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Report to Congressional Requesters

February 2002

PERSONNEL PRACTICES

Career and Other Appointments of Former Political Appointees, October 1998 - April 2001

GAO-02-326

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Accountability * Integrity * Reliability

United States General Accounting Office
Washington, D.C. 20548

February 26, 2002

The Honorable Christopher S. Bond
Ranking Minority Member
Committee on Small Business and Entrepreneurship
United States Senate

The Honorable Dave Weldon
Chairman, Subcommittee on Civil Service
and Agency Organization
Committee on Government Reform
House of Representatives

The Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Political appointees in the federal government sometimes seek appointments to career competitive and other positions which, unlike political appointments, do not terminate at the end of an administration. When such appointments occur, they are called "conversions." Conversions of political appointees to career positions must conform to merit system principles requiring that selection be determined solely on the basis of merit after fair and open competition. Sometimes, however, circumstances surrounding conversions can raise questions as to whether the individuals received political favoritism or an unfair advantage in the merit system selection process, even the appearance of which could adversely compromise the integrity of the system.

As requested we (1) identified the number of conversions of political appointees to career and other positions as reported to us by 45 executive branch agencies from October 1, 1998, through April 30, 2001, and (2) for the conversions at the General Schedule (GS) pay grade 12 and above and their equivalents, (a) determined whether the agencies used appropriate appointment authorities and followed proper procedures consistent with merit system principles or (b) whether there was any appearance of favoritism or political preference, even if proper procedures were followed.[1] We were also asked to identify the characteristics, such as the

[1]When a person was converted to a pay plan that did not have a GS grade level, we used the annual basic pay to classify that person into a grade level.

titles, grades, and salaries, of the political and career positions for conversions that occurred during that period. We provide that information by agency in appendix II. For purposes of this review, we defined political appointees as those who obtained noncareer appointments to the Senior Executive Services (SES), Schedule C appointments, or presidential appointments. As consistent with the requests, we also included congressional employees who converted to career and other positions at those same agencies.

Results in Brief

The 45 agencies we surveyed as part of our review responded that 111 former political appointees and congressional employees converted to career and other positions from October 1, 1998, through April 30, 2001.[2] According to the agencies, 100 of these employees converted from political appointments and 11 employees converted from congressional staff positions. Twenty-one agencies accounted for all of the conversions. The other 24 agencies reported no such conversions during that period. The most conversions by agency were at the Departments of Justice (24), Energy (11), Labor (8), Commerce (7), and Defense (7). The 111 conversions represented far less than 1 percent of the total number of career appointments the agencies made during that time.

Ninety-five of the 111 conversions were to positions at the GS-12 level and above. The 21 agencies making these conversions used appropriate appointment authorities, such as civil service certificates from the competitive selection process, and generally followed merit system procedures. However, in 17 instances, the circumstances surrounding the appointments could, in our opinion, give the appearance that the appointees had received political favoritism or preferences that enhanced their prospects for appointment. Nine of these 17 appointments were career competitive appointments; eight were noncompetitive appointments to the excepted service.

- Of the nine career appointments, four cases gave the appearance of what is referred to as a "conversion in place," i.e., the career positions

[2]In addition to the 111 conversions, agencies reported 15 appointments of limited-term SES employees to career SES positions based on our request for them to include career appointments whenever limited-term SES positions were involved. However, in these 15 cases, we found after further review that the 15 appointees were career employees rather than political appointees and therefore we did not include them in our review.

had quite similar, and in some cases, identical roles and responsibilities as well as the same supervisors as the former political positions. In all four cases, the only major difference between the career and political positions was the deletion of the Schedule C element requiring a close and confidential relationship with an appointed official from the career position. For another conversion, the agency allowed a political appointee to provide input to the position description of the career service position before the vacancy announcement was issued. The political appointee subsequently applied for and was selected for the position. Such circumstances create concern about whether the individuals received an unfair advantage or unauthorized preferences in the merit system.

- For the eight excepted service appointments, individuals were noncompetitively appointed to positions near the date of the presidential inauguration. Although the six agencies involved had the authority to make these appointments noncompetitively, the timing of these appointments—as a change in administration was occurring—can raise the appearance of political favoritism.

While it is reasonable for individuals who join the government as political appointees to have the opportunity to continue a federal career in the competitive or excepted service, the nature of their previous political appointee positions can create concerns about whether the individuals received favoritism or improper advantage in the selection process, even the appearance of which could compromise the integrity of the merit system. We referred the 17 conversions to the Office of Personnel Management (OPM) in its oversight capacity for review and action as appropriate.

Background

Political appointments are generally made by the administration in office to support and advocate the president's political goals and policies. They are noncareer appointments—that is, they are noncompetitive and are therefore made without regard to the rules for competition that govern career appointments. Political appointees fill positions in the executive branch under various types of appointments. For example, they may hold Schedule C positions, obtain noncareer appointments to SES, or be presidential appointees.

Schedule C appointees receive noncompetitive appointments to positions graded GS-15 and below that involve determining policy or that require a close, confidential relationship with the agency head or other key

appointed officials of the agency. Noncareer SES appointees can receive noncompetitive appointments to SES positions that normally involve advocating, formulating, and directing the programs and policies of the administration.

Political appointments may be terminated at any time, and appointees generally leave their positions at the end of an administration. However, while serving under a political appointment, appointees can also apply and compete for positions that are filled through career appointments, which do not end with the change of administrations. Career appointments are usually made through competitive procedures consistent with the government's merit system selection principles. Therefore, conversions to career competitive positions must conform to the principles contained in the Civil Service Reform Act of 1978.[3] For example, recruitment should be from qualified individuals, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills after fair and open competition that ensures that all receive equal opportunity. Also, applicants for employment should receive fair and equitable treatment in all aspects of personnel management.

Political appointees may also convert to other noncompetitive positions. For example, Schedule A authority allows an agency to noncompetitively appoint individuals to positions in the excepted service for which it is not practical to apply the qualification standards and requirements established for the competitive service. Schedule A positions include attorneys governmentwide and other positions for which a critical hiring need exists or for which it is impractical to hold a competitive examination. An agency may also petition OPM to establish Schedule A appointing authority specifically applicable to it. Also, under 28 U.S.C. 542, the Attorney General may noncompetitively appoint individuals to assistant U.S. attorney positions.

OPM is responsible for implementing the Civil Service Reform Act and other personnel-related laws and for developing regulations to ensure that all agency personnel actions are in accordance with merit system principles.[4] In a February 18, 2000, memorandum to agency heads, OPM emphasized agencies' responsibilities to ensure that (1) all appointments,

[3] 5 U.S.C. Sec. 2301(b)(1).

[4] 5 U.S.C. 1104.

including conversions, are based on merit, (2) all personnel actions are based on legitimate management needs, and (3) records pertaining to all personnel actions clearly show that the actions are proper and legitimate. The memorandum reminded agencies that once a Schedule C position has been established, the Schedule C elements (i.e., its confidential and/or policy-determining characteristics) may not be unilaterally removed from the position for the sole purpose of converting the position, along with its incumbent, into a career position. The memorandum also informed agencies that appointments of Schedule C and noncareer SES employees to the competitive service at the GS-15 level or below during the period from the issuance of the memo through January 31, 2001, required an OPM preappointment review. The memorandum listed specific information items that agencies needed to provide OPM for its preappointment review. These included a description of the procedures followed to identify candidates, a copy of the vacancy announcement, and a description of the relationship between the candidate's current and former positions. The memo also reminded agencies that OPM would continue its merit staffing reviews of selections for SES career appointments before they are presented to Qualification Review Boards for certification of their executive qualifications.

According to agency records, OPM received and reviewed 60 proposed conversions during the period from February 18, 2000, when it notified agencies that review would be required, through January 31, 2001. Forty-nine of these conversions were to GS or equivalent positions in the career competitive service and 11 were to career SES. OPM approved all of the proposed conversions to SES positions and 40 of the 49 proposed conversions to GS positions. It disapproved one of the proposed conversions and agencies withdrew their requests for approval for four others. The remaining four proposed conversions were pending OPM approval at the time the new administration took office and instituted a hiring freeze. OPM returned these proposed conversions with no action taken.

GAO has issued a number of reports on personnel practices, such as conversions.[5] (See Related GAO Products at the end of this report.)

[5]For example, in May 1994 we issued our report entitled *Personnel Practices: Presidential Transition Conversions and Appointments—Changes Needed* (GAO/GGD-94-66, May 31, 1994).

Over a Hundred Political Appointees and Congressional Employees Converted to Career and Other Positions

Twenty-one of the 45 executive branch agencies we surveyed reported converting 111 former political appointees and congressional employees to career and other positions from October 1, 1998, through April 30, 2001. The other 24 agencies reported no conversions during that period. One hundred of these conversions were former political appointees, and 11 were congressional employees. Those agencies accounting for most of the conversions included the Departments of Justice with 24, Energy with 11, Labor with 8, and Commerce, Defense, and Treasury with 7 each. Appendix I identifies the 45 agencies surveyed and the number of conversions for each. Appendix II provides more detail on the characteristics of the positions to which individuals were converted, including the grades, salaries, titles of positions, and appointment dates. The 111 conversions represented far less than 1 percent of the total number of career appointments the agencies made during fiscal years 1999 and 2000.

Appropriate Authorities Used, but 17 Conversions Gave the Appearance of Political Favoritism

The 21 agencies that reported making conversions used appropriate appointment authorities to hire each of the 95 individuals we reviewed (at the GS-12 level and above) and generally followed procedural requirements called for by merit system principles, according to the records we reviewed. However, in 17, or about 18 percent, of the cases, circumstances surrounding the appointments could, we believe, give the appearance that the political appointees had received political favoritism or preferences that enhanced their prospects for appointment. Such appearances can adversely compromise the integrity of the merit system.

Agencies Used Appropriate Authorities and Generally Adhered to Merit System Principles in Their Conversions

The 21 agencies that reported providing career and other appointments to the 95 former political appointees and congressional employees at the GS-12 level and above used the appropriate appointment authority to hire each of them and generally followed merit system principles in doing so. Agencies can choose from a number of authorities in making career appointments and must cite the legal authority under which they are appointing an individual in the documentation they prepare to make an appointment. OPM guidance and/or federal law establishes the conditions under which the authorities may be used, and the agencies used authorities in accordance with that guidance or federal law. Using 10 different authorities in the conversions we reviewed, agencies most often cited civil service certificates from the competitive selection process. The criteria for this authority's use are identified in the merit staffing plans of each agency.

Appendix III identifies the specific authorities used and the number of times each was used.

For the conversions we reviewed, agency files indicated that the agencies generally followed procedural requirements called for by merit system principles, such as fair and open competition and fair and equitable treatment of applicants. For example, agencies 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' relative competencies or knowledge, skills, and abilities against job-related criteria to identify the most qualified applicants. For the most part, the selection of individuals for conversion appeared to be done without preferential treatment or favoritism.

Circumstances Surrounding 17 Appointments Gave the Appearance of Favoritism or Preferential Treatment

Seventeen of the 111 political appointees were converted under circumstances that appeared to provide them an advantage or provide the appearance of political favoritism. Nine of these appointments were career competitive ones. The other eight were noncompetitive appointments to the excepted service.

Four of the nine career competitive appointments involved Schedule C appointees and gave the appearance of a conversion in place, i.e., an action that moves the duties and the incumbent of a Schedule C position from the excepted to the competitive service by unilaterally removing the position's Schedule C elements—such as its confidential or policy-determining characteristics. In each of the four cases, the career position had almost identical roles and responsibilities as the former political position; in two of the cases, the only major difference was that the career position did not have the Schedule C requirement for a close and confidential working relationship with an appointed official. Also, in all four instances, the career positions had the same supervisor and same organizational location as the former political position.

These circumstances make it appear that the Schedule C employee was merely converted from a political appointee position to an identical career position. Under such circumstances, one would expect these applicants to fare well in the qualifications review portion of the appointment process--which they did. A conversion in place with the sole purpose of converting the position, along with the incumbent, into a career position would violate the Civil Service Reform Act of 1978 prohibition against granting any preference or advantage not authorized by law, rule, or regulation to employees or applicants for the purpose of improving their prospects for employment.[6] However, proving that the position descriptions were written for the sole purpose of conversion can be difficult. The agencies that made these conversions are the Departments of Defense, Energy, Justice, and Veterans Affairs.

In another of the nine career competitive appointments, the Office of Management and Budget (OMB) date-stamped the receipt of the appointee's application a day after the deadline for submitting the applications. The vacancy announcement not only gave the deadline but also stated that any one missing that date was ineligible to be considered for the position. An OMB personnel officer said that the application may have been received in the mailroom on the closing date but could produce no evidence of that. This circumstance gives the appearance that the appointee received favoritism or preferences that enhanced his prospect of appointment.

The four remaining career competitive cases had various indications of possible favoritism or unauthorized preferences.

- In one case, although the political appointee's name appears on the certificate of eligibles, it does not appear on the list of applicants. A Department of Labor official said this could have been due to a clerical error, but could not provide any documentation on when the political appointee's application was received.
- The Department of the Interior allowed a political appointee to provide input to the position description of a career service position before the vacancy announcement was issued. The political appointee applied and was selected for the position.
- In another case, the selecting official at the Department of Labor provided the political appointee a superior performance rating that

[6] 5 U.S.C. 2302 (b)(6)

included narrative similar to the high-rated evaluation factors 4 days after the opening date of the vacancy announcement.

- Last, the Small Business Administration (SBA) canceled a vacancy announcement under conditions in which multiple qualified candidates were available but under which it would have been difficult to justify selecting a former political appointee who was also a candidate because a preference-eligible disabled veteran was ahead of her on the eligibility list. SBA shortly thereafter detailed the former political appointee to the position in a developmental program that she had previously applied for and had been selected for. Appendix IV provides the details of each of these nine career appointments.

Finally, four agencies converted a total of eight political appointees to noncompetitive appointments in close proximity to the presidential inauguration date of January 20, 2001, after which such political appointees could have been asked to resign from their positions by the new administration. While the agencies had the authority to do so, the timing of these appointments—as a change in administration is occurring—raises the appearance of political favoritism. For example, the Department of Justice converted four political appointees to assistant U.S. attorney positions—three on January 14 and one on January 22, 2001. U.S. attorneys, who are also political appointees, made these four appointments. The Department of Treasury also converted two political appointees to noncompetitive positions on January 14, 2001—one to a law enforcement appropriations officer position and the other to a strategic trade advisor position. The Department of the Interior and the Environmental Protection Agency each noncompetitively converted one political appointee to an attorney advisor position on January 14 and 18, 2001, respectively.

Noncompetitive appointment authorities are an important tool for agencies to use as they try to recruit and retain the best employees. GAO has encouraged agencies to use such tools and other flexibilities in managing their human capital. As with any tool, however, agencies need to avoid situations and appearances that could compromise the credibility and integrity of the merit system. Appendix V provides further details of the eight noncompetitive appointments.

Conclusions

The challenges and responsibilities facing government today require that federal agencies have the flexibility and independence needed to manage their operations and achieve results. However, as we have noted in

previous reports, conversions of political appointees from noncareer to career status presents a dilemma. The number of conversions reported is small compared to the total number of career appointments made by agencies, and it is reasonable for individuals who join the government as political appointees to have the opportunity to continue a federal career in the competitive or excepted service. However, the nature of their previous political appointee positions can create concerns about whether the individuals received favoritism or improper advantage in the selection process, 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 meet merit system principles. While this process has in fact been successful in identifying and preventing improper conversions, as we point out in this report, questionable conversions can sometimes still occur.

We referred these 17 conversions to OPM for review and action as appropriate because the circumstances surrounding each could give the appearance of political favoritism or preference. These include those conversions that were not subject to OPM's preappointment review because they were exempted, such as the non-competitive appointments to the excepted service, or because the timing of the conversion preceded establishment of the preappointment requirement.

Agency Comments

We obtained comments on a draft of this report from the director, Office of Personnel Management. The director said our draft report accurately described OPM's process for preappointment review of conversions during the presidential election periods. The director also agreed that even the appearance of favoritism needed to be avoided. The director noted that the eight cases involving excepted service appointments discussed in the report would not have come to OPM for review under the criteria spelled out in OPM's February 18, 2000, memorandum to agencies on the preappointment process. In addition, the director responded that the merit staffing elements of the two SES cases were considered by OPM as part of the standard processing of cases for initial appointment to the SES. Regarding the seven Schedule C cases, four occurred before OPM's review period began on February 18, 2000, and OPM reviewed the other three. The director also stated that OPM did review three of the Schedule C cases listed. Finally, the director stated that she has asked her staff to revisit the cases discussed in the report.

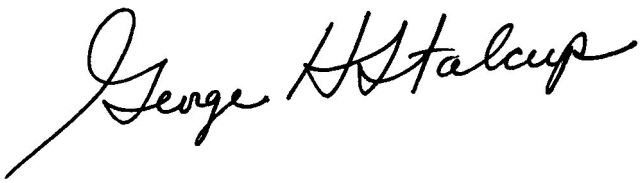
We also confirmed the data in appendixes II, IV, and V by sending to the agencies that reported the data the relevant sections for their review.

OPM's comments are reprinted in appendix VII.

We did our work in Washington, D.C., from April 1999 through November 2001 in accordance with U.S. generally accepted government auditing standards. Appendix VI provides the details of our scope and methodology.

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 Representative Danny K. Davis, Ranking Member, the Subcommittee on Civil Service and Agency Organization, House Committee on Government Reform; Senator John F. Kerry, Ranking Minority Member, Senate Committee on Small Business and Entrepreneurship; Representative Dan Burton, Chairman, and Representative Henry A. Waxman, Ranking Minority Member, House Committee on Government Reform; Representative John Conyers, Jr., Ranking Minority Member, Senate Committee on the Judiciary; and the Honorable Kay Coles James, Director, Office of Personnel Management. In addition, copies will be sent to other congressional committees, the heads of the 45 agencies who reported information to us, and other interested parties. We will also make copies available to others on request.

Major contributors to this report were Richard Caradine, Carolyn Samuels, Domingo Nieves, Clifton Douglas, Jr., Steven Berke, and Casandra Joseph. Please contact me on (202) 512-6806 if you have any questions.



George H. Stalcup
Director, Strategic Issues

Executive Branch Agencies and Departments and Their Conversions

The criteria used to select the executive branch agencies and departments were: (1) all cabinet-level departments and agencies, (2) agencies that had oversight or other regular responsibilities for federal workforce issues, and (3) departments and agencies of particular interest to the congressional requesters of the review. The following lists the 45 agencies and departments selected and the number of conversions reported.

1. Department of Agriculture - 6
2. Department of Commerce - 7
3. Department of Defense (Office of the Secretary, Air Force, Army, and Navy) - 7
4. Department of Education - 5
5. Department of Energy - 11
6. Department of Health and Human Services - 5
7. Department of Housing and Urban Development - 1
8. Department of the Interior - 5
9. Department of Justice - 24
10. Department of Labor - 8
11. Department of State - 5
12. Department of Transportation - 2
13. Department of the Treasury - 7
14. Department of Veterans Affairs - 4
15. African Development Foundation - 0
16. Commission on Civil Rights - 0
17. Consumer Product Safety Commission - 0

18. Corporation for National Service - 0

19. Environmental Protection Agency - 4

20. Equal Employment Opportunity Commission - 1

21. Export-Import Bank of the United States - 0

22. Federal Aviation Administration - 0

23. Federal Labor Relations Authority - 0

24. Federal Maritime Commission - 0

25. Federal Mediation and Conciliation Service - 0

26. Federal Retirement and Thrift Investment Board - 0

27. Federal Trade Commission - 0

28. Inter-American Foundation - 0

29. Merit Systems Protection Board - 0

30. National Endowment for the Arts - 0

31. National Endowment for the Humanities - 0

32. National Labor Relations Board - 0

33. National Mediation Board - 0

34. Occupational Safety and Health Review Commission - 0

35. Office of Government Ethics - 0

36. Office of Management and Budget - 1

37. Office of Personnel Management - 0

38. Office of Special Counsel - 1

39. Office of the United States Trade Representative - 1

40. Overseas Private Investment Corporation - 0

41. Peace Corps - 0

42. Pension Benefit Guaranty Corporation - 0

43. Small Business Administration - 3

44. United States Institute of Peace - 0

45. United States International Trade Commission - 3

Political Appointees Converted to Term, Career, and Other Positions by Agency from October 1, 1998, through April 30, 2001

Career or other position title and office	Career grade and salary[a]	Date appointed/ entered on duty	Former political position title, office, and agency	Type of appointment, noncareer grade, and salary[a]
Department of Agriculture				
Deputy Director Operations Office of Operations	ES-0301-00/05 $125,900	03/14/99	Deputy Administrator for Management Farm Service Agency Department of Agriculture	Noncareer SES ES-0301-00/05 $125,900
Program Analyst Natural Resources Conservation Service Outreach Division	GS-0343-13/03 $64,949	06/04/00	Confidential Assistant to the Chief Natural Resources Conservation Service Department of Agriculture	Schedule C GS-0301-13/02 $59,961
Assistant Administrator for Public Liaison[b] Cooperative State Research Education, and Extension Service	GS-0301-15/10 $110,028	07/02/00	Confidential Assistant to the Administrator Agricultural Research Service Department of Agriculture	Schedule C GS-0301-15/10 $110,028
Director Conservation Communications Staff Natural Resources Conservation Service	GS-1035-15/10 $114,224	01/14.01	Special Assistant to the Secretary & White House Department of the Interior	Schedule C GS-0301-15/10 $110,028
Staff Assistant[b] Risk Management Agency	GS-0301-13/03 $67,427	01/14/01	Confidential Assistant Risk Management Agency Department of Agriculture	Schedule C GS-0301-12/06 $62,013
Management Analyst[b] Risk Management Agency	GS-0343-13/10 $80,279	04/22/01	State Executive Director Texas State Office Department of Agriculture	Schedule C GS-0301-14/10 $94,862
Department of Commerce				
Government Liaison Bureau of Census	GS-0301-14/10 $85,978	11/22/98	Congressional Affairs Officer Bureau of Census Department of Commerce	Schedule C GM-0301-15/00 $90,767
Intergovernmental/ Partnership Specialist[b] Office of the Secretary	GS-0301-13/02 $59,961	01/31/99	Legislative Affairs Specialist Office of the Secretary Department of Commerce	Schedule C GS-0301-13/02 $59,961
Outreach Program Specialist[b] National Oceanic & Atmospheric Administration	ZA-0301-04/02 $82,000	05/17/99	Senior Legislative Assistant U.S. Senate	Legislative branch employee $72,000
Supervisory International Trade Specialist International Trade Administration	GS-1140-14/02 $70,855	09/27/99	Special Assistant Office of the Deputy Assistant Secretary for Technology and Aerospace Industries Department of Commerce	Schedule C GS-0301-14/02 $66,707

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Program Analyst[b] Office of the Director, National Institute of Standards & Technology	ZA-0343-III/01 $48,000	10/10/99	Legislative Affairs Specialist Office of the Secretary Department of Commerce	Schedule C GS-0301-11 $40,714
Regional Director Economic Development Administration Denver Regional Office	ES-0301-00/01 $111,671	12/19/99	State Director Rural Development Department of Agriculture	Schedule C GM-0301-15/00 $92, 354
Deputy Under Secretary for Economic Affairs Economic & Statistics Administration	ES-0301-00/06 $130,200	06/04/00	Chief Economist Economic & Statistics Administration Department of Commerce	Noncareer SES ES-0110-00/05 $120,886
Department of Defense				
Program Analyst[b] Defense Security Cooperation Agency	GS-0343-14/01 $68,570	05/09/99	Program Analyst Defense Security Cooperation Agency Department of Defense	Schedule C GS-0343-13/04 $63,829
Family Support Liaison[b] Defense, Prisoner of War/Missing, Personnel Office	GS-0301-15/10 $104,851	11/21/99	Special Assistant for Family Advocacy & External Relations Defense, Prisoner of War/Missing, Personnel Office Department of Defense	Schedule C GS-0301-15/10 $104,851
Program Analyst[b] Deputy Under Secretary of Defense	NH-0343-III/00 $60,830	01/16/00	Staff Specialist Deputy Under Secretary of Defense Department of Defense	Schedule C GS-0301-12/04 $56,324
Foreign Affairs Specialist[b] Threat Reduction Nonproliferation Policy	GS-0130-15/02 $87,459	05/21/00	Defense Fellow Washington Headquarters Services Department of Defense	Schedule C GS-0301-15/02 $87,459
Director of Defense Procurement, Acquisition & Technology Office of the Under Secretary of Defense	ES-1102-00/06 $133,477	06/04/00	Administrator, Office of Federal Procurement Policy Office of Management and Budget	Presidential appointee EX-0301-03/00 $133,477
Writer-Editor[b] Executive Secretariat	GS-1082-11/07 $53,221	01/14/01	Staff Assistant Office of the Secretary of Defense Department of Defense	Schedule C GS-0301-12/01 $53,156
Foreign Affairs Specialist[b] Assistant Secretary of Defense	GS-0130-12/07 $63,785	01/28/01	Special Assistant to the Assistant Secretary of Defense Department of Defense	Schedule C GS-301-13/01 $63,211
Department of Education				
Management & Program Analyst[b] Office of Intergovernmental, Interagency Affairs	GS-0343-14/04 $75,427	05/23/99	Special Assistant Office of Intergovernmental, Interagency Affairs Department of Education	Schedule C GS-0301-14/04 $75,427
Management Analyst[b] Office of the Chief Information Officer	GS-0343-13/01 $60,890	05/21/00	Special Assistant Office of Elementary & Secondary Education Department of Education	Schedule C GS-0301-13/01 $60,890

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Education Program Analyst[b] Office of Elementary & Secondary Education	GS-1720-14/01 $71,954	06/04/00	Special Assistant Office of Elementary & Secondary Education Department of Education	Schedule C GS-0301-14/01 $71,954
Management Program Analyst[b] Office of Special Education and Rehabilitation Services	GS-0343-14/10 $93,537	12/17/00	Deputy Assistant Secretary Office of Legislation and Congressional Affairs Department of Education	Schedule C GS-0301-15/01 $93,101
Program Analyst[b] Office of Elementary & Secondary Education	GS-0343-13/07 $75,857	01/14/01	Special Assistant Office of Post Secondary Education Department of Education	Schedule C GS-0301-14/01 $74,697
Department of Energy				
Foreign Affairs Specialist[b] Office of Nonproliferation & National Security	GS-0130-12/02 $48,635	11/22/98	Staff Assistant Office of Intelligence Department of Energy	Schedule C GS-0301-12/02 $48,635
Deputy Director[b] Office of Counterintelligence	ES-0340-00/01 $110,351	07/04/99	Professional Staff Member House Permanent Select Committee on Intelligence House of Representatives	Legislative branch employee $80,000
Director[b] Office of Planning & Analysis	ES-0301-00/01 $110,351	10/01/99	Senior Staff Advisor Office of Science Department of Energy	Schedule C GS-0301-15/05 $91,410
Budget Analyst Office of Chief Financial Officer	GS-0560-15/02 $83,346	12/19/99	Staff Assistant Office of Chief Financial Officer Department of Energy	Schedule C GS-0301-15/02 $83,346
Program Specialist[b] Office of Intelligence	GS-0301-13/09 $77,126	02/13/00	Senior Program Analyst Office of Intelligence Department of Energy	Schedule C GS-0301-14/03 $75,750
Associate Chief Financial Officer National Nuclear Security Administration	ES-0301-00/02 $121,264	6/18/00	Associate Chief Financial Officer Budget, Planning & Financial Management Department of Energy	Schedule C GS-0505-15/10 $110,028
Attorney Advisor[b] Immediate Office of the General Counsel	GS-0905-13/05 $69,008	02/27/00	Special Assistant to the General Counsel (Attorney-Advisor) Office of the General Counsel Department of Energy	Schedule C GS-0905-15/01 $84,638
Senior Advisor for Organizational Systems Development, Strategic Planning, & Implementation[b] National Nuclear Security Administration	ES-0301-00/06 $133,700	01/19/01	Principal Deputy Assistant Secretary of Operations National Nuclear Security Administration Department of Energy	Noncareer SES ES-0301-00/06 $133,700
Contract Management Specialist[b] Assistant Secretary for Environmental Management	GS-0301-12/05 $60,242	01/14/01	Confidential Assistant Assistant Secretary for Environmental Management Department of Energy	Schedule C GS-0301-12/05 $60,242

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Director[b] Policy Planning, Assessment & Analysis Staff	ES-0301-00/05 $133,700	03/21/01	Consultant National Nuclear Security Administration Department of Defense	Noncareer SES EF-0301-00/00 $480.00 per diem
Director Chicago Regional Office	GS-0301-15/04 $95,185	11/19/00	Special Assistant Assistant Secretary for Energy Efficiency & Renewable Energy Department of Energy	Schedule C GS-0301-15/04 $93,101
Department of Health and Human Services				
Supervisory Tribal Child Support Program Specialist Child Support Enforcement	GS-0101-15/10 $110,028	05/21/00	Commissioner, Administration for Native Americans, Administration for Children & Families Department of Health and Human Services	Presidential appointee EX-0301-V/00 $114,500
Health Insurance Specialist Office of the Administrator, Office of Legislation, Congressional Affairs Group	GS-107-09/01 $35,310	01/02/01	Legislative Correspondent U.S. Senate	Legislative branch employee $25,950
Supervisory Program Analysis Officer Administration for Children & Families	GS-0343-15/10 $114,224	01/02/01	Executive Assistant Office of the Assistant Secretary, Planning and Evaluation Department of Health & Human Services	Schedule C GM-0301-15/00 $80,834
Public Affairs Specialist Health Care Financing Administration	GS-1035-11/02 $44,148	09/10/00	Confidential Assistant Executive Association Administrator Department of Health & Human Services	Schedule C GS-0301-11/02 $44,148
Program Analyst National Institutes of Health	GS-0343-14/08 $92,128	3/11/01	Special Assistant DASL-HS Office of the Secretary Department of Health & Human Services	Schedule C GS-0301-15/02 $90.793
Department of Housing and Urban Development				
Reform Issues Manager[b] Administration	GS-0301-15/08 $99,474	02/28/99	Director Executive Secretariat Department of Housing & Urban Development	Schedule C GS-0301-15/08 $99,474
Department of the Interior				
Director of Diversity and Human Resources[b] Reclamation Service Center Diversity & Human Resources Office	ES-0340-00/04 $125,900	06/06/99	Deputy Assistant Secretary Assistant Secretary Policy, Management & Budget Department of the Interior	Noncareer SES ES-0301-00/04 $125,900
Special Assistant to the Director Office of the Director U.S. Fish and Wildlife Service	GS-0301-15/10 $110,028	04/09/00	Special Assistant Special Assistant to the Commissioner Bureau of Reclamation Department of the Interior	Noncareer SES ES-0301-00/04 $130,200
Executive Director Invasive Species Council Office of the Secretary	GS-0301-15/08 $104,386	07/30/00	Special Assistant to the Director U.S. Fish & Wildlife Region 9, Office of the Director Department of the Interior	Schedule C GS-0301-15/08 $104,386

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Attorney-Advisor (General) Southwest Region	GS-0905-15/10 $111,581	01/14/01	Associate Solicitor - Land and Water Resources Division of Land and Water Resources Department of the Interior	Noncareer SES ES-0905-00/04 $133,700
Communications Officer Office of Surface Mining	GS-0301-15/10 $114,224	01/21/01	Director of Communications Office of the Secretary Department of the Interior	Noncareer SES ES-0301-00/06 $133,700
Department of Justice				
Assistant U.S. Attorney U. S. Attorney's Office Central District of California	AD-0905-21/00 $67,234	10/25/98	Deputy Director Violence Against Women Office Office of the Assistant Attorney General Department of Justice	Schedule C GS-0905-15/02 $80,391
Secretary U.S. Attorney's Office District of South Dakota	GS-0318-09/04 $35,088	11/22/98	Secretary Office of Automation Department of Justice	Schedule C GS-0318-09/04 $35,088
Immigration Judge Executive Office of Immigration Review, Office of the Chief Immigration Judge	IJ-0905-00/04 $122,065	12/06/98	U.S. Attorney Northern District of California Executive Office of U.S. Attorneys Department of Justice	Presidential appointee AD-0905 -01/00 $118,300
Web Manager[b] Office of the Assistant Attorney General	GS-0301-14/08 $84,570	07/18/99	Special Assistant to the Administrator Bureau of Justice Statistics, Office of Justice Programs Department of Justice	Schedule C GS-0301-15/02 $83,346
Assistant U.S. Attorney District of New Mexico	AD-0905-24/00 $59,287	03/22/99	Legislative Assistant United States Senate	Legislative branch employee $46,500
Assistant U.S. Attorney U.S. Attorney's Office Eastern District of New York	AD-0905-29/00 $109,113	07/18/99	Deputy Assistant Attorney General Office of the Assistant Attorney General Department of Justice	Noncareer SES ES-0905-00/04 $125,900
Executive Resources Program Manager[b] Director, Executive Office for U.S. Attorneys	GS-0301-15/02 $83,346	08/01/99	Special Assistant to the Secretary for Scheduling Office of Management & Administration Department of Energy	Schedule C GS-0301-15/02 $83,346
Policy Analyst[b] Office of the Director Community Relations Service	GS-0301-14/01 $68,570	11/07/99	Special Assistant to the Director Community Relations Service Department of Justice	Schedule C GS-0301-14/01 $68,570
Senior Advisor to the Director[b] Executive Office for Immigration Review, Office of the Director	GS-0905-15/10 $110,028	03/26/00	Professional Staff Member Committee on Appropriations House of Representatives	Legislative branch employee $124,000
Legal Secretary U.S. Attorney's Office Western District of Louisiana	GS-0986-07/10 $36,741	02/13/00	Secretary U.S. Attorney's Office Western District of Louisiana Department of Justice	Schedule C GS-0318-10/05 $43,154
Paralegal Assistant U.S. Attorney's Office Eastern Division, Wisconsin	GS-0986-08/10 $41,092	02/13/00	Secretary to the U.S. Attorney U.S. Attorney's Office, Eastern Division, Wisconsin Department of Justice	Schedule C GS-0318-10/05 $43,578

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Assistant U.S. Attorney U. S. Attorney's Office Northern District of California	AD-0905-21/00 $71,996	04/23/00	Assistant to the Attorney General Office of the Attorney General Department of Justice	Schedule C GS-0905-14/01 $71,954
Assistant Director Communications Division Office of Community Oriented Policing Service	GS-0301-15/01 $84,638	06/18/00	Chief of Staff Office of Boards & Divisions Office of Community Oriented Policing Service Department of Justice	Schedule C GS-0301-15/01 $84,638
Assistant United States Attorney U.S. Attorneys Office Southern District of Florida	AD-0905-29/00 $112,490	08/13/00	Deputy Chief of Staff Office of the Attorney General Department of Justice	Noncareer SES ES-0905-00/01 $115,811
Public Affairs Specialist[b] U.S. Attorney's Office Maryland	GS-1035-11/07 $51,269	12/17/00	Secretary U.S. Attorney's Office Department of Justice	Schedule C GS-0318-10/10 $50,554
Assistant U.S. Attorney U.S. Attorney's Office District of Columbia	AD-0905-29/00 $116,017	01/14/01	Associate Deputy Attorney General Office of the Deputy Attorney General Department of Justice	Noncareer SES ES-0905-00/04 $133,700
Assistant U.S. Attorney U.S. Attorney's Office District of Columbia	AD-0905-29/00 $116,017	01/14/01	Associate Deputy Attorney General Office of the Deputy Attorney General Department of Justice	Noncareer SES ES-0905-00/04 $133,700
Assistant U.S. Attorney U.S. Attorney's Office District of Columbia	AD-0905-21/00 $77,216	01/14/01	Counsel to the Attorney General Office of the Attorney General Department of Justice	Schedule C GS-0905-14/02 $77,187
Assistant U.S. Attorney U.S. Attorney's Office Eastern District of Virginia	AD-0905-29/00 $116,017	01/22/01	Deputy Assistant Attorney General Criminal Division Department of Justice	Noncareer SES ES-0905-00/04 $133,700
Legal Secretary (Office Automation) Nevada	GS-0986-07/09 $37,077	02/11/01	Secretary U.S. Attorney's Office Department of Justice	Schedule C GS-0318-09/02 $37,001
Legal Secretary (Office Automation) New Hampshire	GS-0986-07/10 $38,053	03/25/01	Secretary U.S. Attorney's Office Department of Justice	Schedule C GS-0318-10/05 $44,693
Regional Director Community Relations Service	GS-0340-15/10 $110,180	11/19/00	U.S. Marshal U.S. Marshals Service Department of Justice	Presidential appointee GS-0082-15/10 $110,180
Budget Analyst Justice Management Division	GS-0303-07/02 $30,965	01/21/01	Staff Assistant Office of Attorney General Department of Justice	Schedule C GS-0303-07/02 $30,965
Criminal Investigator Judicial Security Division, Court Security U.S. Marshals Service	GS-1811-13/10 $77,507	08/05/00	Deputy Director U.S. Marshals Service Department of Justice	Noncareer SES ES-0340-00/04 $130,200
Department of Labor				
General Attorney Office of the Solicitor, Division of Civil Rights	GS-0905-12/01 $48,796	10/24/99	Special Assistant to the Assistant Secretary Pension & Welfare Benefits Administration Department of Labor	Schedule C GS-0301-12/01 $48,796

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Management Analyst Office of Small Business Programs	GS-0343-14/07 $82,284	12/19/99	Special Assistant Office of the Assistant Secretary for Administration & Management Department of Labor	Schedule C GS-0301-14/07 $82,284
Lead Program Analyst Occupational Safety & Health Administration	GS-0343-14/04 $75,427	12/05/99	Legislative Director House of Representatives	Legislative branch employee $45,000
Program Analyst Occupational Safety & Health Administration Directorate of Federal/State Operations, Office of Cooperative Programs	GS-0343-11/01 $42,724	3/12/00	Counsel Committee on Budget House of Representatives	Legislative branch employee $72,100
Manpower Analyst[b] Employment & Training Administration, Office of the Assistant Secretary	GS-0140-15/10 $110,028	04/09/00	Special Assistant to the President for Economic Policy Office of Policy Development, National Economic Council Executive Office of the President	Executive Office of the President AD-0301-00/00 $97,500
Director, Administration & Management Mine Safety & Health Administration	ES-0341-00/01 $115,811	09/24/00	Legislative Assistant Appropriations Committee U.S. Senate	Legislative branch employee $123,074
Lead Apprenticeship & Training Representative[b] Employment & Training Administration	GS-0243-14/10 $93,537	07/30/00	Special Assistant to the Assistant Secretary Occupational Safety and Health Administration Department of Labor	Schedule C GS-0301-15/05 $95, 923
Member, Benefits Review Board Office of the Deputy Secretary Office of the Secretary of Labor	SL-0905-00/00 $121,264	12/31/00	Assistant Secretary for Mine Safety and Health Administration Office of the Assistant Secretary Department of Labor	Presidential appointee EX-0340-04/00 $122,400
Department of State				
Program Analyst Bureau of Population, Refugees, and Migration Office of Multilateral & External Relations	GS-0343-13/03 $61,895	09/26/99	Special Assistant Office of the Assistant Secretary Department of State	Schedule C GS-0301-13/03 $61,895
Secretary-Stenographer Bureau of Arms Control	GS-0343-09/10 $43,743	10/10/99	Staff Assistant Bureau of Arms Control Department of State	Schedule C GS-0303-10/07 $44,467
Program Analyst Office of Europe/Bureau of International Narcotics and Matters/Multilateral Programs	GS-0343-11/10 $55,541	02/13/00	Foreign Affairs Officer (Staff Assistant) Office of Assistant Secretary Department of State	Schedule C GS-0130-12/03 $54,618
Foreign Affairs Officer[b] Bureau for International Narcotics & Law Enforcement Affairs	GS-0130-14/08 $92,128	01/14/01	Special Advisor Office of Assistant Secretary Bureau for International Narcotics & Law Enforcement Affairs Department of State	Schedule C GS-0130-15/02 $90,793

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Foreign Affairs Officer[b] Bureau for International Narcotics & Law Enforcement Affairs	GS-0130-14/10 $97,108	01/14/01	Special Assistant Office of Assistant Secretary Bureau for International Narcotics & Law Enforcement Affairs Department of State	Schedule C GS-0130-15/05 $99,580
Department of Transportation				
Executive & Legislative Assistant[b] Office of the Chairman, Surface Transportation Board	GS-0301-12/07 $58,556	04/11/99	Confidential Assistant to the Chairman Office of the Chairman, Surface Transportation Board Department of the Treasury	Schedule C GS-0301-12/07 $58,556
Director of Human Resource Management Office of the Assistant Secretary for Administration	ES-0340-00/04 $133,259	08/13/00	Deputy Assistant Secretary for Human Resources Department of the Interior	Noncareer SES ES-0301-00/04 $130,200
Department of the Treasury				
Secretary (Typing) Bank Supervision (Policy), Core Policy, Capital Policy Division	OC-0318-08/00 $33,074	09/26/99	Secretary (Typing) Office of National Drug Control Policy Executive Office of the President	Executive Office of the President GS-0318-08/05 $34,525
Assistant Director (Artesia Operations)[b] Federal Law Enforcement Training Center	ES-0301-00/03 $124,185	03/19/00	Assistant to the Attorney General Immediate Office of Attorney General Department of Justice	Noncareer SES ES-0340-00/05 $130,200
Domestic Counter-Money Laundering Advisor to the Assistant Secretary[b] Under Secretary (Enforcement)	GS-0301-15/10 $114,224	01/14/01	Senior Policy Advisor Departmental Offices Under Secretary (Enforcement) Department of the Treasury	Schedule C GS-0301-15/10 $104,851
Deputy Assistant Secretary (Regulatory Affairs) Departmental Offices, Assistant Secretary (Tax Policy)	ES-0301-00/04 $133,700	03/25/01	Senior Advisor for Policy Departmental Offices, Assistant Secretary (Tax Policy) Department of the Treasury	Noncareer SES ES-0301-00/04 $133,700
Law Enforcement Appropriations Officer[b] Congressional Affairs U.S. Customs Service	GS-0301-15/10 $114,224	01/14/01	Assistant Commissioner Congressional Affairs Department of the Treasury	Noncareer SES ES-0301-00/01 $120,261
Strategic Trade Advisor[b] Strategic Trade	GS-1801-15/10 $114,224	01/14/01	Ombudsman Office of the Commissioner U.S. Customs Service Department of the Treasury	Noncareer SES ES-0340-00/01 $120,261
Director Research, Analysis, and Statistics of Income Internal Revenue Service	ES-0340-00/06 $133,700	03/21/01	Senior Policy Advisor Energy Information Administration Department of Energy	Noncareer SES ES-0301-00/06 $133,700
Department of Veterans Affairs				
Staff Director[b] Office of the Deputy Under Secretary for Memorial Affairs	GS-0301-15/07 $101,565	05/07/00	Special Assistant VA Central Office, Office of the Secretary Department of Veterans Affairs	Schedule C GS-0301-15/07 $101,565

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Chief Information Officer Veterans Health Administration, Office of Chief Information Officer VA Central Office	ES-0301-00/05 $130,200	07/30/00	Senior Advisor for Reserve Components Office of the Secretary of Defense	Noncareer SES ES-0301-00/05 $133,477
Chief Communications Officer Veterans Health Administration Office of the Chief Communications Officer VA Central Office	ES-030-00/04 $130,200	11/05/00	Deputy Assistant Secretary for Public Affairs VA Central Office Department of Veterans Affairs	Noncareer SES ES-1035-00/03 $126, 825
Program Specialist[b] VA Central Office Assistant Secretary for Public and Intergovernmental Affairs	GS-0301-09/10 $47,648	04/22/01	Confidential Assistant VA Central Office Office of the Secretary Department of Veterans Affairs	Schedule C GS-0301-11/06 $51,743
Environmental Protection Agency				
Director Office of Environmental Justice Office of Enforcement & Compliance Assurance	ES-0905-00/05 $125,900	11/22/98	Associate Solicitor Division of Conservation & Wildlife Department of the Interior	Noncareer SES ES-0905-00/05 $125,900
Supervisory Environmental Protection Specialist Office of Solid Waste & Emergency Response	GS-0028-15/00 $126,825	06/18/00	Deputy Assistant Administrator Office of Solid Waste & Emergency Response, Office of the Assistant Administrator Environmental Protection Agency	Noncareer SES ES-0340-00/03 $126,825
Attorney Advisor Administrator for Prevention, Pesticides & Toxic Substances, Office of the Assistant Administrator	GS-0905-15/02 $87,459	06/18/00	Congressional Liaison Specialist Associate Administrator for Congressional & Intergovernmental Relations, Office of Congressional Affairs Environmental Protection Agency	Schedule C GS-0301-15/02 $87,459
Attorney-Advisor[b] Environmental Accountability Division	GS-0905-14/10 $95,725	01/18/01	Environmental Policy Analyst Office of the Regional Administrator, Immediate Office Environmental Protection Agency	Schedule C GS-0301-15/06 $97,485
Equal Employment Opportunity Commission				
Writer Editor[b] Office of Communications & Legislative Affairs	GS-1082-13/02 $62,920	03/26/00	Media Contact Specialist Office of the Chairwoman, Office of Communications & Legislative Affairs Equal Employment Opportunity Commission	Schedule C GS-0301-13/02 $62,920
International Trade Commission				
International Trade Analyst Office of Investigations, Division C	GS-1101-09/10 $43,747	02/17/99	Legislative Assistant House of Representatives	Legislative branch employee $28,000
General Attorney Office of Unfair Import Investigations	GS-0905-14/06 $79,999	05/01/99	Legislative Assistant U.S. Senate	Legislative branch employee $81,760

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Supervisory International Economist Office of Operations, Office of Economics	GS-0110-15/07 $105,437	03/11/01	Senior Economist Office of Commissioner International Trade Commission	Schedule C GS-0301-15/07 $105,437
Office of Management and Budget				
Chief State/USIA Branch	ES-0301-00/04 $133, 259	02/15/00	Majority Clerk and Staff Director Subcommittee on the Departments of Commerce, Justice, & State Committee on the Judiciary & Related Agencies House of Representatives	Legislative branch employee $133,615
Office of Special Counsel				
Deputy Associate Special Counsel for Prosecution Prosecution Division	ES-0905-00/01 $115,811	11/05/00	Attorney Advisor Office of the Special Counsel	Schedule C GS-0905-15/07 $101,565
Office of U.S. Trade Representative				
Policy Analyst (Trade) Executive Office of the President	GS-0301-15/05 $95,923	07/23/00	Director for Policy Planning for Japan Executive Office of the President	Executive Office of the President AD-0301-00/00 $95,923
Small Business Administration				
Associate Administrator for Government Contracting Office of Government Contracting	ES-0340-00/03 $126,825	07/16/00	Director, Small/Disadvantaged Business Utilization Department of Transportation	Noncareer SES ES-0301-00/02 $121,264
District Director Candidate Region VIII – Denver, Colorado	GS-0340-15/03 $91,514	10/08/00	Regional Administrator Region VIII – Denver, Colorado Small Business Administration	Schedule C GS-0340-15/03 $91,514
Senior Executive Service Candidate Associate Deputy Administrator of Management & Administration	GS-0340-15/10 $114,224	01/14/01	Counselor to the Administrator Office of the Administrator Small Business Administration	Noncareer SES ES-0340-00/02 $125,883

[a]Salary includes locality pay.

[b]Newly established position.

Legend:

AD: Administratively determined rates not elsewhere specified

ES: Senior Executive Service

EX: Executive pay

FB: Officers (similar to the SES). Only the FAA uses this code.

GM: Employees covered by the Performance Management and Recognition System

GS: General Schedule

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

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

OC: Office of the Comptroller of the Currency. The code is for the use by the Office of the Comptroller of Currency only.

ZA: Administrative. The code is for use by the Department of Commerce only.

Appointment Authorities Used in the 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.	48
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.	15
Schedule A (5 C.F.R. 213.3101)	Noncompetitive hiring authority for positions other than those of a confidential or policy-determining character for which it is impractical to examine.	13
(28 U.S.C. 542)	Appointment of assistant US attorneys, subject to removal by the attorney general.	8
Noncareer and limited appointments (5 U.S.C. 3394(a))	Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications for the position to which appointed, as determined in writing by the appointment authority.	4
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 a 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.	3
Schedule B (5 C.F.R. 213.3202 (j))	Executive development positions established in connection with Senior Executive Service candidate development programs, which have been approved by OPM. A federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.	1
Selection of term employees (5 U.S.C. 316.302(b)(4))	An agency may give a noncompetitive term appointment to an individual who is qualified for the position and who is eligible for appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more).	1
SES reinstatement (5 U.S.C. 3593 (a))	A former career appointee may be reinstated without regard to 5 U.S.C. 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified under certain conditions.	1

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SES reinstatement (5 U.S.C. 3593(b))	A career appointee who is appointed by the president to any civil service position outside 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

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

Details of Nine Conversions to Career Positions with the Appearance of Preferential Treatment

Case 1:	Conversion in Place
Agency:	Department of Defense (DOD)
Positions:	From Schedule C, GS-15, Special Assistant for Family Advocacy and External Relations, POW/Missing Personnel Office To GS-15, Family Support Liaison, Defense POW/Missing Personnel Office
Details:	The incumbent occupied a Schedule C position as Special Assistant for Family Advocacy and External Relations, POW/Missing Personnel Office, at the GS-15 level, before the November 1999 career appointment as Family Support Liaison, Defense POW/Missing Personnel Office, at the GS-15 level. The incumbent had been appointed to the Schedule C position in January 1994. The Schedule C position's responsibilities included policy matters and issues involving advocacy and liaison with POW/MIA[7] next of kin and families, veterans organizations, and the Congress. The position required a close and confidential working relationship with the Deputy Assistant Secretary of Defense, to whom the incumbent reported. The Schedule C position's duties included (1) formulating, developing, and implementing DOD POW/MIA family support and advocacy policies, (2) serving as senior advisor on all aspects of DOD family assistance and advocacy issues and external relations related to policy and programs, (3) serving as the focal point for family liaison and public awareness, including responding to POW/MIA next of kin and family requests for information and assistance, and (4) preparing related testimony, attending closed intelligence hearings, and commenting on POW/MIA legislation. The career position reports to the Chief of Staff to the Deputy Assistant Secretary of Defense for the POW/Missing Personnel Office. The duties of this position include (1) formulating, developing, and implementing DOD POW/MIA family support and advocacy issues, (2) serving as senior advisor on all family support matters, (3) ensuring and maintaining direct and frequent contact with POW/MIA families, including responding to family requests for information and assistance, and (4) preparing related testimony, attending closed intelligence hearings, and commenting on POW/MIA legislation.

[7]POW/MIA is the acronym for prisoner of war/missing in action.

Our comparison of the Schedule C and career positions revealed that (1) both positions were located in the DOD POW/MIA Personnel Office, (2) the positions had similar duties, and (3) the Schedule C position included a requirement for a close and confidential relationship with the Deputy Assistant Secretary of Defense, but the career position did not.

Our review of the resume that the incumbent submitted for the career position showed that the employee had apparently been doing the career position's duties while serving in the Schedule C position since initially appointed in January 1994. For example, the vacancy announcement for the career position included the explicit duty of directing and managing the activities of four military officers and one senior enlisted person. This duty was not part of the position description for the Schedule C position. However, the resume of the incumbent included the performance of this function under current experience.

The competitive service position was created as a new permanent position in August 1999 and advertised for 2 weeks in mid-September 1999. Thirty persons applied for the position and three were found qualified. The incumbent was ranked as the highest qualified candidate, was selected for the position, and entered on duty in November 1999.

Conclusion:

In our view, this conversion gives the appearance of a conversion in place—an action that moves a Schedule C position's duties and the incumbent from the excepted to the competitive service by unilaterally removing the position's Schedule C elements. The incumbent had been performing the same functions of the newly created career position for about 6 years as a Schedule C appointee. The organizational location of the positions was the same and their duties were almost identical. The only major difference between the two positions was the deletion of the Schedule C element requiring a close and confidential relationship from the competitive service position. A conversion in place with the sole purpose of converting the position, along with the incumbent, into a career position would violate the Civil Service Reform Act of 1978 prohibition against granting unauthorized advantages, including defining the requirements for any position for the purpose of improving or injuring the prospects of any particular person for employment.[8]

[8] 5 U.S.C. 2302(b)(6)

This conversion was not subject to OPM's preappointment review because it occurred before OPM's February 18, 2000, memorandum to agencies establishing the pre-appointment review requirement.

Case 2: Conversion in Place

Agency: Department of Energy

Positions: From Schedule C, GS-14, Senior Program Analyst in the Office of Intelligence

To GS-13, Program Specialist in the Special Programs Staff of the Office of Intelligence

Details: The incumbent served as a Schedule C employee in the Office of the Secretary of Energy from March 1994 through September 1998, as executive assistant first to the chief of staff and the deputy chief of staff, and then to the secretary. In October 1998, the incumbent was reassigned to another Schedule C position as a GS-14 senior program analyst in the Office of Intelligence. In this position, the incumbent managed the Department of Energy's Overseas Radiation Detection Border Installation (ORDBI) Program. This program was designed to detect and interdict nuclear material smuggled across international borders into the former Soviet Union and Eastern European countries. In this position, the incumbent, among other responsibilities, (1) developed, in conjunction with the State Department, guidance, priorities, and funding requirements for site survey, installation, and training, maintenance and coordination, and logistical operations, (2) assisted with negotiation, establishment, coordination, and implementation of interagency agreements for collaborative technology efforts, (3) formulated position requirements, funding parameters, and selection of qualified personnel for international travel, (4) conducted special projects, studies and analysis, including preparation of decision papers, briefing materials and correspondence, and (5) maintained awareness of applicable R&D efforts throughout DOE and other federal agencies in order to stay abreast of developments in sensor technology.

In October of 1999, the Department created and advertised a permanent competitive position for a GS-13 program specialist in the Special Programs Staff of the Office of Intelligence. The duties of the position as listed in the job announcement were identical to the duties in the incumbent's Schedule

C position description. In addition, (1) the announcement required that applicants have 1 year of specialized experience directly related to providing expert advice on the selection and deployment of radiation detection sensors, (2) a selective placement factor was knowledge of the characteristics, capabilities, and requirements of radiation detection sensing systems used to monitor or track the movement of radioactive materials, and (3) the first item in the knowledge, skills, and abilities was knowledge of U.S. government goals, programs, and activities related to interdiction of radioactive materials.

Three persons applied for the position. Only one applicant—the incumbent—was found qualified and was selected February 4, 2000. The selecting official, the director of special programs in the Office of Intelligence, was the incumbent's supervisor in both the most recent Schedule C position and in the career position.

Conclusion:

In our view, this conversion gives the appearance of a conversion in place and that the competitive position may have been created for the incumbent. The Schedule C employee had been performing the duties of the career position for almost a year prior to the creation of the position, and the responsibilities and duties were almost identical for both positions. In addition, the specialized experience requirements, as well as the selective placement factor and one of the knowledge, skills, and abilities appeared to be tailored to the experience of the incumbent—so much so that only the incumbent qualified under them. Also, the same official supervised the incumbent, selected the incumbent for the career position, and continued to supervise the incumbent following the conversion. And, the organizational location of both positions was the same. A conversion in place with the sole purpose of converting the position, along with the incumbent into a career position would violate the Civil Service Reform Act of 1978 prohibition against granting unauthorized advantages, including defining the requirements for any position for the purpose of improving or injuring the prospects of any particular person for employment.[9]

This conversion was not subject to OPM's preappointment review because it occurred before OPM's February 18, 2000, memorandum to agencies establishing the pre-appointment review requirement.

[9] 5 U.S.C. 2302(b)(6)

Case 3:	Conversion in Place
Agency:	Department of Justice
Positions:	From Schedule C, GS-14, Special Assistant to the Director Community Relations Service To GS-14, Policy Analyst Community Relations Service
Details:	Prior to appointment as a GS-14 policy analyst in November 1999, the incumbent occupied a Schedule C position as special assistant to the director, GS-14, beginning in February 1999. Prior to that appointment, the incumbent had served as a legislative assistant to a U.S. Senator from December 1996 to February 1999. Both the Schedule C position and the career position had the following duties and responsibilities: (1) assist the director in monitoring and evaluating the policies and programs of the Community Relations Service (CRS), (2) assist the director in coordination, development, and management of CRS programs and functions affecting the entire agency, (3) participate with the director in the formulation of CRS program initiatives and policies, (4) track status of matters of interest to the director, and keep the director apprised of the status of issues affecting CRS, (5) draft correspondence, speeches, and other material for the director, and (6) review news items, industry journals, and other sources for trends which may have an impact on policy-making. These duties were set forth in identical wording in the position descriptions of the Schedule C and career positions. Other listed duties were not identical but were similar in wording. The only major difference between the career position and the Schedule C position was that the competitive position did not include a requirement for a close and confidential working relationship with the director of CRS, as did the Schedule C position. The director, who was the selecting official for the career position, was also the incumbent's direct supervisor in both the Schedule C position and the career position. According to a CRS official, the career position was not a new position in CRS; however, it had not been filled since a 1996 downsizing. The official did not say why it was decided to fill the position after this lengthy interval, and we could not find any documentation for this decision.

The career position was announced in August 1999, with the announcement being open August 20 through September 3 and applications from all sources being accepted. CRS received 39 applications for the position. Thirty-three candidates were found to be qualified for the position and were rated. The incumbent and three other candidates were determined to be best qualified and were interviewed by a panel of CRS employees. The incumbent was selected for the position on October 28.

Conclusion: In our view, this conversion gives the appearance of a conversion in place. In this case, the career position's duties were largely identical to the Schedule C position's duties. The only major difference is that the career position did not include a requirement for a close and confidential working relationship with the director of CRS, as did the Schedule C position. The director, who made the selection of the Schedule C employee, was the employee's direct supervisor in both positions. A conversion in place violates the Civil Service Reform Act of 1978 prohibition against granting unauthorized advantages, including defining the requirements for any position for the purpose of improving or injuring the prospects of any particular person for employment.[10]

This conversion was not subject to OPM's preappointment review because it occurred before OPM's February 18, 2000, memorandum to agencies establishing the preappointment review requirement.

Case 4: Conversion in Place

Agency: Department of Veterans Affairs

Positions: From Schedule C, GS-15, Special Assistant, Office of the Secretary

To GS-15, Staff Director, Office of the Deputy Under Secretary for Memorial Affairs

Details: Prior to the incumbent's appointment as a GS-15 in May 2000, the employee occupied a position as special assistant in the Office of the Secretary. Beginning in October 1995, the incumbent held a competitive temporary appointment in which his duties mostly concerned liaison to veterans'

[10] 5 U.S.C. 2302(b)(6)

organizations. The incumbent initially received a Schedule C appointment in March 1996, serving in the Office of the Secretary of Veterans' Affairs as liaison to national veterans' organizations. In August 1997, the incumbent also assumed responsibility for overseeing the department's participation in the Korean War 50th Anniversary Commemoration. In addition, the incumbent had served in the Marine Corps from 1958 to 1982 and had a 30 percent disabled veteran status.

In April 2000, the Department of Veterans' Affairs sought preappointment review approval from OPM to appoint the incumbent to a GS-15 career position as a noncompetitive term appointment (permissible under 5 CFR 315.707 because of the incumbent's disabled veteran status). OPM initially refused approval because the duties of the competitive position were basically the same as those of the Schedule C position, and the two positions would have the same supervisor. However, OPM gave the department 2 days to submit a revised request. The department did so, providing a new justification that placed the position under the under secretary for memorial affairs and stated that the primary duties of the position would relate to the ongoing Korean War commemoration. But, the incumbent would continue to have veterans' organization liaison duties for which the incumbent would report to the deputy secretary.

Because of these changes and the incumbent's disabled veteran status, OPM gave its approval for the conversion, though still expressing reservations. OPM noted that (1) there were similarities between the employee's present duties and the duties of the permanent position, (2) the employee would continue some veterans' liaison duties under the current supervisor, (3) the employee's Schedule C position would be abolished if the employee was converted, and (4) there was no active recruitment for the position. OPM stated that normally these factors would warrant disapproval; however, in this instance its concerns were offset by the changes the department had made in the position and by the employee's status as a disabled veteran. Because this was a noncompetitive appointment, there was no merit selection process. The incumbent was converted to the position in May 2000.

Conclusion: In our view, this conversion gives the appearance of a conversion in place. Even after revising the justification, OPM noted during its preappointment review the similarities between the two positions and that the incumbent would continue some veterans' liaison duties under the current supervisor. A conversion in place with the sole purpose of converting the position along with the incumbent into a career position would violate the Civil Service Reform Act of 1978 prohibition against granting unauthorized advantages, including defining the requirements for any position for the purpose of improving or injuring the prospects of any particular person for employment.[11]

Case 5: Application Received after Closing Date

Agency: Office of Management and Budget (OMB)

Positions: From Majority Clerk and Staff Director, Commerce/Justice/State Subcommittee, House Committee on Appropriations

To ES-0301-04, Chief, State/USIA Branch, International Affairs Division

Details: The incumbent worked for the House Committee on Appropriations as the majority clerk on the Commerce/Justice/State Subcommittee. The incumbent applied for an ES-0301-04 career position as Chief, State/USIA Branch, within its International Affairs Division. The opening date for this position was April 14 and the closing date was May 5, 1999. The vacancy announcement notified all applicants that applications received after the closing date would not be considered. The incumbent's resume was date stamped as received by OMB on May 6, 1999—the day after the vacancy announcement closing date—and was included in the selection process. The incumbent was selected on December 23, 1999. According to an OMB official, the application may have been received in the mailroom on the closing date. However, the OMB official could not provide evidence that this occurred.

Conclusion: Based on available documentation, it appears that the incumbent's application was received the day after the vacancy announcement closing date. To be eligible for a position, an applicant not only needs the

[11] 5 U.S.C. 2302(b)(6)

appropriate experience and skills, but also must meet administrative requirements, such as meeting the deadline for submitting the application. Waiving that requirement for some applicants can give an unfair advantage to them—such applicants have more time to prepare their application and are not held to the same standard as others—giving the appearance in this case that the incumbent received favoritism or preferences that enhanced the incumbent's prospects for appointment.

This appointment was not subject to OPM's preappointment review because it occurred prior to OPM's February 18, 2000, memorandum. Also, it involved a congressional employee, rather than a Schedule C or noncareer SES employee, and was therefore not within OPM's preappointment review requirements coverage.

Case 6: Incumbent Not on List of Applicants

Agency: U. S. Department of Labor

Positions: From Legislative Assistant, Senate Appropriations Committee

To ES-0341-01, Director of Administration and Management, Mine Safety and Health Administration

Details: The Department of Labor issued a vacancy announcement for a director of administration and management in its Mine Safety and Health Administration, Directorate of Administration and Management. The opening date was January 24, 2000, and the closing date was February 23, 2000. The incumbent, who had previously held a legislative assistant position to the chairman of Appropriations Committee, U.S. Senate, was selected on May 26, 2000. Documents indicated that while the incumbent's name appears on the certificate of eligibles, it does not appear on the list of applicants. Further, the date stamp on the incumbent's cover letter—which could show whether the application was received in time for the incumbent to be put on the applicant list—is illegible. The fact that the individual was not on the original list of applicants could indicate that the application was received after the closing date of the vacancy announcement.

A Labor Department official said that the absence of the individual's name on the list of applicants could have been due to clerical error. Also, the official said that while the complete date stamp is illegible, the number "17" is legible, and the cover letter was dated February 16, 2000. The official

said that one could conclude that the application was most likely received prior to the closing date of the vacancy announcement. However, the official said there is no way to document when the application was received.

Conclusion: The fact that the incumbent was not on the list of applicants and the date stamp was illegible raises questions as to whether the agency followed the same procedures for this applicant as for other applicants, i.e., whether the agency required him to submit an application by the closing date on the vacancy announcement. We recognize the possibility of the Labor Department's explanation. However, without documentary evidence either that the incumbent's application was received on time or as to why the incumbent's name was not included on the list of applicants, we believe that this case can give the appearance that the incumbent may have received favoritism or preferences over other applicants that enhanced the incumbent's prospects for appointment.

Because the incumbent was not a former Schedule C or noncareer SES employee, this appointment was not subject to an OPM preappointment review.

Case 7: Incumbent Provided Input to the Position Description for the Position for Which He Later Applied

Agency: U.S. Department of the Interior

Positions: From SES, Special Assistant to the Commissioner of the Bureau of Reclamation

To GS-15, Special Assistant to the Director, Fish and WildlifeService (FWS)

Details: Beginning in December 1993, prior to appointment to a GS-15 position as Special Assistant to the FWS Director in April 2000, the incumbent occupied a noncareer SES position as Special Assistant to the Commissioner of the Bureau of Reclamation. Before this, the incumbent had been on the White House Environmental Policy Staff for several months in 1993, coming there from the National Oceanic and Atmospheric Administration (NOAA), where the incumbent had been in career positions since 1981.

The career position was announced in December 1999, with the announcement open from December 14 through December 29. Prior to the announcement, the incumbent was given the opportunity to review and suggest changes to the position description. This is indicated in a memorandum that was faxed from the incumbent to an FWS personnel specialist on November 30 that stated, "Here are some proposed edits to the PD [position description] you sent. I also sent the inserts to you via e-mail. Let me know if you have any questions." The merit-staffing file did not contain the specific changes suggested by the employee and we could not determine whether changes were made to the position description.

Although the position description in final form does not have any wording identical to the position description for the incumbent's previous position, the duties and responsibilities for the two positions are similar, both dealing with providing advice and supervising projects related to water resource management. The significant difference is that the previous position was responsible for departmental liaison to NOAA; the current position has general liaison duties to other departments and agencies.

The announcement was restricted to current or federal employees or veterans with preference eligibility, eligible under the Interagency or Agency Transition Assistance Program. Three persons applied for the position. Two of them were found unqualified under the terms of the announcement. The third was the incumbent, who was the only candidate on the certificate issued January 13, 2000. The Director of the Fish and Wildlife Service selected the incumbent on January 18, with an effective date of April 9, 2000.

Conclusion:

This conversion gives the appearance of granting an unauthorized advantage in defining the requirements for a position for the purpose of improving one's prospects for employment. Prior to the announcement of the vacancy, the incumbent was given the opportunity to review and comment on the position description for the career service position the incumbent was eventually selected for. The action also gives the appearance that the incumbent was preselected for the position. Such actions violate the Civil Service Reform Act of 1978 prohibition against granting unauthorized advantages to individuals in the employment process.

OPM did a preappointment review and approved this appointment on April 4, 2000. The fax indicating that the incumbent provided input to the

position description, however, was the type of document requested by OPM for its review.

Case 8: Selecting Official Gave Incumbent Superior Rating Linked to Evaluation Factors in the Vacancy Announcement Just after Opening

Agency: U. S. Department of Labor

Positions: From Schedule C, GS-0301-14, Special Assistant to the Assistant Secretary for Administration and Management

To GS-0343-14, Management Analyst, Office of Small Business Programs

Details: The incumbent received a Schedule C appointment to the Department of Labor's Office of the Assistant Secretary for Administration and Management in August 1998 and was apparently detailed immediately to the Office of Small Business Programs from August 1998 to December 1999. The Department of Labor issued a vacancy announcement for a management analyst position in its Office of Small Business Programs. Although the selection official certified the position in April 1998, before the incumbent joined the Department, the vacancy announcement did not open until November 1 and closed November 12, 1999. The department reported receiving about 30 applications, of which 15 were referred to the selecting official. The incumbent was among the ones whose names were sent to the selecting official. The incumbent was selected for appointment on December 3, 1999.

Documents regarding the conversion show that the incumbent was given a performance rating by the selecting official. The duties and responsibilities and evaluation factors listed in the vacancy announcement were similar to the narrative explanation attached to the performance appraisal. And, the incumbent received the highest rating possible on all rating elements. Further, the selecting official signed the incumbent's rating on November 5, 1999—4 days after the opening date of the vacancy announcement. When asked for a copy of the incumbent's duties as a detailee—to compare against the position description for the position the incumbent was selected to fill—a Labor official said there was none. She said the only description available is the one contained in the narrative portion of the incumbent's rating.

Conclusion: In this case, the incumbent appears to have had the advantage of working as a detailee in, if not the same, at least a very similar position to the one the incumbent was selected to fill. The person who provided the incumbent's rating was also the selecting official for the career position. Also, the duties and responsibilities of the two positions were similar. Thus, this case gives the appearance that the incumbent received favoritism or preference over other applicants, which enhanced the incumbent's prospects for appointment.

This conversion was not subject to OPM's preappointment review because it occurred before OPM's February 18, 2000, memorandum to agencies establishing the preappointment review requirement.

Case 9: Vacancy Announcement Canceled and Appointee Detailed to Position in Developmental Capacity

Agency: Small Business Administration (SBA)

Positions: From Schedule C, GS-15, Regional Administrator

To District Director, Candidate Development Program Participant

Details: The appointee held a Schedule C appointment in SBA as a GS-15 Regional Administrator. On June 27, 2000, SBA issued a vacancy announcement for positions in its District Director Candidate Development Program. It closed on July 14, 2000. The objective of the development program is to train candidates for SBA District Director positions. The vacancy announcement said that the program varied in length from 6 to 18 months, depending on the candidate's prior experience, developmental needs, and performance in the program. Upon successful completion of the program, graduates may be noncompetitively appointed to District Director or other positions.

As set forth in the vacancy announcement, SBA accepted applications from all sources. A total of 123 individuals, including the incumbent, applied. In September 2000, SBA selected the incumbent, along with nine others, for the program with an effective start date of October 8, 2000. As part of the hiring process, the appointee signed a standard mobility and service agreement and indicated that South Dakota, her home state, was her preferred location.

The incumbent also applied for an SBA vacancy announcement for the District Director position in South Dakota. South Dakota is within the region for which the appointee was the Schedule C Regional Administrator. The vacancy announcement was open from August 7 through August 18, 2000, and indicated that individuals could apply and qualify for the position at either the GS-14 or the GS-15 level.

Four certificates of eligible candidates were forwarded for consideration for the South Dakota District Director position. Two certificates, one for the position at the GS-14 level and one at the GS-15 level, were developed under SBA's merit promotion plan and contained the names of 12 and 5 qualified candidates, respectively. Another two certificates, also for the position at the GS-14 and GS-15 levels, were developed under SBA's delegated examining authority, which it had received from OPM. Each of these certificates contained the names of three qualified candidates. The appointee's name appeared second on the list of three qualified candidates at the GS-15 level developed under SBA's delegated examining authority. The applicant ahead of the appointee on the list was a preference eligible veteran who had a compensable service-connected disability of 30 percent or more. Under the Veterans' Preference Act, if an agency is to pass over such a veteran and select someone lower on the list, it would need to justify such an action and seek OPM's approval. The agency would also need to notify the veteran of the action and the agency's reasons for it.[12] The veteran would be entitled to comment on the agency's reasons for passing him over, and OPM is required by law to consider the veteran's response in determining the sufficiency or insufficiency of the agency's reasons.

SBA's associate administrator apparently chose not to interview the candidates and, rather than making a selection for the South Dakota District Director position, decided in December 2000, to cancel the vacancy announcement and make no selection. The associate administrator, also a Schedule C employee, has since left SBA, and we could not determine his rationale for canceling the vacancy announcement. On January 14, 2001, SBA detailed the appointee, in the appointee's capacity as a participant in the Candidate Development Program, to the South Dakota District Director position in an acting capacity.

From an unsigned and undated hand written note in SBA's files, it appears there was interest in graduating the appointee from the program shortly

[12] 5 U.S.C. 3318(b)

after she entered into it in October 2000 and placing her noncompetitively in the South Dakota District Director position. This note contained a phrase that suggested the former political appointee and two other candidates (who were career employees) were to graduate after 2 months and be put in District Director positions before January 20, 2001. The note also indicated that someone called OPM to check to "see if [there was a] way to place [the candidates]. . . ." SBA officials that we spoke with believed the note was written by a former SBA political appointee. They said the intended actions did not occur, however, possibly because it would have contradicted the announced 6 to 18 month duration of the Candidate Development Program. According to these officials, the incumbent, as well as the other two candidates, were still in the Candidate Development Program as of December 6, 2001. The district director position in South Dakota has recently been readvertised and a different person has been selected for it.

Conclusion:

This conversion gives the appearance of granting an unauthorized preference for the purpose of improving the prospects for employment. SBA canceled a vacancy announcement under conditions in which multiple qualified candidates were available but under which it would have been difficult to justify selecting the appointee who was also a candidate. SBA then detailed the appointee, in the appointee's capacity as a participant in SBA's District Director Candidate Development Program, to the same position as acting district director.

Hand written notes in SBA's file also indicate that the appointee may have been pre-selected for the position. While the candidate program normally lasts for 6 to 18 months, these notes suggest that someone at SBA planned to have the appointee graduate from the program after about 2 months and be permanently placed noncompetitively in the position in less than 1 month after the vacancy announcement was canceled and just before the presidential inauguration. Such actions give the appearance of unauthorized preference, which would violate the Civil Service Reform Act of 1978 prohibition against granting unauthorized advantages to individuals for the purpose of improving or injuring the prospects of any person for employment.

OPM did a preappointment review and approved the incumbent's appointment to the District Director Candidate Program on December 18, 2000. The circumstances surrounding this conversion, which raised our concern are outside of the selection process for the candidate program and would not have been part of OPM's review.

Eight Conversions to Excepted Service Positions under Schedule A or 28 U.S.C. 542 Authority with the Appearance of Political Favoritism

Excepted Service position title, office, and hiring authority	Noncareer position title and office	Date appointed/ entered on duty
Department of the Interior		
Attorney-Advisor (General) Southwest Region Schedule A 213.3102(d)	Associate Solicitor - Land and Water Resources Division of Land and Water Resources	01/14/01
Department of Justice		
Assistant U.S. Attorney U.S. Attorney's Office 28 U.S.C. 542	Associate Deputy Attorney General Office of the Deputy Attorney General	01/14/01
Assistant U.S. Attorney U.S. Attorney's Office 28 U.S.C. 542	Associate Deputy Attorney General Office of the Deputy Attorney General	01/14/01
Assistant U.S. Attorney U.S. Attorney's Office 28 U.S.C. 542	Counsel to the Attorney General Office of the Attorney General	01/14/01
Assistant U.S. Attorney U.S. Attorney's Office 28 U.S.C. 542	Deputy Assistant Attorney General Criminal Division	01/22/01
Department of the Treasury		
Law Enforcement Appropriations Officer U.S. Customs Service Schedule A 213.3105(b)(6)	Assistant Commissioner Congressional Affairs U. S. Customs Service	01/14/01
Strategic Trade Advisor Strategic Trade U. S. Customs Service Schedule A 213.3105(b)(6)	Ombudsman Office of the Commissioner U.S. Customs Service	01/14/01
Environmental Protection Agency		
Attorney-Advisor Environmental Accountability Division Schedule A 213.3102(d)	Environmental Policy Analyst Office of the Regional Administrator Immediate Office	01/17/01

Scope and Methodology

To ascertain the number of conversions from political positions to career positions, we asked 45 federal agencies (see appendix II) to complete our data collection instrument (DCI) indicating the career appointments they made to former political appointees or congressional employees from October 1, 1998, through April 30, 2001. We also asked them to indicate any months in which they did not make a conversion. We established the October 1998 to April 2001 coverage period, as agreed with your offices, in order to include conversions that might occur in the months before and after the November 2000 presidential and congressional elections.

In our DCI, we defined political appointees as those individuals who received an appointment to the following positions after April 1, 1997: (1) Schedule C, (2) noncareer SES, including limited-term SES and limited emergency SES, and (3) presidential appointees, including executive level, and noncareer ambassadors. We included in our definition individuals who were employees in the Executive Office of the president and who were first hired after January 20, 1993. As consistent with your requests, we also asked agencies to report on the appointment of former congressional employees to career positions in the executive branch.

In completing the DCI, the 45 agencies provided information about the career positions to which the individuals were appointed. Specifically, they provided the position title, the appointee's pay grade, annual salary, and appointment or entered-on-duty date. They also provided the title of the appointee's former position. In addition, the agencies provided the related Standard Form 50 for all appointments. These forms provide the official record of a personnel action, such as an appointment. We used the Form 50s to obtain information about each appointee's prior position, such as annual salary, and to verify information that the agencies provided on the DCI.

To determine whether appropriate appointment authorities were used, whether merit system principles were adhered to, and whether any of the appointments gave the appearance of favoritism or political preference (for all conversions that occurred at the GS-12 level or higher), we examined the official personnel files and merit staffing files relevant to each conversion. 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 each department's or agency's merit staffing plans, as appropriate.

We did not judge the qualifications of former political appointees and congressional employees for the career 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. Therefore, we applied our professional judgment after reviewing the appropriate laws and regulations and the circumstances of each case.

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 questionable cases by attorneys experienced in the application of federal personnel law. In addition, we gave a draft of case summaries 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.

Comments from the Office of Personnel Management

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

JAN 23 2002

Mr. George H. Stalcup
Director, Strategic Issues
General Accounting Office
Washington, DC 20548

Dear Mr. Stalcup:

Thank you for the opportunity to comment on the General Accounting Office (GAO) draft report *Personnel Practices: Career and Other Appointments of Former Political Appointees, October 1998-April 2001.*

I believe strongly in the Federal merit system and the need to protect it through active oversight. I support the monitoring efforts that GAO and the Office of Personnel Management (OPM) undertake during presidential election periods. I also agree that even the appearance of favoritism needs to be avoided.

The draft report accurately describes the OPM's process for preappointment review of conversions during presidential election periods. OPM's focus is on the conversion of Schedule C and noncareer-type SES employees to the competitive service or career Senior Executive Service (SES) appointments. Seventeen cases are discussed in the report. Eight of these conversions would not have come to OPM under the criteria spelled out in our February 18, 2000 memorandum to agencies on the preappointment process. The merit staffing elements of the two SES cases were considered by OPM as part of the standard processing of cases for initial appointment to the SES. Four Schedule C cases occurred before our review period began on February 18, 2000. OPM did review three of the Schedule C cases listed. I have already asked my staff to revisit all of these cases.

We look forward to receiving the final report.

Sincerely,

Kay Coles James
Director

CON 131-84-4
September 1993

Related GAO Products

Personnel Practices: Career Appointments Granted Political Appointees From October 1998 through June 2000 (GAO/GGD-00-205, Sept. 18, 2000).

Personnel Practices: Career Appointments of Former Political and Congressional Employees (GAO/GGD-97-165, Sept. 2, 1997).

Personnel Practices: Improper Personnel Actions on Selected CPSC Appointments (GAO/GGD-97-131, June 27, 1997).

Hiring of Former IRS Employees by PBGC (GAO/GGD-97-9R, Oct. 2, 1996).

Personnel Practices: Career Appointments of Legislative, White House, and Political Appointees (GAO/GGD-96-2, Oct. 10, 1995).

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).

Personnel Practices: Presidential Transition Conversions and Appointments: Changes Needed (GAO/GGD-94-66, May 31, 1994).

Political Appointees: Turnover Rates in Executive Schedule Positions Requiring Senate Confirmation (GAO/GGD-94-115FS, Apr. 21, 1994).

Political Appointees: 10-Year Staffing Trends at 30 Federal Agencies (GAO/GGD-93-74FS, Apr. 30, 1993).

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).

Federal Employees: Appointees Converted to Career Positions, January and February 1989 (GAO/GGD-89-89FS, June 13, 1989).

Federal Employees: Appointees Converted to Career Positions, October through December 1988 (GAO/GGD-89-66FS, Apr. 24, 1989).

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