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PERSONNEL PRACTICES

Career Appointments of Former Political and Congressional Employees





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The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
House of Representatives

The Honorable Benjamin A. Gilman
Chairman, Committee on International Relations
House of Representatives

This report responds to your requests that we determine (1) whether appropriate authorities were used and proper procedures were followed in appointing former political appointees and legislative branch employees¹ to positions in the executive branch since January 1996 and (2) whether the circumstances surrounding any of the appointments gave the appearance of favoritism or preferential treatment in the appointment process, even if proper procedures were followed.

More specifically, this report provides information on the appointments of 36 former political appointees and legislative branch employees to positions in the executive branch between January 1996 and March 1997.² These 36 appointments were at pay grades General Schedule (GS) 13 or higher and were reported to us by 18 of the 50 agencies—including the cabinet-level departments—that we surveyed. The 36 appointments represented fewer than 1 percent of the career appointments made at the GS-13 level or above during the period we reviewed.

Results in Brief

On the basis of our review of relevant personnel files and documents and discussions with agency officials, we believe the 18 agencies that provided career appointments to the 36 former political appointees and legislative branch employees used the appropriate appointment authority to hire

¹As used in this report, political appointees are defined as those who obtained noncareer appointments to the Senior Executive Service (SES); limited term and limited emergency SES appointments; presidential appointees; and noncareer appointments involving an administratively determined pay rate and whose position titles were administrative—not technical—in nature. Also included are those who held Schedule C positions. Former legislative branch employees are defined as former congressional employees who obtained career appointments to executive branch agencies under authority provided by the Ramspeck Act of 1940 (5 U.S.C. 3304(c)). The act was repealed by Congress effective December 19, 1997.

²Of the 36 individuals appointed, 28 were political appointees in the executive branch, and 8 were employed in the legislative branch. The appointments were either career or career-conditional appointments; a career-conditional employee must satisfactorily serve a probationary period before gaining full career status.

each of them³ and followed proper procedures in making the appointments. However, notwithstanding use of the appropriate authority and proper procedures, the circumstances surrounding six of the appointments could, in our opinion, give the appearance that the appointees had received favoritism or preferences that enhanced the appointees' prospects of appointment.⁴ For example, in two cases, the vacancy announcements for the positions to be filled, which outlined the qualifications (e.g., work experience) that the agencies were seeking from applicants, appeared tailored to include specific work experiences possessed by the two appointees. Under such circumstances, one would expect these applicants to fare very well in the qualifications review portion of the appointment process, which they did. (Details of the six cases are presented in app. I.) The remaining 30 appointments did not raise comparable questions of the appearance of favoritism or preference.

Background

The majority of the federal civilian workforce obtained their positions by competing against others under the government's merit system selection process. However, there are provisions for noncompetitive appointments as well. Included among these are the following:

- Presidential, noncareer SES, and Schedule C appointees are appointed by an administration to support and advocate the president's goals and policies. Noncareer SES appointees can receive noncompetitive appointments to SES positions that normally involve advocating, formulating, and directing the programs and policies of the administration. Schedule C appointees generally receive noncompetitive appointments to 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. These appointees serve at the pleasure of the President or agency head.
- Certain congressional employees are eligible to apply for noncompetitive, career appointments under the Ramspeck Act. Eligibility requirements include, among other things, that employees must have been separated from this employment involuntarily, such as when a Member retires, and must be appointed to a career position within 1 year of separation.

³Although the appropriate appointment authorities were used, the reference citations on the effecting documents for 3 of the 36 appointments were incorrect. Personnel officials from the employing agencies stated that the incorrect citations were due to administrative error and that corrections would be made. The three appointments did not involve circumstances that, in our opinion, could give the appearance of favoritism or preferential treatment.

⁴The agencies that made the six appointments were the Departments of Defense, Energy, Commerce, and Veterans Affairs; the U.S. Agency for International Development; and the Office of Personnel Management (OPM).

Employees appointed under this authority must meet applicable qualification requirements for the positions to which they are appointed.

- Under the Foreign Assistance Act of 1961, as amended, certain agencies can noncompetitively appoint individuals to what are labeled administratively determined pay rate appointments in which (1) individuals appointed under this authority serve at the pleasure of the agency head and can be removed upon notice and (2) the salary levels can be determined by the agency head.
- Limited term SES appointments are time-limited, nonrenewable appointments for up to 3 years. These appointments can be made noncompetitively. Limited emergency SES appointments are also nonrenewable. They are for time-limited positions for up to 18 months that are required to meet an urgent program need. Limited emergency SES appointments also can be made noncompetitively, and the appointees serve at the pleasure of the agency head.

Since such appointments are often tied to the administration in power and, with the exception of the Ramspeck Act appointments, are not permanent, such individuals sometimes seek a permanent, career appointment in the government. Career appointments in government are usually made through competitive procedures, consistent with the government's merit system selection principles, in which the selection is determined on the basis of relative knowledge, skills, and ability, after fair and open competition that ensures that all applicants receive equal opportunity.⁵ When a political appointee seeks a career appointment, concerns can arise as to whether these merit principles will be followed. These concerns may occur because the appointee competing for the career appointment is often well known or "connected" in the agency or department, sometimes having worked for the political appointee who should nominate the best qualified candidate to the selecting official or for the official who will do the selecting.

We have written a number of reports on the issue of former political appointees and former legislative branch employees receiving career appointments in the executive branch. As in this report, we generally found that agencies usually followed appropriate procedures in making these career appointments. However, we also found a few cases in which the circumstances appeared to have provided the appointee with an advantage. See Related GAO Products for a listing of our past reports.

⁵5 U.S.C. Sec. 2301(b)(1).

Scope and Methodology

In order to determine whether agencies used appropriate authorities and followed procedures in providing career appointments to former political appointees and legislative branch employees during the period January 1, 1996, through March 31, 1997, we first identified such cases. We did this by asking 50 executive branch agencies, including all cabinet-level departments, to complete and return to us a data collection instrument (DCI) for each case in which they had provided (1) a career appointment to a former political appointee or (2) a career appointment to a former legislative branch employee using Ramspeck Act authority. The DCI provided reporting instructions and defined former political appointees and legislative branch employees for purposes of our review. It was also used to collect details of each of the career appointments, including the appointee's name, employing agency, date of career appointment, title of position, and grade level. It also collected details about each of the political or legislative branch appointments, including the type and date of the political appointment, title of position, and employing agency. In addition, we asked each of the 50 agencies to send us negative reports for each month in which they did not make such career appointments. A copy of the DCI we used for this review is contained in appendix II.

The 50 agencies and departments were selected using criteria developed in concert with your offices. The selection criteria and agencies are identified in appendix III. As agreed with your offices, we conducted detailed reviews of the authorities used and procedures followed in those cases in which career appointments reported to us were made at the GS-13 level and higher. To determine whether the appropriate appointing authority was used, we first identified the authority that the agency cited for the appointment. The agency must cite this authority in Standard Form 50B-Notification of Personnel Action (SF-50B), a copy of which is filed in the appointee's official personnel folder (OPF). We then researched the cited authority in law and/or regulation to determine the criteria the agency had to meet in order to use the authority. We then examined the contents of the employee's OPF and, when appropriate, the merit staffing case file to determine if there was evidence that the criteria for using the authority were met.⁶

⁶The types of documents contained in an employee's OPF may include, in addition to SF-50Bs, the employee's resumes or applications for federal employment, pay records, certificates or diplomas of professional training and achievement, and performance ratings. The types of documents contained in the merit staffing case file may include a copy of the vacancy announcement, the application packages of each applicant, the results of the rating and ranking process, the listing of best-qualified applicants, and documentation showing which applicant was selected for the position.

To determine whether proper procedures were followed in the 36 cases, we examined the steps taken in the application and appointment process. With guidance and assistance from a GAO personnel specialist, we examined OPFS and merit staffing case files to determine what procedures the agencies used. In cases where we had questions, we also interviewed officials from the personnel offices of the appointing agency or other officials knowledgeable about the specific case. We then compared the procedures used in the appointment process to the federal personnel laws and regulations contained in the U.S. Code and the Code of Federal Regulations and to the department's or agency's merit staffing plans, as appropriate. We did not independently determine whether the 36 employees were qualified for the positions to which they were appointed.

There was no specific set of criteria that we could apply to determine if any of the appointments appeared to involve favoritism or preferential treatment. Consequently, we applied our professional judgment after reviewing the circumstances of each case. For example, to assess whether a vacancy announcement might have been tailored to the work experiences of the appointee, we examined information contained in the employee's application materials and excepted service position descriptions regarding work experiences and dates and responsibilities and compared that information to the information contained in the vacancy announcement.

We were aided in this appraisal of the circumstances by the knowledge gained from past work on the subject; the technical assistance provided by a GAO personnel specialist; and by our internal review process, which included the examination of the six questionable cases by attorneys experienced in the application of federal personnel law. In addition, we gave draft summaries of the six cases to the respective agencies that made the appointments and asked them to provide any corrections, clarifications, or explanations that they believed were appropriate to our understanding of the circumstances. We incorporated their clarifications to the case summaries as appropriate.

All together, 20 of the 50 agencies reported to us that they had made 47 career appointments of (1) former political appointees or (2) former legislative branch employees under authority provided by the Ramspeck Act. We did not verify that the 50 agencies identified and reported to us all reportable appointments. Of the 47 appointments reported to us, 36 were made at the GS-13 level, or higher, by 18 agencies. Appendix IV provides a list of the 18 agencies where the 36 appointments were made.

We did our work in Washington, D.C., from April 1996 through July 1997 in accordance with generally accepted government auditing standards. Because OPM is responsible for overseeing the federal personnel system, we obtained written comments on a draft of this report from OPM. These comments are discussed at the end of this letter and are reprinted in appendix V.

Appointment Authorities and Procedures Properly Used or Followed

Agencies must cite the legal authority under which they are appointing an individual in the documentation they prepare to make an appointment. Each appointment authority generally covers a particular set of circumstances and includes requirements or criteria the agencies must meet in order to use the authority. All together, 7 different appointment authorities, such as the Ramspeck Act of 1940, were cited for the 36 appointments. (The 7 authorities, their criteria, and the distribution of the 36 appointments among the 7 authorities are shown in app. VI.) From our review of the various documents that were related to the appointments (such as vacancy announcements, resumes, and official notifications of personnel actions) and our discussions with pertinent agency officials, we determined that the agencies met the requirements of the 7 appointment authorities and that they used the authorities properly in making the 36 appointments.

We did note, however, that in 3 of the 36 appointments, although the appropriate appointment authorities were used, the reference citations on the effecting documents were incorrect. For example, in one case, the appointment authority cited was the vacancy announcement number rather than the applicable section of the U.S. Code entry under which authority the appointment had been made. Personnel officials from the employing agencies stated that the incorrect citations were due to administrative error and that corrections would be made. The three appointments did not involve circumstances that, in our opinion, could give the appearance of favoritism or preferential treatment.

The merit staffing procedures agencies are to follow in making appointments are set out in federal personnel law and regulations and by the agencies in their merit staffing plans, which detail their procedures for filling positions. The procedures are intended to foster the principles of fair and open competition and equal opportunity. For example, to fill a position, an agency may be required to (1) publish a vacancy announcement so that the position's availability is made known to possible applicants; and (2) have all applications rated and ranked by a

several-member panel, with the assignment of members to the panel and the scoring of applications to be accomplished in accordance with the related merit staffing plan. For the 36 cases, we compared the procedures called for in law, regulation, and merit staffing plans, as appropriate, with the procedures that were evident in the appointment documentation. On the basis of these comparisons, it appeared that the agencies followed proper procedures in making the 36 appointments.

However, as we pointed out in a previous report,⁷ like any other system, the appointment process can be manipulated. Processes and procedures such as advertising the positions may be followed, and the appearance of fair and open competition may be achieved. Ultimately, however, the question of whether fair and open competition actually occurred or whether a candidate was preselected for appointment or given some other advantage rests with the intent and motivation of the agency officials involved—factors that cannot be controlled by regulation and that we could not determine from review of files or discussions with agency officials.

Circumstances Surrounding Six Appointments Could Give the Appearance of Favoritism or Preferential Treatment

Although records in OPFS and merit staffing files indicated that agencies used proper appointing authorities and procedures for all 36 appointments, in our opinion, 6 appointments involved circumstances that could lead to the appearance that the individuals received favoritism or preferences that enhanced their prospects for the appointments. The remaining 30 appointments did not raise comparable questions of the appearance of favoritism or preference. The circumstances in these six cases are summarized below.

In two cases, the required duties, knowledge, skills, or abilities listed in the vacancy announcements appeared to have been tailored to the work experiences of the political appointees who applied for and were appointed to the respective positions. In one of these cases, the vacancy announcement contained several requirements that closely matched the specific work experiences of the political appointee who obtained the position. One of those requirements, for example, was that applicants should have experience working with particular congressional committees. The only applicant who had that experience was the political appointee, who had worked for one of the committees prior to obtaining his political appointment. In the other case, the vacancy announcement

⁷Personnel Practices: Propriety of Career Appointments Granted Former Political Appointees (GAO/GGD-92-51, Feb. 12, 1992).

contained several requirements that closely matched the position description for the job the political appointee had previously held at that agency. Agency personnel officials with whom we discussed these two cases defended the agencies' prerogative in determining what requirements were necessary for the positions. They also said that situations in which vacancy announcements may appear to be tailored to a particular individual are not unusual.

In another two cases, political appointees obtained career appointments to positions from which they were reassigned shortly after receiving their appointments, thus raising questions about whether there was a bona fide need to fill the positions. In one of these cases, a political appointee obtained a career appointment to a position from which—on the same day of his career appointment—he was reassigned to a second position. In the second of these two cases, a political appointee responsible for the agency's administrative operations—including human resource management—initiated the process to fill, through a career appointment, an executive level position at a component agency. A vacancy announcement was published, and the political appointee applied and was selected for the position. According to a high ranking human resource management official at the parent agency, the need to fill the position was questionable because, among other things, the agency in which the position was located had a strong administration and did not need another executive position. After about 2 months, the newly appointed "career" employee was reassigned to another position.

In the fifth case, a political appointee who worked directly for the head of the agency helped create a new executive position that was to be filled through a career appointment. The political appointee applied and was selected by the head of the agency for the position. High ranking agency officials told us that they were surprised that the political appointee applied and was selected for the position because of the potential negative perceptions that the public may have acquired in this case. Nevertheless, the agency officials advised us that political appointees are not prohibited from applying or being selected for career appointments in the government; in this case, they believed the individual was the most qualified applicant for the position.

Finally, the sixth case involved a political appointee who applied and was selected for an executive position after the position was announced a third time. Applicants from the first two announcements were rated together by a screening panel, of which the political appointee was a member. Five

applicants were identified as being best qualified for the position, and one of them was offered the position but declined. The position was then reannounced for the third time, and the political appointee applied and was selected for the position. According to documentation contained in the merit staffing file, the position was reannounced because too much time—3 months—had passed since the closing of the original announcement, and it was decided that the search for candidates should be broadened. We noted that recruitment under the first two vacancy announcements had been limited to current civil service employees of the federal government. The recruitment area was expanded to qualified applicants from within and outside the federal government in the third announcement. The political appointee who obtained the position had the kind of experience that the position required. However, the unanswerable question is whether the agency reissued the announcement in order to enable the political appointee to apply, even though one of the best-qualified candidates from the earlier announcements could have been selected.

We believe that the circumstances surrounding each of the six cases could create a perception of preferential treatment or favoritism toward a particular applicant, despite the use of proper hiring authorities and merit staffing procedures. The appearance of preferential treatment or favoritism can obviously compromise the integrity of the merit staffing system. However, a determination of whether preferential treatment or favoritism actually occurred could be made only if the intent and motivation of the agency officials involved were known.

Agency Comments and Our Evaluation

The Director of OPM provided written comments on a draft of this report in a letter dated July 29, 1997. (See app. V.) The Director expressed concern about our finding that circumstances surrounding six appointments could give the appearance of favoritism or preferential treatment. He noted that there is a difference between “could” and “did,” and in OPM’s reading of the draft report, there is no basis to conclude that favoritism or preferential treatment did actually occur. He was concerned with the use of the word “could” because, he said, it implies activity that cannot be proven, while leaving the impression of wrongdoing. He said that since we were unable to discern the intent of the agency officials involved in the six appointments, it would be inappropriate to conclude that any prohibited activities occurred. In the absence of evidence to the contrary, he believed that agencies must be given the benefit of the doubt in assessing whether they exercised proper judgment in their appointments.

We agree that such a conclusion would be inappropriate. As we point out in the report, an ultimate determination of whether favoritism or preferential treatment actually occurred could be made only if the intent or motivation of the involved agency officials are known—something that we could not determine from review of agency files or discussions with agency officials. For this reason, we characterized the circumstances as those that, in our opinion, could lead to the appearance of favoritism or preferential treatment. We believe this is a valid representation of the circumstances surrounding the six appointments, but we recognize that others could have a different opinion. Just as we reported that the agencies used appropriate appointment authorities and followed proper appointment procedures, we would be remiss in not reporting the existence of the circumstances surrounding the six cases.

The Director pointed out in his letter that limited term and limited emergency SES appointments are not considered by OPM to be political appointments. We recognize that OPM has not traditionally recognized such appointments as being political appointments. Among other things, however, they share certain characteristics with the noncareer SES political appointments. For example, limited term SES appointments can be made noncompetitively and appointees serve at the pleasure of the agency head. On the basis of discussions with your offices, and as pointed out in footnote 1 of this report, we treated both limited term and limited emergency SES appointments for purposes of this assignment as political appointments when the incumbents of those positions subsequently obtained career appointments. The Director also clarified the use of a specific SES appointment authority that focuses on the technical qualifications of an SES career appointment candidate deemed to offset the lack of some of the general managerial qualifications. We incorporated this clarification in our description in appendix I of the case involving the career appointment of a Department of Energy employee.

One of the other cases involved an OPM appointment, and the Director provided clarification of the role his former Chief of Staff played in the creation of the position to which he (the former Chief of Staff) obtained a career appointment. Based on this clarification, we augmented our description of this case to include language intended to more clearly describe the former Chief of Staff's role in creating the position. In clarifying the role, the Director noted our concern that the appointment may have negatively affected other agencies' views toward OPM as the lead organization for ensuring that agencies follow merit system principles. The

Director said he considers oversight and protection of the merit system to have been the core function of OPM during his tenure.

As agreed with your Committees, unless you publicly announce this report's contents earlier, we plan no further distribution of it until 10 days after the date of this letter. We will then send copies to the Ranking Minority Members of your Committee and Subcommittee, the Chairmen and Ranking Minority Members of the Senate Governmental Affairs and House Government Reform and Oversight Committees, other appropriate congressional committees, the Director of OPM, the heads of other agencies where we did our work, and other interested parties. We will also make copies available to others on request.

Major contributors to this report were Richard W. Caradine, Assistant Director; N. Scott Einhorn, Evaluator-in-Charge; Anthony Assia, Evaluator; Carolyn L. Samuels, Evaluator; and Stephen J. Kenealy, Technical Advisor. Please contact me at (202) 512-9039 if you have any questions.



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Abbreviations

AD	administratively determined pay rate
AID	Agency for International Development
DCI	data collection instrument
DOD	Department of Defense
DOE	Department of Energy
ERB	Executive Resources Board
IDP	individual development plan
IG	Inspector General
IPA	Intergovernmental Personnel Act
OPF	official personnel folder
OPM	Office of Personnel Management
QRB	Qualifications Review Board
SES	Senior Executive Service
VA	Department of Veterans Affairs

Details of Six Cases That Could Give the Appearance of Preferential Treatment or Favoritism

Case 1: Tailored Vacancy Announcement

In May 1994, an individual was noncompetitively appointed by the Department of Defense (DOD) to an excepted service, Schedule C, position at the General Schedule (GS) 14 level. Prior to obtaining this position, the individual had worked for approximately 5 years on the U.S. House of Representatives Committee on Small Business. In March 1996, the individual obtained a career appointment to a competitive service position at DOD. Results from our examination of the case indicated that the vacancy announcement for the competitive service position appeared to have been tailored to the work experience of the individual appointed. The announcement contained work experience requirements that closely matched the specific work experiences of the individual, including “detailed knowledge of, and experience with, the Congressional legislative process, particularly in the Small Business Committees.”

The May 1994 excepted service appointment was to a temporary Schedule C, GS-14 Staff Specialist position for which the appointment was not to exceed September 11, 1994. On July 24, 1994, the individual was converted from the temporary appointment to a permanent excepted service appointment as a Schedule C Staff Specialist.

The March 1996 career appointment was to a Program Analyst position that was initially advertised in September 1995 and subsequently readvertised in November 1995. The initial vacancy announcement had limited the area of consideration to “Current Status Department of Defense Employees, Eligible Disabled, and 30% Disabled Veterans.” According to DOD personnel officials, this area of consideration restricted competition to only those candidates who (1) had competitive service status and were already employed by DOD or (2) were eligible disabled veterans. We noted that the individual who was selected for the position had not acquired competitive service status and, under the area of consideration specified in the initial advertisement, would not have been eligible to apply or be considered for the position.

The area of consideration in the November 1995 vacancy announcement was changed to “All Sources.” According to DOD personnel officials, the All Sources denotation meant that the position was open to competition among all candidates, including those who did not have competitive service status in the federal government, such as the individual who was selected for the position. However, the qualifications of such applicants would first have to be reviewed by the Office of Personnel Management (OPM) in order to (1) certify the individual’s eligibility for the position and (2) rate and rank the applicants against others lacking competitive service

status who were seeking the position. According to DOD personnel officials, the original intention of DOD managers was to announce the position to sources both within and outside the government, and so the restricted area of consideration in the original announcement was a clerical error.

Both vacancy announcements contained several duties and assessment factors that appeared to be tailored to the work experiences of the individual. For example, one of the duties listed was to serve as the manager of the Small Business Innovation Research program and related small business research programs. According to information contained in the application materials of the individual, he had been serving as the acting manager of the Small Business Innovation Research and Small Business Technology Transfer programs. Of the five assessment factors listed in the amended vacancy announcement, one of them required detailed knowledge of the statutes and operations of the Small Business Innovation Research program; one required knowledge of and experience with the congressional legislative process, particularly in the Small Business Committees; and one required thorough knowledge and understanding of the academic literature bearing on technology policy and management. The first two matched the individual's work experience as claimed on his application materials. The third assessment factor also matched information cited on the individual's application materials in which he listed six published articles on technology policy that had appeared in such publications as The Economist and Science. Additionally, the individual stated that he had coauthored a publication entitled Dual Use Technology: A Defense Strategy for Affordable, Leading Edge Technology. The other two assessment factors required general knowledge and understanding of innovative solutions to complex problems and familiarity with the management of "RDT&E" within DOD, qualifications that were not specifically addressed in the individual's application materials.

Documents contained in DOD's files indicated that 42 persons, including the individual, applied for the competitive service position. Nineteen of the 42, including the individual, were determined to be among the best qualified. DOD tentatively selected the individual, then asked OPM to determine whether the individual would be within reach on an OPM certificate of eligibles. OPM determined that the individual was eligible for the position and sent DOD a certificate of eligibles containing only the name of the individual. It was from this certificate that the individual was officially selected.

Case 2: Tailored Vacancy Announcement

In March 1994, an individual was noncompetitively appointed by the U.S. Agency for International Development (AID) to an excepted service, administratively determined pay rate position equivalent to the GS-15 level.¹ According to documents contained in the employee's official personnel folder (OPF), prior to obtaining this position, the individual had worked for approximately 2 years as a congressional staff member. In April 1996, the individual was selected for a career appointment to a competitive service position at AID. Results from our examination of the case indicated that the vacancy announcement for the competitive service position appeared to be tailored to the work experience of the individual. The announcement contained work experience requirements that closely matched the specific work experiences of the individual, including knowledge and understanding of the legislative authorization and appropriations process. Because the individual did not have competitive service status in the federal government, OPM had to review the individual's qualifications in order to (1) certify the individual's eligibility for the position; and (2) rate and rank the individual against other qualified, nonstatus applicants who were seeking the position. For this reason, the close matching of the experience requirements in the vacancy announcement to the work experience of the individual could have affected the outcome of OPM's review.

The March 1994 excepted service appointment was to a Program Manager position equivalent to the GS-15, step 9, salary level. The authority used for this noncompetitive appointment was provided by section 625(b) of the Foreign Assistance Act of 1961, as amended.² According to an AID personnel official, such appointments are labeled by AID as administratively determined (AD) pay rate appointments in which (1) individuals appointed under this authority serve at the pleasure of the AID Administrator and can be removed upon notice, and (2) the salary levels can be determined by the AID Administrator.

The April 1996 career appointment was to a GS-14 Program Manager position and resulted from a competitive selection process in which the vacancy was announced to the public, applications were received and screened, the best-qualified applicants were identified, qualifications of best qualified nonstatus applicants were reviewed by OPM, certificates of eligibles for selection were prepared, and the individual was selected. Our examination of the case indicated that AID appeared to have followed proper procedures in the competitive selection process. Even so, certain

¹See footnote 1 in letter.

²22 U.S.C. 2385(b).

factors about the vacancy announcement may have enhanced the individual's prospects of being found to be among the best qualified and eligible for selection.

The vacancy announcement for the competitive service position indicated that both status and nonstatus applicants could apply. Therefore, the individual—who did not have status—was eligible to apply for the position. According to an AID personnel official, many of AID's positions are highly technical in nature and therefore potentially qualified applicants are limited. As a result, vacancy announcements for such positions are frequently opened to all sources, including nonstatus applicants. In this case, however, the position did not appear to be highly technical. The AID personnel official indicated that AID management has the prerogative to announce vacant positions as being open to both status and nonstatus applicants in order to attract the best qualified applicants, regardless of their competitive status.

The vacancy announcement also contained several duties that matched the duties and responsibilities section of the position description for the excepted service position to which the individual had been appointed in 1994. In addition, the vacancy announcement cited three selective factors that were to be used in evaluating the applicants' qualifications. Two of the three factors matched the factors contained in the position description for the excepted position to which the individual had been appointed, and the third factor—concerning knowledge of the authorization and appropriations process—matched the work experience cited by the individual on application documents.

Documents contained in AID's files indicated that at least 15 persons, including the individual, applied for the competitive service position. Five of the 15, including the individual, were determined to be among the best qualified. OPM reviewed the qualifications and rated and ranked four of those five, including the individual, since the four did not have status. OPM's rating and ranking resulted in a certificate of eligibles that showed the individual as ranked highest among the four and therefore eligible for selection. Regulations in this situation are that an agency may select from the top three rated and ranked eligibles on the OPM certificate, except that an agency should normally not bypass a preference-eligible veteran.³ (None of the four persons rated and ranked by OPM claimed veterans' preference points in this case.) In our opinion, the individual's chances of being placed among the top three could have been enhanced by the

³5 CFR 332.406(b).

similarities between the vacancy announcement and the individual's work experience.

The fifth person found to be best qualified did have status; therefore, OPM did not review that person's qualifications. AID personnel staff placed this person's name alone on a separate certificate of eligibles from which the selection could also have been made.

Case 3: Reassigned Soon After Obtaining Career Appointment

This case involved actions taken by the Department of Energy (DOE) to (1) appoint a former congressional employee to a 2-year limited term Senior Executive Service (SES) position in order to fill a purported critical vacancy, (2) approve detailing the employee from that position to another position shortly after appointing him, (3) select this individual about 10 months later for a career SES appointment to a specific position, and (4) reassign the individual to another SES position the same day his career appointment became effective. We believe that the circumstances surrounding DOE's actions could give the appearance that

- a bona fide need for the initial limited term SES position may not have existed, and that
- DOE did not intend for the employee to serve in the position for which he was initially selected.

On November 18, 1994, DOE's Assistant Secretary for Energy Efficiency and Renewable Energy requested the Department's Executive Resources Division to appoint a former congressional employee to the position of Deputy Assistant Secretary for Building Technologies. According to the employee's application for federal employment, his position on a congressional committee had been abolished. The request was for a limited term SES appointment and was purported to be needed to fill a critical vacancy that occurred when the incumbent went on an Intergovernmental Personnel Act (IPA) assignment. The term appointment was not to exceed January 3, 1997, or the date when the incumbent returned from the IPA assignment. The Executive Resources Board (ERB) approved the request on November 21, 1994, pending the allocation of the limited term SES position by OPM. DOE received approval from OPM in a letter dated January 4, 1995, from the Chief of Staff for the Director of OPM. DOE appointed the employee to the limited term SES position effective January 4, 1995. An agency may make a limited term appointment without the use of merit staffing procedures, but the appointee must meet the qualification requirements for the position (see 5 CFR 317.603).

Although the limited term position and appointment were to fill a critical need, within 2 weeks of his appointment, the ERB approved the detailing of the employee to the position of Deputy Assistant Secretary for House Liaison, Assistant Secretary for Congressional and Intergovernmental Affairs. However, agency documents contained in his OPF show that the detail was not officially effected until April 20, 1995, approximately 4 months after he received his limited term appointment.

During the employee's detail, DOE advertised the position for Deputy Assistant Secretary for Building Technologies as a career SES appointment. The vacancy announcement was advertised from July 12, 1995, to August 9, 1995. The employee applied for the position on August 7, 1995. DOE's Merit Staffing Committee evaluated the applicants and made a final determination on October 18, 1995. Seventeen applications were received, and 4 of the 17 applicants were determined not to be qualified. Of the remaining 13 qualified applicants, the Committee rated 1 superior, 5 very good, and 4 acceptable. Three were found qualified as noncompetitive referrals. The employee received the superior rating. The applicants rated superior and very good were referred to the selecting official as the best qualified.

The employee was approved for selection for the career SES appointment as Deputy Assistant Secretary for Building Technologies in the Office of Energy Efficiency and Renewable Energy on December 18, 1995, subject to OPM's certification of his managerial qualifications. On the same day, however, DOE approved a request to reassign the employee to the position of Principal Deputy Assistant Secretary in the Office of Fossil Energy.

Because this was the employee's first career SES appointment, his executive/managerial qualifications needed to be certified by a Qualifications Review Board (QRB) convened by OPM. Federal personnel law requires that the qualifications of an individual selected for a career appointment to the SES for the first time must be certified by a QRB. On January 4, 1996, DOE submitted a request for certification to OPM. DOE's submission requested approval of the candidate's qualifications under 5 U.S.C. 3393(c)(2)(A)—“consideration of demonstrated executive experience.”

OPM notified DOE on January 30, 1996, that the QRB disapproved the certification because it found that two of the five executive core qualifications—Human Resources Management and Resources Planning and Management—were not supported at the executive level in the

submission. DOE resubmitted a request for approval to OPM on February 15, 1996. The new request included a revised Standard Form 171, which expanded upon the employee's work experience; several letters of endorsement from senior DOE executives; and an individual development plan (IDP) for the employee. Also, in the new submission, DOE requested approval of the employee's qualifications under 5 U.S.C. 3393(c)(2)(C). This section provides for "sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment." A DOE official told us that the department believed the employee possessed the special qualities called for under 3393(c)(2)(C).

According to OPM, 5 U.S.C. 3393(c)(2)(C) authority focuses on the qualifications of the applicant and is used when an individual brings unique technical qualifications to the position that offset the absence of some general managerial qualifications. OPM notified DOE on February 20, 1996, that a QRB certified the employee under 3393(c)(2)(C).

On February 21, 1996, DOE approved a request to reassign the employee from his career SES appointment as Deputy Assistant Secretary for Building Technologies, Office of Energy Efficiency and Renewable Energy, to the position of Principal Deputy Assistant Secretary for Fossil Energy. The effective date was March 3, 1996. A DOE official told us this reassignment was made because there was a greater need to fill the latter position.

On March 8, 1996, DOE selected another candidate for the Deputy Assistant Secretary for Building Technologies position. This candidate had been among the best qualified when the former congressional appointee was originally selected for that position. However, this candidate declined the offer in May 1996. DOE readvertised the position in September 1996 and selected another individual to fill the position in July 1997.

Case 4: Reassigned Soon After Obtaining Career Appointment

This case involved actions taken by the Department of Commerce to select a noncareer SES employee for a career SES appointment in a vacated position that had been authorized to be advertised and filled by the same noncareer SES employee. Shortly after receiving the career appointment, the individual was reassigned to another SES position in the Department. The circumstances surrounding these actions could give the appearance that a bona fide need for the initial SES position may not have existed.

The employee was hired as a Schedule C, Confidential Assistant in the immediate office of the Secretary of Commerce on February 2, 1993. She was appointed to a noncareer SES position on March 3, 1993, in the Department's Office of the Assistant Secretary for Administration. Her position title was Deputy Assistant Secretary for Administration, with responsibilities for space allocations, parking, and virtually all other administrative matters, including human resources.

According to the Director for Human Resources Management at the Department of Commerce, in the latter part of 1995, the noncareer SES appointee approved the filling of a vacant career SES position. The Director, who worked for the political appointee, investigated the position and informed the political appointee that she did not think the position should be posted and filled for the following reasons:

- Commerce was trying to reduce its number of SES positions.
- The agency in which the position was located had a strong administration and did not need another executive position.
- The position created an additional layer over other administrative positions at the agency, which created further concern about the need for the position.

According to the Director, although the political appointee was aware of her concerns, the political appointee decided to post the position anyway. The position was advertised from August 28, 1995, to September 18, 1995, and was open to all qualified applicants. Commerce received 12 applications. One of the applicants was the political appointee.

The Director told us she was unaware that the political appointee had intended to apply for the position. After learning of this, the Director sent all the applications to the Bureau of Census so that its personnel office could do the merit staffing and ranking process. This was done to avoid any appearance of impropriety, because the political appointee was the Director's "noncareer" supervisor.

Of the 12 applicants, 4 were disqualified in the preliminary screening for failing to address all of the qualification requirements, and 4 others were deemed not qualified for the position. The screening panel ranked the political appointee as "highly qualified" and ranked the other three as "qualified." All four were referred to the selecting official, who selected the noncareer SES appointee for the position.

Commerce sent the employee's qualifications for the career SES appointment to OPM to be certified by a QRB, the last step in the SES merit staffing process. OPM also conducted a merit staffing review of this appointment as part of its oversight of conversions of political appointees to career positions. OPM concluded that the staffing process appeared to have been conducted in conformance with all applicable laws and regulations. The career appointment was effected on January 21, 1996.

On March 31, 1996, approximately 2 months after being appointed, the former political appointee was reassigned to another career SES position in another agency of the Department of Commerce.

Case 5: Political Appointee Obtained Career Appointment to Position He Helped Create

In March 1996, the OPM Chief of Staff—who was holding a noncareer SES appointment to that position—obtained a career SES appointment to the position of Director, Partnership Center. The Partnership Center position resulted from an OPM study, and the Chief of Staff was the highest ranking official on the task force that performed the study and recommended creation of the Partnership Center. His selection to the position was made by the OPM Director. These circumstances, we believe, could give the appearance of favoritism in the Chief of Staff's selection over other applicants for the position and created an unfavorable situation for OPM in which, as the government's principal agency charged with governing the merit selection process, it placed itself in a position in which the merits of its own personnel actions were subject to question.

In response to the administration's National Performance Review call for "reinventing" government, in 1994 the Director of OPM established the OPM Redesign Task Force to study the organizational structure of OPM and to recommend a design for the OPM of the future. Members of the task force included OPM employees from management, employee groups, and unions. The highest ranking member was the Director's Chief of Staff. In August 1994, the task force proposed to the OPM Director that a number of OPM service "centers" be created. One of the proposed centers was the Partnership Center, which was intended to aid and encourage government managers and government employee union officials to work together—in partnership—in addressing government employment issues. According to the OPM Director, the task force recommendations were referred to an OPM Business Council to work on implementation issues and to propose modifications as necessary. The Chief of Staff was a member of the Business Council, but according to the OPM Director, the Chief of Staff was not a member of the Business Council subgroup that was working on the

Partnership Center proposal. The Business Council completed its implementation plan in December 1994, and in January 1995, the Director announced to OPM employees the plan for redesigning OPM, including the establishment of the Partnership Center. According to a report by the OPM Inspector General (IG),⁴ the Center's business was to be handled by the Chief of Staff with assistance from the OPM Director of Program Management until OPM decided whether to provide permanent staff to the Center.

In October 1995, after internal conditions stabilized, OPM decided to recruit for several SES positions, including the Director, Partnership Center. The Chief of Staff, along with other individuals, applied for the Partnership Center position and was rated by OPM's ERB as among the best qualified for the position. As the selecting official, the OPM Director received the best qualified list; from among those on the list, he selected the Chief of Staff for the position. Because it would be the Chief of Staff's first career appointment into an SES position, OPM convened a QRB, which was composed of SES members from other agencies, to review the Chief of Staff's qualifications for the appointment. The QRB considered him highly qualified.

Concerns raised by the media about the selection of the OPM Chief of Staff for the position of Director, Partnership Center, included claims that the Chief of Staff was preselected for the position and that he had used his political connections to "burrow" into a career government appointment in order to obtain job security that is not afforded political appointees. We also had concerns about the selection, because the Chief of Staff appeared to play a key role in helping to create the position. His selection may have had a negative effect on other agencies' views on OPM as the lead organization for ensuring that government agencies follow merit system principles.

Partially as a result of the published criticism in this case, OPM's IG reviewed the case. The IG found that there were some administrative oversights in the case that were common to many SES appointments within OPM, but concluded that there was no legal or regulatory impropriety regarding the career appointment of the individual in this case. From our examination of the case, we also concluded that there was no evidence of legal or regulatory impropriety.

⁴See OPM, Office of the Inspector General, Inspection Report: Selection to the Position of Director, Partnership Center, April 1996.

However, the appearance of favoritism or preselection cannot be easily dismissed. According to OPM officials, the Chief of Staff had previously worked closely with the OPM Director in a similar position for another government agency, and the OPM Director recruited him for the position of Chief of Staff at OPM. He worked closely with the Director of OPM for 3 years as the Director's Chief of Staff, and he was selected for the career position by the OPM Director. High ranking agency officials told us that they were surprised that the political appointee applied, and was selected, for the position because of the potential negative perceptions that the public may have acquired in this case. Nevertheless, the agency officials advised us that political appointees are not prohibited from applying, or being selected, for career appointments in the government; in this case, they believed the individual was the most qualified applicant for the position.

Case 6: Political Appointee Participated on Panel Before Applying, and Being Selected, for the Position

In this case, the Department of Veterans Affairs' (VA) actions in making a career appointment to an SES position could give the appearance that the selected Schedule C employee received preferential treatment when VA decided to reopen the competition for the position. The Schedule C employee had served as a GS-15 Special Assistant to the Secretary of VA from March 1993 to February 1996 before receiving a career SES appointment as Deputy Assistant Secretary for Congressional Affairs on February 11, 1996.

VA issued a vacancy announcement for a career SES appointment to the position of Deputy Assistant Secretary for Congressional Affairs in February 1995. The vacancy announcement was opened from February 22, 1995, to March 7, 1995, and sought applications from all persons qualified within the federal government. According to an OPM document, a VA official said that, just after the first announcement closed, the VA Assistant Secretary for Congressional Affairs learned about some potential candidates who had not applied. VA decided to reopen the announcement for applications from April 5, 1995, to April 18, 1995. Candidates from the first and second announcements were considered together after the April 18, 1995, closing date.

The Schedule C employee who eventually received the appointment had not applied under the first two announcements and had served on the panel that rated the applications submitted under those announcements. The screening panel considered all the minimally qualified candidates and sent a list of 16 highly qualified candidates to VA's ERB panel for

consideration. The ERB ranked the candidates referred and identified the five best qualified candidates, and then referred its list to the Assistant Secretary for Congressional Affairs, who was the nominating official. The nominating official selected a candidate and referred him to the Secretary for approval. After the Secretary's approval, the candidate, a White House employee, was offered the appointment, but he declined the offer on July 13, 1995.

Rather than selecting one of the other best-qualified candidates, VA readvertised the position from July 26, 1995, to August 8, 1995, to individuals within and outside the federal government. Documentation in VA's staffing file for this appointment indicated the reason for readvertising the vacancy was that "so much time had passed, and because it was decided that the search for candidates should be broadened" VA notified previous applicants that they remained under consideration and that there was no need to reapply. The Schedule C employee and an additional 37 other candidates applied for the position under the third vacancy announcement. Since the Schedule C employee had become a candidate, he was replaced on the screening panel.

The screening panel again considered all the minimally qualified candidates and sent a list of 20 highly qualified candidates to VA's ERB. The ERB reviewed the applications, identified the nine best-qualified candidates, and referred them to the same official who would nominate a selection for the VA Secretary's approval. Of the nine, four had been on the best-qualified list developed from the earlier vacancy announcements; and five, including the Schedule C employee, were new. The Schedule C employee, who at one time served as the congressional liaison for a veterans' organization, was nominated for selection.

On approval of the Schedule C employee's selection by the VA Secretary on October 12, 1995, his qualifications for the appointment were sent to OPM for certification by a QRB. Because of the sensitivity of staffing actions involving conversions of political appointees to career appointments, OPM conducted a merit staffing review before submitting this case to a QRB. OPM concluded that the staffing process appeared to have been conducted in conformance with all applicable laws and regulations and forwarded the Schedule C employee's qualifications to the QRB. The QRB certified that the employee was qualified for the SES appointment and informed VA that he could receive a career appointment in the SES. The appointment was effected on February 11, 1996.

Data Collection Instrument Used

GAO

United States General Accounting Office

Political Appointee Data Collection Instrument

Introduction

The U.S. General Accounting Office has been requested by the House International Relations Committee and the Civil Service Subcommittee of the House Committee on Government Reform and Oversight to monitor the selection of political appointees for career positions in the government. For purposes of this project, we are defining political appointees as those having held positions since January 21, 1993, classified as:

- Schedule C;
- Noncareer SES, including Limited Term SES and Limited Emergency SES; and
- Presidential appointees, including Executive Level, Schedule A Executive Residence, and noncareer Ambassadors.

Also included in our definition are:

- Those employees working in the Executive Office of the President; and
- Those employees being paid under Administratively Determined (AD) pay rates and holding positions such as Special Assistants; Office or Division Directors or Deputy Directors; Advisors; Program or project managers; or positions in Public or Legislative Affairs. We are not including attorneys, scientists, and other "specialized" positions in this definition of political appointees.

We are requesting that a separate copy of the attached form be completed for each employee who (a) obtained (or obtains) a career or career-conditional position with your department or agency during the period January 1, 1996, through March 31, 1997, and (b) fell (or falls) within one of the five bulleted categories above prior to the career or career-conditional appointment.

Note: If your department or agency has already collected this information using a previously issued GAO form, then send these forms to GAO. However, please begin using this form for future appointments.

We have also been asked to monitor the career appointments of former **Legislative Branch** employees who obtain their career positions through use of Ramspeck Act authority. Please complete a copy of this form for each of these appointments as well.

Completed forms and supporting SF-50s for all career or career-conditional appointments occurring between January 1, 1996, and May 31, 1996, should be sent to GAO by June 15, 1996.

Completed forms and supporting SF-50s for all career or career-conditional appointments made after May 31, 1996, should be sent to GAO by the 15th of each succeeding month.

The forms can be either hand carried or mailed to the following address:

U.S. General Accounting Office
441 G Street, N.W.
FMWI, Room 2908
Washington, DC 20548
Attention: N. Scott Einhorn

Any questions should be directed to either N. Scott Einhorn at (202) 512-9634 or Carolyn Samuels at (202) 512-5734.

Appendix II
Data Collection Instrument Used

Section I - Career (or career-conditional) Position

Please enter the following information for this employee:

1. Selecting department or agency: _____
2. Selected candidate's name : _____
3. Type of appointment: *(Check one.)*
 1. ☐ Career (Competitive Service)
 2. ☐ Career-conditional (Competitive Service)
 3. ☐ Career (Senior Executive Service)
 4. ☐ Other (Excepted service) - *Please specify*: _____
4. Date of Appointment: _____ / _____ /19____
Mo Day Yr
5. Position title: _____
6. Job Series and grade: _____
Job Series Grade
7. Is this a newly established position?
 1. ☐ Yes → If yes, date established: _____ / _____ /19____
Mo Day Yr
 2. ☐ No
8. Annual salary: \$ _____
9. Organization location: _____
Office City State
10. Supervisor's name, title, and telephone number:

Name Title Telephone number
11. Name, title, and telephone number of department or agency personnel official who can answer questions about this appointment:

Name Title Telephone number
12. Please attach a copy of the SF-50 documenting the career or career-conditional appointment.

Section II - Politically Appointed Position

1. Department or agency: _____
2. Date of Appointment: ____/____/19____
Mo Day Yr
3. Type of appointment: *(Check one.)*
 1. ☐ Schedule C
 2. ☐ Noncareer SES
 3. ☐ Limited term SES
 4. ☐ Limited emergency SES
 5. ☐ Presidential appointee
 6. ☐ Executive Office of the President - *Please specify agency:* _____
 7. ☐ Administratively Determined (AD)
 8. ☐ Legislative branch employee
 9. ☐ Other - *Please specify:* _____
4. Position title: _____
5. Termination date of political appointment: ____/____/19____
Mo Day Yr
6. **Please attach copies of the form SF-50 documenting (1) the political appointment, and (2) the transfer or termination of the employee from the politically appointed position.**

Please return the completed forms to the address on page 1 of this form.

Thank you.

Listing of 50 Executive Branch Agencies and Departments Reviewed and Criteria Used to Select Them

The criteria used to select the executive branch agencies and departments were: (1) all cabinet-level departments and agencies, (2) departments or agencies that had at least 50 political appointees on their rolls as of September 1995, (3) agencies that had oversight or other regulatory responsibilities for federal workforce issues, (4) departments or agencies having responsibility for international affairs issues, and (5) departments or agencies of particular interest to the congressional requesters of the review. As a result, the following 50 agencies and departments were identified:

1. Department of Agriculture
2. Department of the Air Force
3. Department of the Army
4. Department of Commerce
5. Department of Defense (Office of the Secretary)
6. Department of Education
7. Department of Energy
8. Department of Health and Human Services
9. Department of Housing and Urban Development
10. Department of the Interior
11. Department of Justice
12. Department of Labor
13. Department of the Navy
14. Department of State
15. Department of Transportation
16. Department of the Treasury
17. Department of Veterans Affairs
18. African Development Foundation
19. Agency for International Development
20. Commission on Civil Rights
21. Commission on Immigration Reform
22. Consumer Product Safety Commission
23. Corporation for National Service
24. Environmental Protection Agency
25. Equal Employment Opportunity Commission
26. Export-Import Bank of the United States
27. Federal Aviation Administration
28. Federal Labor Relations Authority
29. Federal Maritime Commission
30. Federal Mediation and Conciliation Service
31. Federal Retirement and Thrift Investment Board
32. Federal Trade Commission

Appendix III
Listing of 50 Executive Branch Agencies and
Departments Reviewed and Criteria Used to
Select Them

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33. U.S. Institute of Peace
 34. Inter-American Foundation
 35. International Joint Commission, United States and Canada
 36. U.S. International Trade Commission
 37. Merit Systems Protection Board
 38. National Foundation on the Arts and the Humanities
 39. National Labor Relations Board
 40. National Mediation Board
 41. Occupational Safety and Health Review Commission
 42. Office of Government Ethics
 43. Office of Management and Budget
 44. Office of Personnel Management
 45. Overseas Private Investment Corporation
 46. Peace Corps
 47. Pension Benefit Guaranty Corporation
 48. Small Business Administration
 49. U.S. Information Agency
 50. Office of the U.S. Trade Representative

Career Appointments of Former Political and Legislative Branch Employees Made by 18 Agencies at Pay Grades GS-13 or Higher (Jan. 1, 1996, Through Mar. 31, 1997)

Agency	Number of appointments
Agency for International Development	2
Consumer Product Safety Commission	1
Department of Agriculture	3
Department of the Army	1
Department of Commerce	2
Department of Defense (Office of the Secretary)	6
Department of Justice	4
Department of Energy	1
Department of Education	2
Department of Health and Human Services	2
Department of Housing and Urban Development	1
Department of Transportation	1
Department of the Treasury	3
Department of Veterans Affairs	2
Federal Labor Relations Authority	1
Environmental Protection Agency	2
Office of Personnel Management	1
Commission on Civil Rights	1
Total	36

Source: As reported by the agencies listed in the table.

Comments From the Office of Personnel Management



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

JUL 29 1997

Mr. Michael Brostek
Associate Director
Federal Management and Workforce Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Brostek:

This is in response to your draft report entitled Personnel Practices: Career Appointments of Former Political and Congressional Employees. As you requested, we reviewed the draft and are presenting our comments.

Overall, we are concerned with your basic finding that "circumstances surrounding six appointments could give the appearance of favoritism or preferential treatment." We note that there is some distance however, between "could" and "did," and in our reading of the document there is no basis to conclude that favoritism or preferential treatment actually did occur. Since it is intent that separates could from did, and you were unable to discern intent from either the document review or discussion with agency officials, it is inappropriate to conclude that any prohibited activities occurred.

We wish to point out that it is neither illegal nor in the least improper for any citizen to seek career appointment, including those who may have gained experience in the political arena. In fact, to preclude such qualified individuals from competing, solely on the basis of their political affiliation, would be discriminatory and, therefore, illegal. Such a violation of merit system principles requiring fair and open competition would certainly constitute a prohibited personnel practice. Therefore, agencies continually exercise their best judgment in balancing the rights of all individuals to seek career appointments with the integrity of the merit system. In the absence of evidence to the contrary, we must give the agency the benefit of the doubt in assessing whether they exercised proper judgment in their placement decision.

While I do not address all six cases identified in your report, I want to specifically comment on the OPM case. The report raises concerns about the selection of an OPM member of the non-career Senior Executive Service (SES) into a career position as Director of OPM's Partnership Center. You indicate that you have concerns about the selection because in his position as Chief of Staff, he "appeared to play a key role in helping to create the position and his selection may

Appendix V
Comments From the Office of Personnel
Management

have negatively affected other agencies' views toward OPM as the lead organization for ensuring that government agencies follow merit system principles." I would like to clarify the role the former Chief of Staff played in the creation of the position.

Your report indicates that the former Chief of Staff was the highest ranking official on a task force that performed a study recommending the creation of the Partnership Center. This Agency Redesign Task Force, composed of OPM employees from management, employee groups, and unions, completely reviewed the mission and functions of OPM with the intent of designing a leaner, flatter, more customer-oriented agency. The task force recommended more than a dozen far-reaching changes to the structure of OPM, including the creation of a Partnership Center. Although my former Chief of Staff participated in the work of the task force, he was not a member of the team of career employees that prepared the task force report and recommendations.

These proposals were referred to OPM's Business Council to work on implementation issues and propose modifications as necessary. While the former Chief of Staff may have been the highest ranking official participating in the work of the Redesign Task Force, we note that the Business Council was made up of the Director and Deputy Director of OPM, as well as 14 agency senior executives and the AFGE local president. Only 2 of the Business Council members, indeed, were below the SES level, and 10 of its 17 members were career employees.

The Business Council, through subgroups, of which my former Chief of Staff was not a member, studied each of the three proposals which created new organizational units, developing functional statements, organizational structures, and implementation plans for these units. The subgroup reviewing the recommendation for the Partnership Center proposed initially establishing this new organization as a virtual organization with guidance from the Office of the Director and staff support from a unit which was later renamed the Human Resources Systems Service. The subgroup further recommended that, if the workload warranted, the Partnership Center might be established as a separate organizational entity reporting directly to me with its own staff and resources. The full Business Council approved this approach in November 1994, and I adopted these recommendations.

During the following twelve months, I became convinced that our budgetary future was more stable, and a number of structural and staffing recommendations in our 1994 redesign plan, which had been held in abeyance, could be put into effect. These included establishing the Partnership Center as a separate organizational entity, based on its workload. In early December 1995, OPM announced five SES positions created by our 1994 redesign plan, including the Director of the Partnership Center.

Appendix V
Comments From the Office of Personnel
Management

As was his right, my former Chief of Staff subsequently applied for the position of Director of the Partnership Center. Of the twelve candidates who applied and were found qualified, he was one of five candidates rated as best qualified by a panel of career SES executives and referred to me for consideration. Though some high ranking OPM officials have reported to you that they were surprised that the political appointee applied for the position, these appointees are not prohibited from applying, or being selected, for career appointments, as you accurately report. The report of the OPM Inspector General concluded that their review “revealed no impropriety surrounding the appointment” and your report also concludes that appropriate appointment authorities were used and proper procedures were followed by OPM in making this appointment.

The candidate selected for this position exceeded both the technical qualifications and the core executive qualifications for this position. Once he applied for this position and was certified by our career personnelists as being among the most qualified candidates, consistent with my mandate from the President and the Congress to recruit or retain the best and brightest, I was compelled by law to treat him as fairly as any applicant who met the same, high standard. I can personally assure you that all merit principles were followed and that, simply put, the most qualified candidate was selected for this position. I also can assure you that I have considered oversight and protection of the merit system the core function of the Office of Personnel Management during my tenure.

On a more technical level, we noted the following misunderstandings about the nature of Senior Executive Service (SES) appointments:

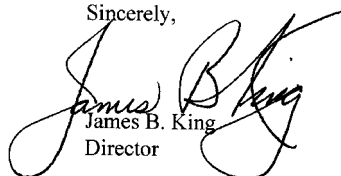
- Limited term/emergency SES appointments are not political appointments. They are time-limited because the duties of the position are not permanent or continuing. They are for the purpose of completing a specific project or dealing with an emergency situation.
- The 3393(c)(2)(C) authority focuses on the qualifications of the applicant, not the nature of the position. This authority is used when an individual brings unique technical qualifications to the position which offset the absence of some general managerial qualifications. The issue in using the authority is not whether the position is intrinsically managerial because SES positions by definition are “managerial.” Rather the point is whether the candidate’s technical qualifications are sufficiently unique.

Appendix V
Comments From the Office of Personnel
Management

In summary, we do not think that the cases in your draft report support a finding that appointing officials provided prohibited preferential treatment. Moreover, we are concerned with the use of the word "could" because it implies activity that cannot be proven, while leaving the impression of wrong doing.

Thank you for the opportunity to comment.

Sincerely,



James B. King
Director

Appointment Authorities Used in the 36 Appointments We Reviewed

Appointment authority	Criteria for authority's use applicable to the appointments reviewed	Number of appointments reviewed in which the authority was cited
Civil Service certificates from competitive selection process	Merit staffing plans of each agency	11
Ramspeck Act of 1940 (5 U.S.C. 3304(c))	An individual must (1) serve for at least 3 years in the legislative branch and be paid by the Secretary of the Senate or the Clerk of the House of Representatives; (2) be involuntarily separated without prejudice from the legislative branch; (3) pass a suitable noncompetitive examination (i.e., be qualified for the position being sought); and (4) transfer to the career position within 1 year of being separated from the legislative branch.	9
SES Recruitment and Career Appointments (5 U.S.C. 3393)	OPM shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for (1) consideration of demonstrated executive experience, (2) consideration of successful participation in a career executive development program that is approved by OPM, and (3) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities that indicate a likelihood of executive success and who would not otherwise be eligible for appointment. Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.	8
Schedule A (5 C.F.R. 213.3102)	Noncompetitive hiring authority for positions other than those of a confidential or policy-determining character for which it is impractical to examine.	5
Reinstatement (5 C.F.R. 315.401)	An agency may appoint by reinstatement to a competitive service position a person who previously was employed under career or career-conditional appointment (or equivalent). There is no time limit to the reinstatement eligibility of a preference-eligible or a person who completed the service requirement for career tenure. An agency may reinstate a nonpreference-eligible who has not completed the service requirement for career tenure only within 3 years following the date of separation. This time limit begins to run from the date of separation from the last position in which the person served under a career appointment, career-conditional appointment, indefinite appointment in lieu of reinstatement, or an appointment under which the person acquired competitive status. The 3-year limit can be extended for certain intervening service.	1
SES Reinstatement (5 U.S.C. 3593(b))	A career appointee who is appointed by the president to any civil service position outside the SES and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the SES if the appointee applies to OPM within 90 days after separation from the presidential appointment.	1
Senior Level Appointment (5 U.S.C. 5108)	Merit staffing plans of each agency	1

Source: SF-50Bs prepared by appointing agencies and applicable laws and regulations.

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Personnel Practices: Selected Characteristics of Recent Ramspeck Act Appointments ([GAO/T-GGD-95-173](#), May 24, 1995).

An Overview of Ramspeck Act Appointments ([GAO/T-GGD-95-155](#), May 8, 1995).

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Personnel Practices: Career Appointments Granted Political Appointees From Jan. Through Nov. 1992 ([GAO/GGD-93-49FS](#), Jan. 22, 1993).

Personnel Practices: Schedule C and Other Details to the Executive Office of the President ([GAO/GGD-93-14](#), Nov. 6, 1992).

Political Appointees: Number of Noncareer SES and Schedule C Employees in Federal Agencies ([GAO/GGD-92-101FS](#), June 8, 1992).

Personnel Practices: Details of Schedule C Employees to the White House ([GAO/T-GGD-92-28](#), Apr. 19, 1992).

Personnel Practices: Propriety of Career Appointments Granted Former Political Appointees ([GAO/GGD-92-51](#), Feb. 12, 1992).

Personnel Practices: The Department of Energy's Use of Schedule C Appointment Authority ([GAO/GGD-90-61](#), Mar. 8, 1990).

Political Appointees in Federal Agencies ([GAO/T-GGD-90-4](#), Oct. 26, 1989).

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