact on the Department.</p> <p>On June 4, 2002, HHS posted a vacancy announcement for the re-established career position<sup>12</sup> of Policy Coordinator in the Office of the Secretary. According to the position description and vacancy announcement, the individual selected for this position would (1) review documents requiring the Secretary's approval, (2) be a technical source of information, (3) represent the Executive Secretary to other government officials, (4) develop background papers to brief the Secretary and other department officials, and (5) coordinate and facilitate meetings.</p> <p>Of the 53 applicants, 5 were referred to the selecting official after being assigned numerical scores and 4 were referred as eligible based on their career status. The eventual selectee received the highest numerical score; however, the file contained no documentation to show how points were</p>

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<sup>12</sup>Agencies may re-establish or recertify career positions after they have been created but remain vacant.

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assigned or who rated the applicants. The selecting official, who was also the selectee's supervisor at the time, made the selection on August 1, 2002.

**Conclusions:**

The duties and responsibilities of the Schedule C and career positions overlap substantially and are located in the same office with a similar supervisory structure, giving the appearance that the agency may have tailored qualifications for the position for the purpose of improving an individual's prospects for employment. Although the selectee received the highest score, there is no documentation explaining how the score was assigned, or who assigned it.

**OPM's Role:**

Since this conversion did not occur in the presidential election review period, it was not subject to OPM's pre-appointment review.

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Case 9:	Department of Health and Human Services
Positions:	From SES Limited Term Appointment, ES-0201-00/00, Director, Human Resources (Site Director) Atlanta, Program Support Center  To ES-0201-00/00, Director, Human Resources Center, Atlanta, Program Support Center
Issue:	Posting SES vacancy announcements for less than the minimum time requirement
Details:	Prior to appointment to the SES career position as Director, Human Resources Center in Atlanta, the eventual selectee served in a similar position for a year under a Limited Term appointment. Before this, she had held career positions for 23 years. At the time of the SES Limited Term appointment on May 18, 2003, the eventual selectee had achieved a position within HHS at the GS-15 level.  HHS posted a vacancy announcement on USA Jobs for a SES position as Director, Human Resources Center in Atlanta, who would be responsible for providing a variety of human resources services to the Center for Disease Control and Prevention in Atlanta. The announcement was open from March 22, 2004, to April 2, 2004, a period of 12 days. Eleven applicants applied, and of these, three were certified as eligible for consideration. Selection was made on April 14, 2004.
Conclusions:	HHS posted the position on USA Jobs for only 12 days. This appears to be a violation of OPM's regulations which require SES job listings to be posted for a minimum of 14 days. <sup>13</sup>
OPM's Role:	The selectee's executive qualifications were approved by an OPM-administered QRB on May 21, 2004.

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<sup>13</sup>5 C.F.R. § 318.501(b)(2).

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Case 10:	Department of Health and Human Services
Positions:	<p>From SES Limited Term Appointment, ES-0510-00/02 Project Manager, Financial Management, Acting Director, Division of Financial Operations, Program Support Center</p> <p>To ES-0510-00/02, Director, Division of Financial Operations, Program Support Center</p>
Issue:	Posting SES vacancy announcements for less than the minimum time requirement
Details:	<p>Prior to appointment to the SES career position as Director, Division of Financial Operations, the eventual selectee served as a Project Manager (with Acting Director duties for the Division of Financial Operations) for over a year under a Limited Term SES appointment. At the time of the conversion, the eventual selectee had been employed with HHS for almost 32 years, 30 of which were in career positions.</p> <p>HHS posted a vacancy announcement on USA Jobs for the director position to lead the operation of HHS' Debt Collection Center and other core financial accounting systems managed by the division. The announcement opening date was August 13, 2002, and it closed on August 19, 2002, a period of 7 days. Four applicants applied, and of these, three were certified as eligible for consideration. Selection was made on October 3, 2002.</p>
Conclusions:	HHS posted the career SES position on USA Jobs for only 7 days. This appears to be a violation of OPM's regulations which require SES job listings to be posted for 14 days. <sup>14</sup>
OPM's Role:	The selectee's executive qualifications were approved by an OPM-administered QRB on February 21, 2003.

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<sup>14</sup>5 C.F.R. § 318.501(b)(2).

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Case 11:	Department of Homeland Security
Positions:	From Schedule C GS-0301-13/02, Staff Assistant, Federal Emergency Management Agency (FEMA)  To GS-0301-13/02, Program Specialist, Federal Emergency Management Agency
Issue:	Selection of former noncareer appointee who appears to have limited qualifications and experience to a career position
Details:	<p>The eventual selectee served as a Schedule C Staff Assistant at FEMA, initially in the Office of General Counsel (OGC), then in the Regional Operations Directorate for 14 months prior to applying for the career position. Although the staff assistant position description provided by the agency outlined a primarily advisory and administrative support role, the eventual selectee's resume listed the following responsibilities as part of the position (1) conceive and implement new initiatives and projects to facilitate and integrate emergency management programs, and (2) formulate, present, and execute budgets. Before joining the federal government, the eventual selectee had worked for 4 years in the private sector for the former FEMA Director prior to his appointment.</p> <p>Beginning on January 28, 2003, the agency advertised the Program Specialist position for 2 weeks. The duties listed for this position in the vacancy announcement included among others (1) conceive and implement new initiatives and projects to strengthen emergency management programs, (2) be the authoritative resource for coordinating and developing long-term planning for regional offices, (3) allocate resources in accordance with short and long range plans, (4) maintain an intimate knowledge of agency policies, programs and directives, and (5) formulate, present, and execute the budget. Of 39 applicants, only the eventual selectee and a career FEMA employee, with over 10 years experience at FEMA as an Emergency Management Specialist, were certified as eligible for consideration. Both candidates were rated as best qualified for the position. The agency referred both the career employee and the eventual selectee to the selecting official on separate certificates. On March 3, 2003, the selecting official, who was also the eventual selectee's supervisor at the time, chose her for the position. The selecting official did not provide further justification for the hiring decision.</p>

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Conclusions:	Although agencies have discretion when hiring among a limited pool of eligible candidates, the agency selected a Schedule C appointee with limited experience over a career employee with over 10 years of relevant emergency management experience. It is unclear why the two candidates received the same rating in the consideration process.
OPM's Role:	Since this conversion did not occur in the presidential election review period, it was not subject to OPM pre-appointment review.

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Case 12:	Department of Homeland Security
Positions:	<p>From SES Noncareer Appointment ES-0301-00/00, Deputy Assistant Secretary for Legislative Affairs, Immediate Office of the Secretary</p> <p>To Excepted Service Schedule A GS-0301-15/10, International Programs Coordinator, Immigration and Customs Enforcement, Office of Investigations</p>
Issues:	Creating career positions specifically for particular individuals
Details:	<p>Prior to the appointment to the career excepted service position, the eventual selectee served for less than 1 year in a variety of work details as a Noncareer SES appointment at DHS. According to the eventual selectee's resume, in these positions she advised high-ranking agency officials on relevant policy issues, guided department-wide efforts to develop and implement policy initiatives, coordinated public outreach, and handled managerial and administrative duties.</p> <p>On March 26, 2004, the agency submitted an official personnel action request to convert the selectee by name to the position of International Programs Coordinator. Four days later, on March 30, a position description was authorized for an International Programs Coordinator, with duties to include advising and assisting the Office of International Affairs in the administration of international policy and planning in Greater Europe. The conversion was made the same day. The agency did not advertise the opening, and there is no evidence suggesting any other candidates were considered for the position.</p>
Conclusions:	Based on the documents provided to us, two factors create the appearance that the individual may have been pre-selected for this position. These factors include: (1) the agency's request to convert the selectee by name prior to authorizing the position description and (2) not providing an opportunity for other candidates to apply. By law, agencies may not grant unauthorized preference to any particular individual or applicant to improve her prospects in the employment process.
OPM's Role:	This conversion was not subject to pre-appointment review because OPM does not review appointments to the excepted service during the presidential election review period.

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Case 13:	Department of Housing and Urban Development (HUD)
Positions:	From Schedule C GS-0301-13/04, Special Assistant, Office of General Counsel  To Excepted Service Schedule A GS-0905-13/04, Attorney-Advisor, Office of General Counsel
Issue:	Selection of former noncareer appointees who appear to have limited qualifications and experience to career positions
Details:	<p>Prior to appointment to the career excepted service (non-Schedule C) position, the eventual selectee served for almost 4 years as a Schedule C Special Assistant in the Office of Insured Housing-Multifamily Mortgage Division in the Office of General Counsel. Based on the eventual selectee's resume, duties in that Special Assistant position included providing legal counsel, interpreting existing and proposed multi-family insurance program statutes, regulations, and other legal documents.</p> <p>Beginning on September 9, 2004, the agency advertised the career position at the GS-12, 13, and 14 levels for 2 weeks. The eventual selectee and one field office attorney applied for the position. The field office attorney had over 26 years of experience in the agency, including several years as a Freedom of Information Act (FOIA) officer in a field office. The eventual selectee identified handling of FOIA requests as one element of his experience on his application; however, his accompanying resume had no mention of FOIA experience. Based on agency excepted service hiring protocols, both candidates were considered qualified for the position and were referred to the selecting official. No interviews were conducted prior to the selection. The Deputy Assistant Secretary for Human Resource Management stated that the eventual selectee qualified at the GS-13 level and the field office attorney qualified at the GS-14 level. They were referred to the selecting official separately on a GS-13 selection roster and GS-14 selection roster respectively.</p>
Conclusions:	Although this conversion was compliant with the agency's excepted service hiring procedures, our work raised questions concerning the selection. With the written applications as the primary source of information considered, the agency selected a Schedule C appointee with minimal experience in FOIA issues, a key requirement of the position, over an

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attorney with 26 years of legal experience at the agency, including several years as a FOIA officer.

**OPM's Role:**

This conversion was not subject to pre-appointment review because OPM does not review appointments to the excepted service during its presidential election review period.

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Case 14:	Department of Justice (DOJ)
Positions:	From Schedule C GS-0905-15/04, Senior Advisor to the Assistant Attorney General, Tax Division  To Excepted Service Schedule A IJ-0905-00/02, Immigration Judge, Executive Office For Immigration Review
Issue:	Selection of former noncareer appointees who appear to have limited qualifications and experience to career positions
Details:	<p>Prior to his appointment to the career excepted service (non-Schedule C) position, the eventual selectee served for almost 2 years as a Schedule C Senior Advisor to the Assistant Attorney General in the Tax Division. According to his resume, the eventual selectee's experience included (1) providing written and oral legal counsel concerning ongoing tax litigation as a Senior Advisor to the Assistant Attorney General; (2) serving for approximately 6 months in a temporary detail as an appellate attorney in the Office of Immigration Litigation, and (3) over 25 years of experience as a civil trial attorney in a private firm. His resume does not list any experience in immigration litigation other than the approximately 6-month detail in the Office of Immigration Litigation.</p> <p>According to the Immigration Judge's position description, the eventual selectee would preside at quasi-judicial hearings to determine the issues arising in exclusion, deportation, and related proceedings. The special knowledge and abilities required for this position include, among others: "a thorough knowledge of the numerous immigration and nationality laws, both past and present, and the regulations and rules of the Immigration Naturalization Service issued thereunder," "expert knowledge of judicial practice," and "a proven ability to assure a fair hearing." On April 4, 2004, the agency appointed the selectee to the Immigration Judge position. In an internal memo requesting a higher pay rate for the appointment, a DOJ Chief Immigration Judge stated that the selectee was eminently well-qualified for the position, but did not cite any immigration litigation experience beyond the selectee's temporary detail as justification for this assessment.</p>
Conclusions:	Converting a Schedule C appointee with less than 6 months of immigration law experience to an Immigration Judge position raises questions about the fairness of the conversion.

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OPM's Role:

This conversion was not subject to pre-appointment review because OPM does not include excepted service positions in its review of appointments made during the presidential election review period.

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Case 15:	Department of Justice
Positions:	From Schedule C Appointment GS-1035-15/01, Deputy Director, Office of Public Affairs, Office of Public Affairs  To Excepted Service Appointment, Title 28 U.S.C. 536, GS-1035-15/02, Public Affairs Specialist, Federal Bureau of Investigation (FBI)
Issue:	Failure to apply veteran's preference
Details:	<p>Prior to appointment to the career excepted service (non-Schedule C) position, from February 2001 until December 2002, the eventual selectee served as a Schedule C Deputy Director in the Office of Public Affairs. According to her application for the FBI position, her duties as Deputy Director included, among others, serving as a spokesperson for the department and Attorney General and preparing the Attorney General and other senior officials for press conferences.</p> <p>According to the position description, the Public Affairs Specialist for the FBI would serve as a liaison between the media and senior agency officials, as well as a public relations advisor to the agency. DOJ created the position on December 6, 2002. The selectee was appointed 3 days later. DOJ did not advertise the opening, and there is no evidence suggesting any other candidates were considered for the position. As part of the excepted service, the FBI is required to apply veteran's preference to its appointments.</p>
Conclusions:	While this selection was consistent with the FBI's current Merit Promotion and Placement Plan, <sup>15</sup> since there was no opportunity for other candidates to apply, the agency apparently did not apply the statutory requirements of veteran's preference to this hiring decision.
OPM's Role:	This conversion was not subject to pre-appointment review because OPM does not review appointments to the excepted service.

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<sup>15</sup>As mentioned previously, agencies create their own hiring procedures and guidelines for excepted service (non-Schedule C) positions.

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Case 16:	Consumer Product Safety Commission (CPSC)
Positions:	<p>From Schedule C Appointment, GS-0301-15/10, Special Assistant, Office of the Chairman, Consumer Product Safety Commission</p> <p>To ES-0340-00/00, Director, Office of International Programs and Intergovernmental Affairs, Office of the Executive Director, Consumer Product Safety Commission</p>
Issue:	Agency did not appear to address OPM qualification concerns about the conversions in a substantive manner
Details:	<p>Prior to applying for the career position, the eventual selectee had served for over a year as a Schedule C Special Assistant in the office of the Chairman. According to his resume, as a Special Assistant, the eventual selectee directly supported the Chairman by (1) providing senior level policy advice on current and developing issues, (2) preparing written materials for presentation at external speaking engagements, (3) acting as a liaison with internal and external parties, and (4) drafting documents as needed.</p> <p>On November 14, 2003, CPSC posted a vacancy announcement for the SES career position of Director, Office of International Programs and Intergovernmental Affairs. Based on the vacancy announcement, the director would oversee and coordinate the Commission's international and intergovernmental efforts related to product safety standards. The desired qualifications listed in the announcement closely matched the eventual selectee's previous experience in the private sector, and as an elected official to the New Mexico State Legislature, as listed on his resume.</p> <p>Twenty-four applicants applied, and of these, nine were considered qualified for the position and assigned numerical scores. The eventual selectee received the highest numerical score and the selecting official selected him for the career position on December 19, 2003.</p> <p>Because this is an appointment to the career SES, CPSC submitted the selectee's case to OPM for approval on February 13, 2004. An OPM-</p>

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administered QRB<sup>16</sup> denied the agency's request citing weakness in three of the five Executive Core Qualifications (ECQ). The QRB also noted that the selectee's lack of managerial experience would be a handicap to successful performance in the SES. Based on comments from CPSC's Executive Director, the selectee revised his ECQ statement by citing different examples from his experiences. Although the selectee refers to his "career as a senior manager and leader" the only concrete examples he provided of his experiences in the ECQs relate to his 15-month position at the CPSC or his 2-terms as an elected official in the New Mexico State Legislature. However, in describing his specific role and duties for each of these positions on his resume, he does not mention managerial or supervisory duties for either. Using the revised ECQs, CPSC resubmitted its request. OPM pointed out that the resubmission was provided to a different QRB, which was not involved or familiar with the initial QRB's concerns or decision. This QRB approved the appointment on April 2, 2004.

**Conclusions:**

Although the selectee modified his second submission to OPM, the primary basis for the selectee's qualifications remained his experience from the 15-month appointment at the CPSC and 2-terms as a State Representative. It is unclear whether or how this revised submission addressed the concerns raised by the initial QRB regarding the candidate not meeting the "demonstrated executive experience" required for SES positions by 5 U.S.C 3393, or the "well-honed executive skills and broad perspective of government" recommended by OPM guidance on the SES.

**OPM's Role:**

Because this is an appointment to the career SES, CPSC submitted the selectee's case to OPM for approval. On February 13, 2004, an OPM-administered QRB denied the agency's request due to weakness in three of the five ECQs. After CPSC resubmitted its request, a different QRB approved the appointment on April 2, 2004.

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<sup>16</sup>While OPM convenes Qualifications Review Boards and provides staff support, the Boards are composed of members of the SES from across the government.

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Case 17:	Environmental Protection Agency (EPA)
Positions:	From Schedule C, GS-0301-14/04, Information Management Specialist, Office of Administrative Services  To GS-0301-14/04, Management Specialist, Office of Administrative Services
Issues:	Failure to apply veteran's preference/creating a career position for a particular individual
Details:	<p>Prior to applying for the career position, the eventual selectee served for over 2 years in a variety of work details initially as a Schedule C appointee, then as an administratively determined position in the Immediate Office of the EPA Administrator. Before this, the eventual selectee had worked for 3 years as a Special Assistant for the Administrator when she was Governor of New Jersey, and had also worked state level political campaigns. In addition to providing administrative support and policy advice to the EPA Administrator, she listed the following experiences on her resume from an 11-month detail to the Facilities Management and Services Division: (1) managed the daily operation of Personnel Security Staff, (2) maintained working knowledge of Executive Orders and OPM guidelines pertaining to national security positions, (3) established and implemented new internal processes and policies regarding personnel security, and (4) worked with other governmental agencies to facilitate personnel security clearances.</p> <p>On April 25, 2003, EPA advertised the new career position of Management Specialist in the Office of Administration and Resources Management, 2 weeks prior to the position's creation. According to the vacancy announcement, the individual in this position would (1) serve as an advisor to the Director, (2) perform special projects such as planning for the review, development and execution of personnel and physical security plans and programs, (3) maintain awareness of the major policy and program initiatives relevant to Security Staff, and (4) work with other federal agencies and the private sector regarding the personnel and physical security plans and programs.</p> <p>Thirty-five individuals applied for the position, including at least seven with veteran's preference. Individuals were assigned scores based on their online responses and a computer-based scoring system. By law, agencies are required to assign additional points to qualifying veteran's scores during</p>

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the rating and ranking process.<sup>17</sup> Based on the applicant listing EPA provided to us, the scores were not adjusted for veteran's preference. Had the veteran's preference points been applied, five of the seven individuals that had veteran's preference would have ranked higher than the selectee. Even without the points applied, the eventual selectee shared the highest score with a 5-point compensable veteran. Despite this tied score, the agency referred only the eventual selectee to the selecting official. On May 18, 2003, the agency converted the selectee to the career position. According to EPA, the selectee had eleven months of relevant experience for the career position at the time of her selection.

**Conclusions:**

Based on the documents, EPA did not apply veteran's preference points for seven applicants. Other factors also suggest there may have been preselection. Although, even in the absence of the added veteran's preference points, two applicants, (a veteran and the eventual selectee), shared the same examination score, the agency only referred the selectee to the selecting official. Also, the close correlation between the duties listed by the selectee for her most recent detail and those of the newly created career position may have given the selectee an advantage in the rating process. Finally, the position was created and filled immediately prior to the former Administrator's resignation.

**OPM's Role:**

This conversion was not subject to OPM's pre-appointment review because it occurred before the presidential election review period.

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<sup>17</sup>5 U.S.C. §§ 3309, 3313.

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Case 18:	Small Business Administration (SBA)
Positions:	From Schedule C Appointment, GS-0301-13/04, Special Assistant to the Administrator, Office of the Administrator  To GS-0301-12/10, Administrative Resources Coordinator, Region IX
Issue:	Agency did not appear to address OPM concerns about the conversion in a substantive manner
Details:	<p>The eventual selectee served as a Schedule C Special Assistant in the Office of the Administrator for over 3 years prior to applying for the career position. Before this, the eventual selectee had worked in Los Angeles for almost 5 years at the private business owned by the Administrator prior to his appointment as SBA Administrator. According to her application, as the Special Assistant to the Administrator, the eventual selectee managed the Administrator's calendar, coordinated meetings with other officials, answered correspondence, and performed special projects of a sensitive nature, among other duties.</p> <p>On August 11, 2004, SBA posted a vacancy announcement for the newly created career position of Administrative Resources Coordinator in the Los Angeles Regional Office. According to the vacancy announcement, the coordinator would (1) interact with senior level officials within the SBA, (2) perform special projects for the Regional Administrator, (3) manage budget allocations, (4) maintain the Regional Office Executive Scorecard, and (5) interact with diverse groups in a variety of settings.</p> <p>There were six applicants for the position, and of these, three were considered eligible. The eventual selectee received the highest rating of all the candidates, and the selecting official chose her for the position on September 10, 2004.</p> <p>Because conversions of Schedule C appointees to career positions during OPM's presidential election review period are subject to OPM pre-appointment review, the agency submitted this conversion to OPM for approval on October 26, 2004. On February 22, 2005, OPM returned the agency request without formal action, citing the fact that the period of pre-appointment review had passed. However, OPM raised concerns to SBA that the appointment did not adhere to merit system principles because the quality ranking factors in the vacancy announcement and crediting plan did</p>

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not appear to be supported by the position description. In OPM's view, this discrepancy may have limited the applicant pool and interfered with open and fair competition. OPM encouraged SBA to review the hiring process and ensure it met merit system principles before appointing the selectee to the position. On February 25, 2005, the Director of SBA's Denver Office of Human Capital Management advised the Chief Human Capital Officer that he had reviewed the recruitment file and the appointment of the selectee met merit system principles because it was made from a legally constituted certificate of eligibles. Based on this review, the agency appointed the selectee to the Administrative Resources Coordinator position on March 6, 2005. The Chief Human Capital Officer at SBA told us that SBA was in the process of moving one of its regional offices from San Francisco to Los Angeles, and that this position was created as part of the standard configuration for a regional office.

**Conclusions:**

As OPM suggested, several factors raise questions about the fairness of this conversion. At the time of selection, the selectee had been working for the SBA Administrator, both in the private sector and at SBA, for about 8 years. Additionally, the position, which was established less than 6 months before the 2004 election was located in the eventual selectee's hometown. SBA did respond to OPM's observation, but it is not clear from the documents whether SBA adequately addressed OPM's concerns, and there was no documentation in the file indicating OPM contacted the SBA further concerning this appointment or the agency's response.

**OPM's Role:**

Because the agency selected a Schedule C appointee for a career position during the presidential election review period, it submitted the conversion to OPM for approval in October 26, 2004. On February 22, 2005, OPM returned the agency request without action citing the fact that the period of pre-appointment review had passed but expressed concern with the merit staffing process.

# Conversions Where It Could Not Be Determined Whether Appropriate Authorities and Proper Procedures Were Followed

Noncareer position, title, and office	Position title, office, and hiring authority	Date converted
<b>Department of Health and Human Services</b>		
Limited Term SES Chief Information Officer Office of Budget, Technology, and Finance	Chief Information Officer Office of the Assistant Secretary for Planning and Evaluation Reg. 317.304	04/20/03
Limited Term SES Special Advisor Information Technology Food and Drug Administration	Chief Information Officer Food and Drug Administration 5 U.S.C. 3393	12/29/02
Schedule C Secretary Regional Representative Office of the Regional Director	Regional Administrator Administration of Aging HHS-PSC-1-05-0002	01/23/05
<b>Department of Justice</b>		
Presidential Appointee U.S. Attorney United States Attorney's Office Eastern District of Missouri	Assistant U.S. Attorney United States Attorney's Office Eastern District of Missouri 28 U.S.C. 542	05/01/01
Schedule C Special Assistant to the Assistant Attorney General Civil Rights Division	Attorney Advisor Office of Legal Counsel Schedule A 213.3102D	09/17/01
Schedule C Attorney Advisor Civil Division	Trial Attorney Civil Rights Division Schedule A 213.3102D	11/02/03
Limited Term SES Counselor to the Assistant Attorney General Criminal Division	Trial Attorney (General) Office of the Solicitor General Schedule A 213.3102D	04/07/02
Schedule C Attorney Advisor Office of the Assistant Attorney General	Assistant U.S. Attorney United States Attorney's Office Eastern Virginia 28 U.S.C. 542	09/08/02
Schedule C Attorney Advisor Executive Office for United States Attorneys	Assistant U.S. Attorney United States Attorney's Office Western Washington 28 U.S.C. 542	06/29/03
Schedule C Special Assistant to the Attorney General Criminal Division	Assistant U.S. Attorney United States Attorney's Office Eastern New York 28 U.S.C. 542	06/15/03
Schedule C Special Assistant to the Assistant Attorney General Criminal Division	Assistant U.S. Attorney United States Attorney's Office Eastern Virginia 28 U.S.C. 542	06/01/03

**Appendix V**  
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**Authorities and Proper Procedures Were**  
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*(Continued From Previous Page)*

<b>Noncareer position, title, and office</b>	<b>Position title, office, and hiring authority</b>	<b>Date converted</b>
Schedule C Counsel to the Assistant Attorney General Civil Rights Division	Trial Attorney Civil Rights Division 28 U.S.C. 542	03/09/03
Noncareer SES Chief of Staff Criminal Division	Assistant U.S. Attorney United States Attorney's Office Western North Carolina 28 U.S.C. 542	01/12/03
Noncareer SES Counselor to the Assistant Attorney General Civil Rights Division	Trial Attorney Civil Rights Division Schedule A 213.3102D	11/02/03
Schedule C Attorney Advisor Executive Office for United States Attorneys	Assistant U.S. Attorney United States Attorney's Office Massachusetts 28 U.S.C. 542	08/08/04
Noncareer SES Deputy General Counsel for Postsecondary and Regulatory Service Office of the General Counsel Department of Education	Assistant U.S. Attorney (Criminal) United States Attorney's Office Western North Carolina Schedule A 213.3102D	02/06/05
3 U.S.C 105 Associate Director Domestic Policy Council The White House	Immigration Judge Executive Office for Immigration Review Schedule A 213.3102D	03/20/05
Schedule C Special Assistant to the Assistant Attorney General Criminal Division	Trial Attorney Criminal Division Schedule A 213.3102D	12/28/03
Schedule C Counsel to the Director Executive Office for United States Attorneys	Trial Attorney Tax Division Schedule A 213.3102D	05/30/04

Source: GAO.

# Comments from Office of Personnel Management



OFFICE OF THE DIRECTOR

UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, DC 20415-1000

April 21, 2006

Mr. George Stalcup  
Director, Strategic Issues  
Government Accountability Office  
Washington, DC 20548

Dear Mr. Stalcup:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report, **PERSONNEL PRACTICES, Conversions of Employees from Noncareer to Career Positions, May 2001 - April 2005**.

As you know, the Office of Personnel Management (OPM) reviews Federal agency hiring actions every four years during the pre- and post election period to ensure merit system principles are followed with respect to employees moving from non-career to career appointments. As your report notes, our most recent review covered the period of March 18, 2004, to January 20, 2005.

GAO has conducted a similar review for the period of May 1, 2001, to April 30, 2005, and recommends that we review 18 cases you have identified. We agree with this recommendation and will review these cases in which GAO believes that certain agencies did not use the appropriate authorities or adhere to merit system principles and veterans' preference. It should be noted that nine of the 18 cases identified came from the Department of Health and Human Services where OPM recently withdrew a delegated examining authority from one of its components following an oversight review.

With respect to GAO's second recommendation that OPM review conversions to career excepted service positions in the same manner as done during the presidential election periods, OPM will incorporate a review of agency practices in this area during our normal review of agency delegated examining units.

Sincerely,

Linda M. Springer  
Director

# GAO Contact and Staff Acknowledgments

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## GAO Contact

George H. Stalcup (202)-512-6806 or [stalcupg@gao.gov](mailto:stalcupg@gao.gov)

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## Acknowledgment

In addition to the contact named above, Sarah Veale, Assistant Director; Carolyn L. Samuels, Lisa Van Arsdale, and Jeffrey McDermott made key contributions to this report.

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