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Widespread agreement now exists among public managers of both political parties, students of Government and some Government personnel officials, members of congressional oversight committees, and public service organizations on the need for Federal personnel systems changes. There is rather general agreement that the systems must be modified to improve service delivery, enhance productivity, and restore some lost credibility to the public service. Recent recommendations have ranged from advocating minor revisions in the existing patchwork structure to plans for complete personnel reorganization. Recommendations requiring structural changes stressed the Civil Service Commission's (CSC's) role in three areas: merit system hiring for the competitive service; the placement of the Federal appeals system; and collective bargaining and CSC's role in policy guidance and technical assistance in labor-management relations. Findings/Conclusions: Personnel functions may be organized for effective administration by: leaving the competitive service structure unchanged and tightening up the operations, particularly those related to merit system hiring; retaining policy and operations in the CSC and creating a

separate independent appeals (and in some proposals, enforcement) agency; and separating policy, operations, and appellate functions, shifting policy to Executive Office of the President, delegating operations to the agencies, and creating an independent review and appellate board with enforcement powers. Among those who want change, there are three major positions on when and how the alterations should be made: thorough long-range examination of all Federal personnel management systems similar to past Hoover Commission studies; a much shorter study, perhaps by a 90-day task force; and immediate action by the new administration, including simultaneous work on a new bill to be presented to the Congress. (Author/QM)

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STUDY BY THE STAFF OF THE U.S. GENERAL ACCOUNTING OFFICE

Management Of Civilian Personnel In The Federal Government: The Present Situation And Proposals For Improvements

There is widespread agreement among Federal officials, congressional oversight committees, and public service organizations on the need for changes in the civilian personnel systems of the U.S. Government. This applies particularly to the Civil Service Commission, its authority, and its administration.

But the choices among proposed improvements and the methods for carrying them out are not simple and will not be easily implemented.

This staff study summarizes civil service history, current primary problems, the roles of those with personnel responsibilities, and recently proposed revisions for Federal civilian personnel management.

PREFACE

This staff study describes the roles of the Civil Service Commission and other organizations that have authority over and responsibility for Federal civilian personnel management.

We have not attempted in this work to cover all personnel management issues. We present information on organizational and structural issues and summarize recent proposed modifications.

The choices among needed improvements and the methods for carrying out selected changes are not simple and will not be easily implemented.

This summary and appendixes I through VI should assist those who are considering possible revisions in Federal civilian personnel policies and legislation.



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ABBREVIATIONS

AFGE	American Federation of Government Employees
BPME	Bureau of Personnel Management Evaluation
EPG	Executive Planning Group
FEAA	Federal Employee Appeals Authority
FPM	Federal Personnel Manual
FSEE	Federal Service Entrance Examination
GAO	General Accounting Office
IAG	Interagency Advisory Group
IPMA	International Personnel Management Association
OMB	Office of Management and Budget

SUMMARY

The Federal civilian personnel systems now include close to 2.9 million employees whose salary and benefits exceed \$40 billion, about 11 percent of the Federal budget. Approximately 93 percent of the employees work under "merit systems"--62 percent in the competitive service and 38 percent in excepted services. (See app. IV.)

Personnel management authority and responsibility are ordered by both the President, through Executive orders, and the Congress, through laws, often with detailed provisions. 1/ The Civil Service Commission, the Office of Management and Budget, the departments and agencies, the Interagency Advisory Group, and the several organizations responsible for labor-management relations and pay programs execute these orders. (See app. II.)

The general public showed little interest in Federal personnel operations until recent concern was aroused by disclosure of merit systems abuses. In the past, chiefly in periods of great Government growth, studies were made which focused on general personnel management improvements; however, though revisions were often recommended in the overall organizational structure, the resulting changes were primarily piecemeal alterations to resolve specific problems. This was particularly true of how new responsibilities and duties were assigned to the Commission as it evolved into a central personnel agency for a vastly expanded Government. (See apps. I and II.)

Widespread agreement now exists among public managers of both political parties, students of Government and some Government personnel officials, members of congressional

1/Unless otherwise specified, references to personnel management or personnel systems apply to Federal civilian competitive service personnel systems.

oversight committees, and public service organizations on the need for personnel systems changes. While there is no agreement on what the specific changes should be or on how modifications should be introduced or implemented, there is rather general agreement that the systems must be modified to improve service delivery, enhance productivity, and restore some lost credibility to the public service. Recent recommendations have ranged from advocating minor revisions in the existing patchwork structure to plans for complete personnel reorganization. Recommendations requiring structural changes stressed the Commission's role in three areas:

- Discussions of political infiltration of the career system examined the Commission's role in its original function--merit system hiring for the competitive service. The basic concept of merit has not been seriously challenged, but disagreement exists over (1) whether the Commission has deemphasized its regulatory role and overemphasized its personnel management consultant role, (2) whether the opposite is true--that the Commission's procedure for regulating agency hiring has been too unwieldy and unresponsive, and has led to agency attempts to circumvent the Commission's rules, or (3) whether the roles have varied according to circumstances. (See app. V.)
- Several groups and studies have recently addressed the issues involved in the placement of the Federal appeals systems, now under the jurisdiction of the Commission. Some authorities have questioned whether the Commission's quasi-judicial functions are compatible with its other roles. Many employees view the Commission as an arm of management; consequently, though appeals decisions may now be fair and just, they often do not have the confidence of all concerned. (See app. V.)
- Attention, particularly in the Congress, has focused on expanding collective bargaining and substituting legislation for the current Executive order under which the Commission is responsible for policy guidance and technical assistance in labor management relations. Most bills currently being considered provide for an independent central labor relations administrative authority. This proposed body's

relationship to and impact on existing civil service laws is uncertain. Should legislation be enacted, the interest of many public administration and personnel specialists will be to insure that a new personnel management system not be superimposed upon the existing structure. (See app. V.)

Among the many recent speeches, investigations, hearings, studies, and reports addressing the above three issues and other possible revisions of the personnel systems are:

- The Sharon Merit Staffing Review Team report, a Commission self-inquiry into everyday recruiting and staffing operations, conducted in late 1975 by a Commission-appointed group which examined political referrals, intrusions into competitive merit hiring procedures, and Commission enforcement of merit system standards and policies.
- A monograph written by Bernard Rosen, former Commission Executive Director, also in late 1975, at the request of the House Post Office and Civil Service Committee, which includes his thorough appraisal of and recommendations for improving executive branch personnel administration.
- The Civil Service Amendments of 1976 (H.R. 12080), which resulted from House Post Office and Civil Service Committee hearings and investigations of merit system abuses; the Amendments proposed strengthened merit systems principles and procedures but were never reported out of committee.
- "Blueprint for Civil Service Reform," a late 1976 report by the Fund for Constitutional Government, a group supported by a foundation active in liberal causes, which proposes revisions in both Commission procedures and structure.
- The International Personnel Management Association testimony on H.R. 12080, in which proposed changes reflect the belief that merit system erosion was not necessarily the result of an unworkable system, but rather the malfunctioning of a workable system.

- Former Commission Chairman Hampton's speech at the annual Commission awards ceremony, in January 1976, in which he said a complete reassessment is needed of what the Civil Service Commission should be.
- The National Civil Service League testimony on H.R. 12080, which suggested a thorough examination of the existing personnel systems.
- A National Academy of Public Administration panel report to the Senate Watergate Committee in 1974, and a panel report on reorganization of the executive branch in 1976. Both recommended a comprehensive study of the Federal civil service and action on the study's recommendations.
- An American Federation of Government Employees proposal which calls for restructuring the Civil Service Commission.
- A bill drafted as followup to a Bureaucrat Magazine symposium on the Federal civil service which proposes a complete reorganization of the present personnel structures. (See app. VI.)

The specific conclusions and recommendations from recent reviews can be grouped into three major positions on the way personnel functions might be best organized for effective administration:

- Leaving the competitive service structure unchanged, tightening up the operations, particularly those related to merit system hiring; perhaps increasing the Commission's independence by changing the term of Commissioners' appointments and by restricting the personnel role of the Office of Management and Budget; some also suggest adding most excepted agencies to Commission jurisdiction.
- Retaining policy and operations in the Commission and creating a separate independent appeals (and in some proposals, enforcement) agency.
- Separating policy, operations, and appellate functions, shifting policy to the Executive Office of the President, delegating operations to the agencies, and creating an independent review and appellate board with enforcement powers.

There are many variations of these proposals and some or all of these same ideas were brought out in past studies and legislative proposals, for example, by the Brownlow Commission in 1937, the Hoover Commissions in 1949 and 1955, and the Clark proposals in 1958. (See app. I.)

Those who favor minor revisions of the present system say the recent abuses resulted from apathy, deliberate subversion, or the system's failure to respond to managers; they claim the latter two can be remedied by changes in the examining system. They believe that the problems are and were with people, and that moving boxes on an organization chart is not a remedy.

Those who have proposed separation of functions say that the Commission roles conflict--one cannot be a friendly consultant, leader, and the "cop on the beat"; enforcement requires insulation and independence. These critics also view the Commission's quasi-judicial functions as conflicting--one cannot simultaneously be an arm of management and a protector of employees.

The Commission, as it is now organized and functions, is said by some to have lost its credibility in both operations and enforcement. These critics say that day-to-day operations would remain much the same under new Commissioners. Even strengthened procedures would still enable agency managers to circumvent policy, not necessarily out of willful intent to be evil or to subvert a merit system, but because the system is on the defensive, and would undoubtedly subject managers to ever greater constraints.

Among those who want change, there are three major positions on when and how the alterations should be made:

- Several groups urge a thorough long-range examination of all Federal personnel management systems similar to past Hoover Commission studies.
- Others in public service or personnel organizations favor a much shorter study, perhaps by a 90-day task force. These people believe the subject has been studied enough but want some voice in reorganization planning, particularly in the drafting of new legislation.

--A third group believes that most, if not all, interested parties have been heard in recent investigations. They say immediate action is necessary because efficiency and morale among personnel administrators and especially Federal managers who must make personnel decisions have deteriorated. These people suggest that the new administration, perhaps working with a small group of consultants, should prepare changes to be made by reorganization plans, Executive order, delegation, and redelegation as soon as possible while simultaneously working on a new bill to be presented to the Congress. (See app. VI.)

The choices among the needed improvements and the methods to implement selected changes in the present personnel systems are difficult and complex. The time is appropriate, however, because rarely in the more than 90 years since the passage of the Civil Service Act has public and Government interest been as great as it is now.

BACKGROUNDBASIC AUTHORITY

The foundation for the present Federal civilian personnel systems rests partly on a rider to the Appropriation Act of 1871, and primarily on the Pendleton Act of 1883, now incorporated along with other important personnel legislation in title V of the U.S. Code. This code, entitled "Government Organization and Employees," was enacted into law (Public Law 89-554, Sept. 6, 1966, 80 Stat. 378) after 10 years of work by the Civil Service Commission with the assistance of various departments and agencies. It restates, in comprehensive form without substantive change, the statutes in effect before July 1, 1965, that relate to Government employees, the organization and powers of Federal agencies generally, and administrative procedures. Title V is updated annually with amendments, revisions, additions, and deletions to personnel law.

INTENT OF THE PENDLETON ACT

The enactors did not intend to create a central personnel agency, but rather to police patronage. The President was authorized to appoint, with the advice and consent of the Senate, a Civil Service Commission to be composed of three commissioners, not more than two of whom were from the same political party, removable at the will of the President. The Commissioners were to aid the President by setting rules for open competitive examinations for testing the fitness of applicants for public service, with individuals to be selected for positions from among those graded highest. The act delegated the authority to recruit and examine personnel to agencies through boards of examiners operating under Commission supervision. There was to be complete freedom from political pressure on those choosing and chosen. Recommendations from Congressmen on matters other than character and residence were not allowed. Previous veteran preference laws were reaffirmed.

The Pendleton Act did not require, but rather authorized, the President to put jobs under the civil service system, thus recognizing that the constitution gave the Executive the

power to appoint, and the Congress the right to set qualifications on, that power. Although it has been called an "independent" agency, the Commission was established "to aid the President, as he may request . . ." and has been regarded as an arm of the President despite restrictive legislation and congressional oversight.

HISTORY OF THE COMMISSION

The rider to the Appropriations Act of 1871 and the Pendleton Act of 1883 were reactions to the spoils system spearheaded by a strong civil service reform movement. About 10 percent of the approximately 133,000 Federal employees were originally included under this act. Added coverage was to be determined by the President with Commission advice.

The Commission's job was to screen, examine, and present a choice of applicants to fill jobs in the agencies covered under law. General issues of personnel management and employee concerns played a minimal role in Commission duties until the early 1900s when President Theodore Roosevelt's Keep Committee and President Taft's Commission on Economy and Efficiency directed attention to these areas. The Keep Committee urged the organization of systems for pay, classification, pensions, and leave for civil servants. One of the Taft Commission's major personnel recommendations--to amend the civil service law to create an executive bureau of personnel--was the first of many public personnel commission and study recommendations suggesting a central personnel agency. This era also initiated the still continuing efforts of the Congress and the executive branch to exert the major influence over the Commission and Federal personnel functions.

The first important consideration of employee rights came in 1912 with the passage of the Lloyd-LaFollette Act, which gave employees individually and collectively the right to petition the Congress and to belong to unions. The act also required that agencies give written notice of reasons for firing an employee and time for the employee to answer. This legislation, still the foundation for Federal labor-management relations, was among the first successful pressures on the Congress by Government unions.

Additional union influence, also directed to the Congress, came with passage of the Retirement Act of 1920. Responsibility for administering this act was shared by the Commission and the Bureau of Pensions in the Department of the Interior because the Commission was still viewed primarily as a policing, not a personnel, agency.

The Congress also refused to give the Commission sole responsibility for administering the next major personnel legislation, the Classification Act of 1923, which was to insure equal pay for equal work. A special Personnel Classification Board was established, composed of three representatives, one from the Civil Service Commission, one from the Bureau of Efficiency--an independent agency which reported to the Congress and did efficiency ratings and investigations of the executive branch--and one from the Bureau of the Budget (which had just been created by the Budget and Accounting Act of 1921). Controversy marked the Board's actions throughout its existence; many problems were related to joint Commission and Bureau of the Budget (now the Office of Management and Budget (OMB)) authority, still a factor in personnel policies and operations. A Personnel Classification Board report on the Federal service pointed to lack of coordination and leadership in personnel activities--a theme repeated in many future studies.

The Commission assumed full responsibility for position classification, supervision of efficiency ratings, and operations created by the Retirement Act after the passage of the Economy Act of 1932 and the abolition of the Bureau of Efficiency. According to a Commission report, this transfer of major personnel functions beyond patronage control began modern personnel administration in the Federal Government.

This transfer also began an era of new concerns. Tremendous growth in Federal employment began in the 1930s with new agencies created to meet first depression and then war emergencies. Many of these new agencies were originally excepted from the competitive service, which caused uneasiness over the future of the merit system. There was also increasing concern over management of the executive branch, which led to establishing the President's Committee on Administrative Management (the Brownlow Committee) in 1936. Among Brownlow's major personnel recommendations were to

- extend the merit system upward, outward, and downward to cover all non-policy-determining posts;
- reorganize the civil service system as a part of management under a single responsible administrator, strengthening the Civil Service Commission as a citizen Civil Service Board to serve as a watchdog of the merit system; and
- increase the salaries of key posts throughout the service so that the Government may attract and hold in a career service men and women of the highest ability and character.

Though proposals to extend the merit system were subsequently adopted, the Brownlow recommendations on Commission reorganization were not implemented.

Legislation and Executive orders, however, did greatly strengthen the Commission at this time. Executive orders in 1938 provided that the Commission

"initiate, supervise and enforce a system, as uniform as practicable, for the recruitment, examination, certification, promotion from grade to grade, transfer and reinstatement of employees in the classified service."

Each Federal agency established a division of personnel supervision and management headed by a director of personnel who became a member of a Federal Council of Personnel Administration (a forerunner of the present Interagency Advisory Group).

Attention also returned to the original Commission objective--freedom from political pressure. The Hatch Acts of 1939 and 1940 were passed because patronage was a problem again. Voters' coercion and political participation by Federal employees or State and local employees paid by Federal funds were prohibited. Penalties to be administered by the Commission were severe. The acts also forbade employing individuals who belonged to organizations advocating the violent overthrow of the Government.

Political loyalty as a precondition of Federal employment was set back further by the passage of the Ramspeck Act of 1940, which brought almost all non-policy-determining positions under the civil service. This act also extended the Classification Act to cover the Government field services.

The Commission's role was expanded in 1944 with the passage of what is still considered one of the most important pieces of personnel legislation, the Veteran's Preference Act. Although veterans had some benefits previously, this law redefined and explained their rights assuring preference in hiring and retention in service with additional rights of appeal. In addition to controversy because many considered this law an "invasion" of the merit system, there was--and is--friction because the law gave the Commission the right to evaluate and if necessary overturn certain agency management decisions.

The roles and duties of the Commission were questioned at the time; it was acting as a central personnel agency, but was it? The first Hoover Commission, created to conduct a thorough study of the executive branch, including personnel administration, recommended reorganizing the civil service, transferring operations to the departments and agencies, leaving the Commission only responsibility for setting standards, post-auditing programs, applying sanctions, and considering employee appeals. Important changes resulted from these recommendations: the head of the Civil Service Commission became chairman and was made responsible for administering the Commission's operations; decentralization increased and the impetus was created for a new classification system.

The Classification Act of 1949, with provisions for "supergrades," revisions of pay rates, and consolidation of occupational categories also permitted classification to be delegated to the agencies, a victory in constant agency efforts to retain control over personnel actions.

As the number of Federal employees alternately expanded and contracted with changes from war to peace, additional functions--and controls--were given to the Commission.

Extremely controversial was the loyalty and security investigations program initiated in 1947 by Executive order and revised in 1953. Extremely popular was the initiation of a Government-wide recruiting program for young people,

particularly college graduates interested in a public service career rather than "just a job."

Commission authority over the executive agencies increased with passage of the Performance Rating Act of 1950 which gave the Commission the responsibility for setting standards and approving all Department and agency performance rating plans.

Government and public service groups' interest in personnel management intensified with the growth in Federal employment and Commission duties. The President's Advisory Commission on Management Improvement (the Morgan Commission) met from 1950 to 1952 and made broad policy recommendations on Federal executive branch management problems. The adoption of many previously mentioned Hoover I personnel proposals came from the Morgan group's work as well as from Temple University followup studies.

Another report--"Responsibility For Personnel Management in the Federal Service"--issued in 1952 by the National Capital Chapter, National Civil Service League, suggested, as had other studies, that personnel policy and implementation be legally made a responsibility of the Chief Executive, and that a Bureau of Personnel Management be established in the Executive Office of the President to consolidate all personnel responsibilities and to evaluate the effectiveness of the use of funds appropriated for personnel management.

The Commission was completely reorganized in 1953 to handle new duties which had been added rapidly by both legislation and Executive order. Some changes reflected recommendations from the studies discussed above. Various units and divisions were consolidated and greater authority was delegated to the executive director. Decentralization was stressed, although primarily in details rather than in discretion. Commission monitoring was emphasized and research and planning were given priority. The reorganization attempted to recognize Commission responsibility to plan, execute, control, and inspect Federal personnel practices.

The independent Federal Personnel Council was also abolished in the reorganization of 1953, and the agency personnel directors who had been in this policymaking group became only consultants for policy formation in a new Interagency Advisory Group (IAG) under the executive director of the Commission.

Despite the Commission reorganization, further studies were conducted on the civil service systems and personnel management. The American Assembly, a nonpartisan deliberative forum, met in 1954 to discuss Federal Government service issues such as the organization for personnel management and the merit system. The research papers and final report of the Assembly were important in future personnel changes; for example, in the deliberations of a second Hoover Commission whose task force on personnel proposed detailed personnel management revisions.

Hoover II's report urged decentralization as had other studies, and stressed the need for followup audit and inspection. Other recommendations related to establishing an experienced senior civil service corps and making greater distinctions between career and political appointees.

Still another report (issued by the House Post Office and Civil Service Committee in 1956) produced similar recommendations--that personnel functions be decentralized and inspection and audit by the Commission be expanded. One action taken after this study established staggered 6-year terms for Commission members. Also in the late 1950s the Senate Post Office and Civil Service Committee hired a consultant to conduct a thorough study of Federal personnel. His report recommended creating an independent board of appeals and also reported that the Commission's roles of protecting the merit system's integrity and administering a personnel management system were incompatible. This study's recommendations were the basis for the Clark bill (introduced in 1958 and again in 1959) which would have left merit system "watchdog" responsibilities in the Commission and personnel management administration in an Office of Personnel Management in the Executive Office of the President.

While the studies and reports of the 1950s concentrated on the structure and administration of personnel management, the legislation of the period was primarily focused on improving fringe benefits for Federal employees. The passage of the Annual and Sick Leave Act of 1951, the Government Employees Incentive Awards Act of 1954, the Federal Employees Group Life Insurance Act of 1954, the Federal Employees Health Benefits Act of 1959, and improvements in the Civil

Service Retirement Act of 1956 gave the Commission new operating duties.

The 1958 Government Employees Training Act and a later Executive order gave the Commission responsibility and authority for operating training programs, providing training leadership and guidance, and monitoring agency training programs to improve the efficiency of Federal employees.

Competition with the private sector for well-qualified personnel led to passage of the Federal Salary Reform Act of 1962, which attempted to set Federal employee pay at a level comparable with private enterprise rates. The principle was reinforced by the Federal Pay Comparability Act of 1970 providing for an improved permanent system for setting white collar salaries.

A consultant role for a Federal Employees Pay Council, a group representing employee organizations, was included in the pay legislation. These organizations were growing rapidly, yet no statutory authority existed for dealing with them other than the Lloyd-LaFollette Act of 1912. In January 1962, Executive Order 10988 set up a Government-wide system for union recognition under the direction of the Commission. This was revised and strengthened by Executive Order 11491, and again amended by other Executive orders which opened new areas for collective bargaining.

Besides legislation and Executive orders relating to employee benefits, both Government and public service groups in the 1960s continued to seek ways to increase the efficiency of executive branch personnel operations. Some of these groups and their recommendations were:

- The 1964 Committee for Economic Development report, "Improving Executive Management in the Federal Government," recommended improvements in executive selection, development, and compensation and increased Presidential supervision and control over top management employees.
- The Price (1964), Heineman (1967), and Lindsay (1968) Task Force reports, only recently released to the public, recommended

consolidation of like functions into fewer departments, decentralization of authority, and strengthening management capabilities of the Office of the President.

--The 1965 revisions of the American Assembly 1954 report found few of their earlier major personnel concerns were fully resolved.

--The 1969 Ash Council Report proposed that the Office of Management and Budget be charged with responsibility for advising the President on policies and programs for recruitment, development, and utilization of the men and women who make up the top ranks of the civil service, and that a division of executive development and labor management relations be set up in OMB. These proposals were incorporated in the enacted Reorganization Plan No. 2 of 1970.

Landmark legislation--the Intergovernmental Personnel Act of 1970--gave broad authority to the Commission to administer programs to help State and local governments improve their service through sharing personnel, grants, training programs, and fellowships, and technical assistance for personnel management improvement.

The coordinated Federal Wage System, initiated by Presidential memorandum in 1965, was enacted into law in 1972. The basic policies of the system were set up under this statute, with the Commission establishing the operating policies and procedures within the statutory framework.

In 1972 the Commission's authority and responsibility for equal employment opportunity were put into law. The act placed Federal employees for the first time under the Civil Rights Act of 1964, as amended. The Commission was also given enforcement responsibility for discrimination and power to correct noncompliance.

Other recent laws which require Commission administration are the Freedom of Information Act, the Privacy Act, and the Fair Labor Standards Act Amendments.

Some of the other duties assigned to the Commission in addition to the significant authorities and responsibilities from legislation and Executive orders previously discussed are: youth opportunity programs, manpower planning, manpower information systems, employment of the retarded and

the mentally restored, occupational health, executive personnel management, the Federal Executive Institute, job information service to the public, and assistance in administering the Voting Rights Act of 1965.

Recent studies and reports on Commission organization and duties are discussed in appendix VI.

PERSONNEL MANAGEMENT AUTHORITY AND RESPONSIBILITY

Personnel authority and responsibility are divided among the President, the Congress, OMB, the Commission, the agencies, the Interagency Advisory Group, and the several organizations responsible for labor-management and pay programs.

ROLE OF THE PRESIDENT

The President, under the Constitution and pertinent statutes, has primary responsibility for executive branch personnel management. Presidential concern and support for effective personnel management and merit principles have varied with the times and the interests of the incumbent. Important personnel duties were assigned to OMB by the President under Reorganization Plan No. 2 of 1970; over the past 40 years, however, more and more of the President's personnel responsibilities have been delegated to the Commission.

According to the Federal Personnel Manual (FPM),

"The President, through his staff assistants, through central staff agencies, and through the heads of agencies, performs the following functions:

- Formulation of the executive branch civilian personnel management goals, policies, and programs.
- Recommendation of personnel legislation and appropriation requests to the Congress.
- Provision of leadership to improve the effectiveness and flexibility of personnel management in, and assure its consistency and coordination among, the various executive agencies.
- Prescribing of rules for the practice of the merit principle and system in all phases of Federal personnel management, and for other personnel management matters.

- Making of appointments to key positions authorized by law."

ROLE OF THE CIVIL SERVICE COMMISSION

For almost half of its first 90 years, Commission duties primarily involved administering practical competitive examinations which allowed selection of politically neutral civil servants from among applicants graded highest. Growth during the depression and the war years, in numbers of people and types of jobs covered by the merit system, led to a wide range of personnel programs. Most studies and proposals for the President to better manage the rapidly expanding Government directed their personnel focus toward efficient management rather than merit system principles. But rather than set up a policymaking White House personnel office with operations delegated to the agencies, as was often recommended, Presidents (at times by congressional direction) instead delegated responsibilities as needed to the Commission. Through the addition of these roles, the Commission evolved into, but has never by law or Executive order been formally designated, a central personnel agency. The scope of Commission activities has greatly expanded and now includes setting policy, issuing regulations, giving leadership, guidance, and technical assistance, operating programs, evaluating, monitoring, enforcing and adjudicating.

According to the FPM, the Commission has:

"a. Staff responsibilities:

- The Civil Service Commission is the central personnel agency of the executive branch of the Government. The Commission, as directed or authorized by statute or by order of the President, serves as the personnel management staff agency of the President. In this capacity, the Commission:
 - Executes the many research, planning, development, and evaluation responsibilities delegated to it.
 - Aids the President, as he may request, in the development of the basic rules for the competitive civil service.

- Gives leadership, on behalf of the President, to personnel management operations, coordination, and improvement in the executive branch.
- Develops and makes legislative, policy and program recommendations to the President.

"b. Administrative responsibilities:

- The Commission is charged with the administration of or has administrative responsibilities under a number of statutes. These include provisions relating to the competitive service, the classification of positions under the General Schedule, training, the civil service retirement system, life and health insurance, incentive awards, performance rating, the political activities of Federal employees, and veteran preference. In this capacity, the Commission:
 - Develops and issues the specific goals, policies, programs, standards, regulations, and procedures which are needed to make the laws, as well as Presidential directives, effective.
 - Conducts nationwide examining and recruiting activities.
 - Carries out a number of other important operating activities, such as a suitability investigations and retirement administration.
 - Makes decisions on employee appeals.
 - Delegates, as authorized by law and consistent with good administration, authority to agency heads to act on personnel matters in accordance with appropriate standards.
 - Maintains a system of agency personnel program inspection and classification audit.
 - Advises and assists agencies in developing effective personnel management programs.

"c. Surveillance responsibilities:

--Some statutes and Executive orders delegate authority to act thereunder directly to heads of agencies with the provision that the exercise of these authorities is subject to compliance with standards, requirements, and instructions issued by the Civil Service Commission. The Commission may also have a surveillance responsibility which is exercised through audit, review, and inspection."

ROLES OF FEDERAL DEPARTMENTS AND AGENCIES

As the President increasingly delegated personnel management responsibilities to the Commission, the Commission in turn delegated duties to agencies under its jurisdiction. Most agency personnel director positions and personnel offices were established in 1938, over 50 years after the Commission was founded. It was almost 10 more years (1947) before Executive Order 9830, still in effect today, clearly set out the agencies' personnel accountability. The order allows the Commission to delegate personnel responsibilities to the agencies who (1) in accordance with standards set by the Commission must cooperate with the Commission and (2) may in turn delegate authority to appropriate agency officials. A key point in the Executive order requires the Commission to maintain an adequate inspection system to determine whether agencies are carrying out Commission instructions and to take appropriate action to insure compliance. To monitor personnel actions better, 1969 Presidential instructions require agencies to establish their own evaluation offices.

According to the FPM, the head of the agency, either personally or through subordinate officials to whom he has delegated authority, should perform the following functions:

- Planning, organizing, directing, coordinating, and controlling all personnel management programs conducted within the agency.
- Determining that personnel management programs support the agency's missions, meet the needs of management and employees, and are consistent with the basic goals of Federal personnel management.

- Insuring that personnel management is carried out effectively and efficiently in accord with applicable laws, Executive orders, Presidential policies, regulations, and standards.
- Implementing positively and vigorously the principle of selection and promotion on the basis of ability, merit, and fitness in staffing the agency.
- Managing the activities of his agency in such a manner as to maintain the high reputation of the Federal Government as an employer and contribute to cordial community relations in the localities where it has installations.
- Cooperating with the Civil Service Commission in the planning, development, execution, and review of personnel management matters.

ROLE OF THE CONGRESS

Just as Presidential interest in and support for effective personnel management and merit principles have depended on both the times and the nature of the incumbent, so also has the role of the Congress. Its powers to investigate, legislate, and appropriate have at times been used to closely manage and control and at other times have been of only slight influence in personnel management. The degree of legislative oversight and action in the House and Senate Committees and subcommittees which have jurisdiction over Commission activities has also varied over time. More frequently, other congressional committees have included personnel regulations in general program legislation, often without consulting the Commission. 1/

1/A 1965 American Assembly study of Federal personnel reported that at that time there were more than 1,500 separate statutes affecting personnel, most of them enacted after 1930. In a recent count of statutes in Commission files, it was estimated that approximately 430 statutes affecting personnel have been enacted from 1965 to 1976.

Bernard Rosen, former Executive Director of the Commission, in a 1975 monograph for the House Post Office and Civil Service Committee, writes that when committees other than Post Office and Civil Service initiate personnel legislation,

"* * * Generally, there is little opportunity for the Post Office and Civil Service Committees or the Civil Service Commission to bring their considerable knowledge and expertise to bear in such instances, with the result that some of these legislative initiatives may not be as sound as they should be, and the overall system is more of a patchwork and has less coherence than is desirable."

He recommended consultation on all legislation which impacts on the civil service.

Granting or denying appropriations for personnel functions is one method of control over personnel decisions by other than oversight committees. One example, Public Law 94-439, title II, section 204, states:

"None of the funds contained in this title shall be available for additional permanent positions in the Washington area if the total authorized positions in the Washington area is allowed to exceed the proportion existing at the close of fiscal year 1966."

Other such legislation includes excepting entire new agencies from competitive service and excepting a certain percent of personnel positions. A 1973 report to the Senate Committee on Post Office and Civil Service listed 44 agencies which were completely or in part excepted from the competitive service. These were considered to be the major exceptions of considerable size although there are numerous exceptions in small agencies with fewer than 100 employees as well as small numbers of excepted positions in larger agencies. These agencies cite the need for "flexibility" in recruitment, selection, appointment, and removal as the reason for their original excepted service status and for continuing such status.

Exceptions to the competitive service are discussed in appendix IV.

ROLE OF OMB

OMB has increasingly become involved with personnel duties in recent years. Besides reviewing and clearing legislative proposals which affect the personnel management system, OMB also prescribes and monitors ceilings on personnel and grade controls, defines the manner in which technical and support personnel are contracted and monitors the use of contractors and its resultant effects on federal personnel. Joining the Chairman of the Commission, the Director of OMB participates as the President's agent in the analysis on which the Federal pay comparability principle is based and shares in the decisionmaking on the setting of pay rates under the Federal Pay Comparability Act of 1970.

Reorganization Plan No. 2 of 1970 gave OMB a role in labor management relations and responsibility for advising the President on the development of new programs to recruit, train, motivate, deploy, and evaluate employees in the top civil service levels. Joint action with the Commission and the agencies was to insure that there would be effective executive management forecasting and then utilization.

ROLE OF THE INTERAGENCY ADVISORY GROUP

The Interagency Advisory Group, established in 1954 and composed of top Federal agency personnel officials, is a forum for communication and consultation on personnel management policies and practices. The Executive Director of the Commission is Chairman of this group which forms project committees to study and report on specific issues. IAG succeeds the Federal Personnel Council, which was similar but a policymaking rather than advisory body.

The FPM states that IAG's purpose is to

"encourage the initiation, exchange and development of ideas and proposals on government personnel policies, major projects and program changes affecting Federal agencies personnel management practices."

ROLES OF OTHER GROUPS WITH
PERSONNEL RESPONSIBILITIESRoles in pay

Groups having Federal pay responsibilities include:

- The Prevailing Rate Advisory Committee, which recommends personnel policies and pay for Federal Wage System employees.
- The Federal Employees Pay Council, which recommends white collar pay policy to the President's agent (the Chairman of the Commission and Director of OMB).
- The Advisory Committee on Federal Pay, which reviews the pay recommendations of the President's agent.
- The Commission on Executive, Legislative and Judicial Salaries, which recommends rates of pay to the President after conducting a quadrennial review of pay for Members of Congress and top officials of all branches of Government.

A President's Panel on Federal Compensation, established in 1975, reviewed the many Federal pay systems and the roles of the parties involved in setting Federal pay. Their recommendations, many of which would require new legislation, recognized that while the Prevailing Rate wage-setting process for blue-collar pay is generally working well, controversy exists over the current system for setting white-collar pay, and changes are needed.

Roles in labor-management relations

Federal labor relations programs have evolved in recent years from amendments to Executive orders first issued in 1962. The current Executive order, 11491 as amended, provides for:

- A Federal-Labor Relations Council, composed of the Chairman of the Commission (who is Chairman of the Council), the Secretary of Labor, the Director of OMB, and other officials named by the President to decide major policy issues and make recommendations to the President.

- A Federal Service Impasses Panel, an agency within the Federal Labor Relations Council, to consider and settle negotiation impasses.
- An Assistant Secretary of Labor for Labor Management Relations to supervise elections, decide unfair labor practice complaints, resolve grievability/arbitrability questions, and make appropriate unit determinations for the purpose of exclusive recognition.
- The Federal Mediation and Conciliation Service to provide services and assistance to Federal agencies and labor organizations in resolution of negotiation disputes.

Under the Executive order, the Commission and OMB are to provide policy guidance to the agencies and to periodically review their labor-management operations. The Commission is also to furnish technical advice and information programs for the agencies, and to assist in the development of programs for training agency personnel and management officials in labor-management relations. The Commission and the Department of Labor are to develop programs for the collection and dissemination of information appropriate to the needs of the agencies, organizations, and the public.

ORGANIZATION OF THE COMMISSION

Three Commissioners appointed by the President with the advice and consent of the Senate serve for overlapping 6-year terms. The Commission must be bipartisan; the chairman and the vice chairman, however, are usually members of the same party as the President, and Commissioners may be removed by the President. They decide on and review policy, approve regulations, recommend legislation, monitor political activity, and hear appeals. Reporting directly to the Commissioners are:

- The Office of the General Counsel, which gives legal advice to the Commission and administers and enforces the Hatch Act and the standards of conduct for Federal employees.
- The Federal Employees Appeal Authority (FEAA), which is responsible for providing a one-level appellate decision.
- The Appeals Review Board, which reconsiders certain FEAA decisions and hears certain other types of cases.
- The Federal Executive Institute, which holds residential educational programs for Federal executives.
- The Federal Prevailing Rate Advisory Committee, which advises the Commission on blue collar workers' wages.
- The Administrative Law Judge, who holds formal hearings for the Commission.
- The International Organizations Employees Loyalty Board, which advises on suitability of individuals for international organization employment.

The Executive Director is a career appointee chosen by the Chairman who conducts the day-to-day Commission business. Staff offices which report directly to him are:

- The Assistant Executive Director, who has responsibility for the Offices of Federal Equal Employment Opportunity, the Federal Women's Program, the 16-Point Program for Spanish Speaking Americans, and the Upward Mobility Program.

- The Interagency Advisory Group, which administers a program of communication with personnel directors from all departments and agencies.
- The Office of Administrative Law Judges, which coordinates the Voting rights program with the Justice Department and handles personnel matters for the administrative law judges.
- The Office of Incentive Systems, which assists departments and agencies in operating awards programs.
- The Office of Labor Management Relations, which gives policy guidance and technical assistance to departments and agencies on bargaining with employee unions.
- The Office of Public Affairs.

In 1971, an Executive Planning Group (EPG) made up of a few of the Commission's top career executives, was established as an informal group under the leadership of the Executive Director to insure lateral coordination of policy and program initiatives. EPG does long-range planning and policy studies for the Commission working through task forces and standing committees.

The majority of the Commission's substantive work is done in 10 Bureaus and by 10 regional offices which also report directly to the Executive Director.

The regional offices, conforming with standard regional boundaries, manage a network of area offices, at least one in each State. The regions represent the Commission in the field, carrying out Commission programs and activities in accordance with the standards, policies, and procedures established in the central office. Regional directors, supervised by the Assistant Director for Regional Operations, while receiving program and policy direction from central office bureaus and offices, have broad authority in adapting programs to suit local needs. Attention to personnel problems resulting from Federal agencies' decentralization has given increased emphasis and authority to regional operations.

The following are central office bureaus which carry out the Commission's policies and activities:

- The Bureau of Policies and Standards develops and coordinates Government-wide personnel policies, manages pay systems, designs classification and

qualification standards and testing techniques, and does staff work on the Commission's legislative program. Until 1972 the Bureau was also responsible for policy development, but as the result of a management study, each bureau and staff office now develops policies, regulations, and guidelines for its own programs.

- The Bureau of Recruiting and Examining develops policies for its programs, tests applicants, reviews applications, maintains lists of open positions and qualified applicants, and certifies eligibles for hiring by agencies. This bureau also handles special hiring programs for employees who have lost their jobs because of reduction-in-force actions, the young, the disadvantaged, and the handicapped. The Bureau also advises agencies on their merit promotion plans.
- The Bureau of Executive Personnel works with agencies on executive personnel planning, recruiting, classifying, training, and evaluating. It allocates supergrade and equivalent positions among the agencies and approves qualifications of individuals selected for these positions.
- The Bureau of Personnel Investigations checks on the background and suitability of Federal employees. The nature and extent of the investigation are determined by the sensitivity of the position to be filled. Investigations cover not only security fitness but also information about essential abilities and attributes. The bureau also conducts a Government-wide security appraisal program.
- The Bureau of Training develops and conducts training courses for Federal, State, and local employees, assists agencies in developing and presenting training programs, and publishes training reports, catalogues, manuals, and statistics.
- The Bureau of Retirement, Insurance and Occupational Health plans and operates the civil service retirement system, administers the Federal employees group life insurance program, and negotiates with carriers the rates and benefits for Federal employee health insurance policies. It also is responsible for developing occupational health, alcoholism, and drug

prevention programs and referral services available to Federal employees.

- The Bureau of Manpower Information Services operates a Government-wide computerized personnel information system from which it produces information for the executive branch, the Congress, and the public.
- The Bureau of Personnel Management Evaluation (BPME) works with agencies to determine the effectiveness of their personnel management and their self-evaluation systems. It is responsible for assuring that agencies comply with merit procedures, personnel laws, rules, regulations, and public policy. BPME also decides classification appeals and houses the clearinghouse for productivity and organizational effectiveness.
- The Bureau of Intergovernmental Personnel Programs administers the Intergovernmental Personnel Act passed in 1971 to help State and local governments improve their services. The Bureau provides grants and technical assistance for personnel management improvement and training, arranges personnel interchanges on a temporary basis, and assists in recommendations for meeting merit system standards, as well as other efforts to strengthen State and local governments.
- The Bureau of Management Services handles the Commission's internal management functions. The Bureau is responsible for developing and operating the management-by-objectives planning system, internal personnel management, budget and accounting, and office services. The Office of Management Analysis and Audits conducts internal audits, recommends improvements, and informs the Chairman and the Executive Director about significant findings.

EXCEPTIONS TO THE COMPETITIVE SERVICE

The Civil Service Act required that only a small number of positions in the executive branch be brought under the new merit system. Increased coverage was to be determined by the President with the Commission's advice. While few were willing to challenge merit hiring principles, department and agency heads often resented having their actions restricted and monitored. This caused the system's expansion to be slow. Many jobs were added to the "classified service" (i.e., positions subject to entrance by competitive examination under the Civil Service Law) at the end of a President's term. This "blanketing in" allowed incumbents (who had entered from outside the classified service, often with political clearance) to join the classified ranks which preserved them from replacement by other political appointees with a change in administration.

Increased civil service coverage depended upon the interest and efforts of the Presidents, which presented (and still present) a dilemma; the spoils system must not return, yet the politically faithful must be rewarded. This caused particular problems for presidents such as Theodore Roosevelt, who had been a Civil Service Commissioner before being elected President; Woodrow Wilson, a former Vice President of the National Civil Service Reform League which pressed for a strong merit system, whose party had not been in office for 16 years; and Dwight Eisenhower, who took office after 20 years of opposing party control, during which tremendous growth in Federal employment had taken place resulting from the creation of many new agencies to meet depression and war emergencies. Many of these agencies were originally excepted from the competitive service, temporarily lowering the percentage of covered employees, and were brought into the system under the Ramspeck Act of 1940 which authorized greatly extended Civil Service Commission coverage and jurisdiction. By 1952 over 85 percent of all Government positions were in the classified service. Currently about 93 percent of all Federal civilian positions are under a merit system--of which 62 percent are under civil service jurisdiction.

Unless an executive branch job is specifically excepted by law or by Commission action, it is presumed to be in the competitive service and subject to civil service rules.

The Congress has excepted over 900,000 positions. Included are the U.S. Postal Service (excepted since July 1971), which employs over 20 percent of all Federal employees, most positions in the legislative and judicial

branch, and among others, positions in the Foreign Service, the Tennessee Valley Authority, the Federal Bureau of Investigation, the Atomic Energy Commission, and the Public Health Service Commissioned Corps.

Concerned by the number of separate personnel systems, in 1972 the Senate Committee on Post Office and Civil Service asked the Commission to report on the reasons for the exceptions and whether there was need for continuing the status. The Committee wrote:

"Each time we consider legislation affecting Government employment in general, we must take into account, or make allowances for, different systems without really considering why the differences are necessary."

Excepted agency responses to the Commission's requests for information stressed the importance of flexibility in recruitment, selection, appointment, and removal. The Commission, reporting to the Senate Committee, acknowledged:

"It is to be expected that no agency wants to forego freedom to select, promote, and separate employees according to policy adopted by the agency and come under the policy and procedural restrictions of another agency."

In their concluding comments they said,

"To enable the competitive service to better meet the legitimate needs of agencies, the Commission believes that, from the technical point of view of public personnel management, further modification in the characteristics of the competitive service may generally be considered preferable to the exception of agencies or segments of agencies from the competitive service."

Exemptions granted by administrative action of the Commission are:

- Schedule A, positions other than those of a confidential or policy-determining character for which it is not practical to examine. (This category includes attorneys who are exempted by appropriation acts prohibiting use of funds to examine for attorney positions.)

- Schedule B, which are positions other than those of a confidential or policy-determining character for which it is not practical to hold a competitive examination.
- Schedule C, positions of a confidential or policy-determining character.
- Noncareer executive assignment positions in grades 16, 17, and 18, which involve advocating administration programs and participating in policy determination or advising the President and political appointees.
- Civil Service Rule VIII, which covers overseas positions mostly held by noncitizens.

(See p. 27 for chart on distribution of Federal employees.)

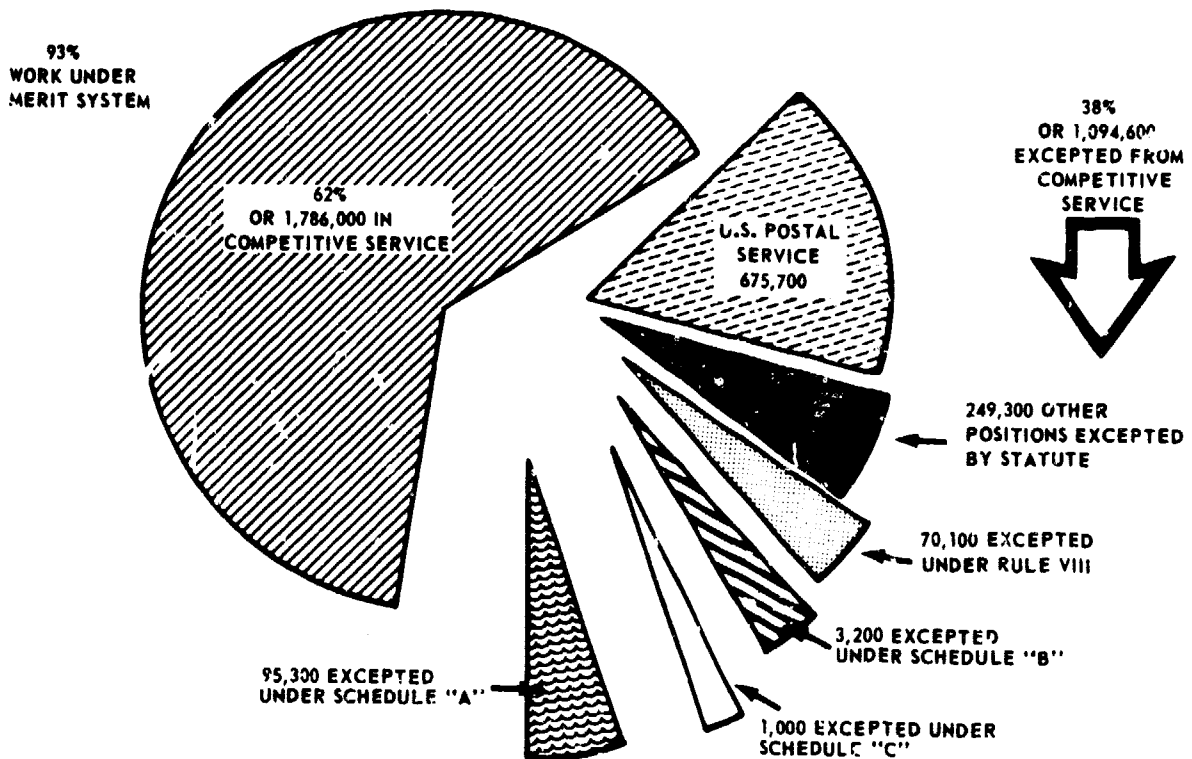
Employees in most excepted merit system agencies and positions, although not in the competitive service, have some assurance of continued employment regardless of changes in political leadership, provided their work is satisfactory. Agreements also exist between various merit systems which permit transfer of employees between systems.

General personnel laws cover varying numbers of employees. For example:

- The Incentive Awards Act of 1954 covers 99 percent of all Federal employees. The 1 percent not covered work for the Tennessee Valley Authority, which has its own incentive system authorized by a different law.
- The 1954 Group Life Insurance Act provides that virtually all nontemporary employees are automatically covered unless they do not want to be included.
- The Retirement Act covers 89 percent of all employees and is the largest of many Federal retirement systems. Social Security covers 10 percent and the Foreign Service Retirement System, the TVA Retirement System, and other systems cover the remaining 1 percent.
- The Annual and Sick Leave Act of 1951 covers 89 percent of all Federal employees; most of the remaining 11 percent receive vacation and sick leave under different laws.

- The Health Benefits Act of 1959 covers 81 percent of all Federal employees with a health benefits program in which participation is voluntary.
- About 69 percent of all Federal employees are covered by the Performance Rating Act of 1950, which requires that employees be given a periodic rating of their performance.
- Fifty-one percent of all Federal employees have their positions classified according to their duties and responsibilities as required by the Classification Act of 1949, as amended.

DISTRIBUTION OF FEDERAL EMPLOYEES
IN THE COMPETITIVE AND EXCEPTED SERVICES
JUNE 1976



MAJOR RECOMMENDATIONS FOR CHANGE

Major recommendations for personnel management change have focused on trends in labor-management relations and the Commission's roles in two areas--merit hiring and the appeals system.

LABOR-MANAGEMENT RELATIONS

As of November 1976, 1,190,478 nonpostal Federal employees (58%) were represented by unions in exclusive bargaining units. Of these, 1,059,663 (52% of nonpostal Federal employees) were under collective bargaining agreements.

Background

In 1883, when the Pendleton Act passed and created the civil service, Federal employees were not unionized with the exception of a few craft and postal workers. Federal employees' legal rights to organize and to petition the Congress were sanctioned in 1912 with the passage of the Lloyd-LaFollette Act. From that time until 1960, union activity centered around promoting legislation, such as the Retirement Act of 1920 and the Classification Act of 1923, to benefit the Federal work force.

Labor unions in the public and private sectors grew rapidly in the 1930s, with Federal unionization increases greatest in jobs that were also most organized in the private sector. During this time, although the Federal Government encouraged, and in fact stated in legislation that "wages, hours, and other terms and conditions of employment should be negotiable between private sector management and unions," organizing Government employees was opposed. One of the strongest advocates of unions in the private sector, President Franklin D. Roosevelt, at one time said,

"The very nature and purposes of government make it impossible for administration officials to represent fully or to bind the employer in mutual discussions with government employee organizations."

This is a view still held by many people.

From 1948 to 1960 bills seeking collective bargaining for Federal employees were introduced in each congressional session; lacking strong Administration support, they never passed. In 1962, on the recommendation of a Task Force on Employee Management Relations in the Federal Service, a

Government-wide policy on relationships between employee organizations and agency management was established under Executive Order 10988. It provided for a decentralized system of bargaining units in each agency under the guidance of the Commission, established standards for several forms of union recognition (exclusive, formal, and informal) and encouraged participation in employee organizations. Again reflecting the recommendations of a Presidential Review Committee on Employee Management Relations in the Federal service, Executive Order 11491 was issued in 1969. This Executive order, still in effect as amended in 1971 by Executive Order 11616 and in 1975 by Executive Order 11838, established a central body, the Federal Labor Relations Council, to administer the program and make final decisions on policy questions and disputed matters. The Federal Mediation and Conciliation Service and the Federal Service Impasses Panel are to resolve negotiation disputes and impasses. By locating policy-setting in the Council, the Commission's role was revised to make its functions those of providing advice, technical assistance, and information services to agencies.

Current status

Under Executive orders, the Federal labor relations program and the scope of collective bargaining have steadily broadened. Government and labor representatives, however, now tend to agree that a need exists for comprehensive legislation to govern this important area of employment.

In his 1975 monograph, former Commission Executive Director Rosen writes that new substantive changes by Executive order are unlikely and a legislative base for labor relations should be considered.

The Commission has supported labor relations administration by Executive order, but former Chairman Hampton, in a 1976 speech, said,

"As far as the Federal service is concerned, the recent changes in the Executive Order, as far as I know now, represent the limits of what can be done by executive action. We can learn more about the problems as a result of these changes, but in the very near future we must face up to the problem that further improvements in the system can only be achieved by legislation."

Several labor relations bills have been introduced and extensive hearings have been held in recent sessions of the Congress. Although personnel operations would not greatly change under some of the bills, other proposals would result in substantial alterations, particularly in the Commission's roles.

Most bills have proposed a Federal Labor Relations Board or Authority which would make determinations on personnel management policies and regulations that relate to more than one agency. The composition, powers, and duties of the proposed administrative authorities vary and its relationship to and impact on existing civil service laws are uncertain. In comments on bills before the House Post Office and Civil Service Committee, the Commission questioned whether the proposals would seriously damage its capability " * * * to function and manage as the central personnel agency of the government and to administer the Civil Service merit principles." Others have noted that labor-management relations programs have already become an "add on." A basic concern of those involved is to insure that a second personnel structure is not superimposed on the existing one, should legislation be enacted.

APPEALS

Background

Shortly after passage of the Civil Service Act, some agencies removed employees for unknown reasons. This often amounted to a return of the "spoils system." To counter these actions, an 1897 Executive order for the first time gave employees the right to know why an action was taken and to appeal in their own defense.

Competitors for employment soon gained an additional right--the right to have their ratings reviewed by an examiner who had not participated in the original markings. A part-time employee of the Commission Examining Division handled all such reviews, but as the number of examinations and competitors increased, appeals were moved to a Chief Examiner's Office; as volume again increased, they were moved to a separate Commission appeals unit.

The 1912 Lloyd-LaFollette Act, in addition to giving employees individually and collectively the right to petition the Congress and to belong to unions, also required that agencies give written notice of reasons and time for an answer if an employee was to be fired. This legislation

created job retention appeals channels in each agency.

The Commission, in the 1920s, organized the Division of Investigations and Review, which held the major functions of appeals and investigations. Its appellate jurisdiction extended to examination matters only. No formally established appellate body in the Commission considered other complaints until the 1940s.

In 1944, the Veterans' Preference Act established the right of veterans to appeal removals and certain other adverse actions by the hiring agency to the Commission. The next major appeals change, Executive Order 10987 of January 17, 1962, established broad guidelines for appeals systems within individual agencies and under Commission regulations. Non-veterans were given rights of appeal to the Commission equivalent to veterans in the companion Executive Order 10988 of the same date, and carried through in its successor Executive Order 11491 of October 29, 1969.

Questions on the placement and handling of Commission quasi-judicial functions led to studies in 1972 and 1973 by the Administrative Conference of the United States, GAO, and the Nader Public Interest Research Group. At the same time, the Commission conducted its own study resulting in the establishment of the Federal Employee Appeals Authority (FEAA) in 1974. This group reports directly to the Commissioners, as does the Appeals Review Board, which considers requests, under specific limited criteria, to reopen cases decided by the FEAA.

Current status

Our recent letter to former Chairman Hampton listed more than 20 types of actions and decisions appealable under separate statutory procedures. Our discussions with agency officials and employee representatives indicated that the statutory appeals process is generally perceived to be overly complicated and needs change. The letter to the former Chairman further stated,

"In spite of actions taken by the Commission in recent years to improve the appellate process, the objectivity and independence of the program are often questioned. Whether rightly or wrongly, the appeals program is frequently viewed as management oriented.

"Union representatives generally would prefer that all matters be subject to negotiated grievance procedures

and arbitration which is viewed as a fast, fair and impartial third party review process.

"As you know, proposed labor relations legislation would make it possible to process matters not subject to statutory appeal procedures under negotiated grievance systems. Those employees not covered by a negotiated procedure presumably could still use the statutory appeal procedures."

Other recent studies and hearings have also discussed removing the appeals process from the Commission. Former Commission Executive Director Rosen sees no need to separate the Commission's roles in appeals from its other responsibilities and believes that the FEAA and the Appeals Review Board, within the Commission and responsible to the Commissioners, have enough independence.

The proposed Civil Service Amendments of 1976 (H.R. 12080) included provisions removing certain kinds of appeals from the Commission. Testifying on the provision:

- Then-Chairman Hampton supported the objective of greater independence to appeals but urged it be achieved by establishing a statutory board within the Commission to adjudicate all appeals rather than only the few types mentioned in the bill.
- The President of the International Personnel Management Association agreed with former Chairman Hampton and suggested that the Commission's technical expertise would not be available to an independent board.
- The President of the American Federation of Government Employees proposed two new juridical Commissioners who, together with the Commission Chairman, would serve as an administrative court for all Federal personnel matters.
- The National Federation of Federal Employees strongly supported removing appeals from the Commission to prevent "the judge from also being a juror."
- The National Academy of Public Administration representative urged consideration of establishing a new and separate agency for the monitoring, investigating, and adjudicating functions, but added that this proposed change

"would constitute only a rather small and partial response to the very great problems which confront the U.S. Civil Service and the administration of personnel activities. Further, there is some danger that establishment of such a board at this time might be construed as the total and only organizational change that is desirable thus inhibiting further study and consideration."

--National Civil Service League officers, while believing that credible appeals function performance stands in considerable tension with the Commission's role as the President's personnel administrator, urged a more thorough evaluation of the Federal personnel system before creating a new appeals board.

An independent Personnel Review Board to adjudicate appeals was proposed in a draft bill written in accordance with consensus reached at a Bureaucrat Magazine symposium called to discuss needed improvements in the present personnel systems.

MERIT HIRING

Recent merit system investigations and recommendations for personnel systems changes were directed primarily toward abuses in competitive service Federal hiring. Because the questions raised in connection with recruiting procedures--basically the roles and relationship of the Commission and of the agencies--were typical of those raised in other functional areas, only recruiting problems are covered here.

RECRUITING FOR THE COMPETITIVE SERVICE

Background

The merit system of 1883 was created to neutralize the effects of the spoils system. Minimal standards were developed which allowed for a selective effort but no positive recruitment. Vacancies were announced and more than enough applicants presented themselves. Public employees varied in ages and backgrounds. Apportionment provisions in the law assured wide geographical distribution.

The first need for large numbers and specific types of employees came at the start of World War I, and recruiting rules were relaxed to meet the emergency. Procedures were

again modified and recruiting efforts redirected to accommodate the Government needs during the depression. Recruiting in the 1930s also changed to attempt to attract the "intellectually elite." The first junior professional and managerial examination came at this time to bring college graduates into the Government.

A great demand for public service employees during World War II required that the Commission institute new recruiting methods for all types of employees. Commission authority to handle increased war recruiting activity was in turn delegated to its regional offices and to agency headquarters and regional offices.

Agencies continued some separate recruiting activities after World War II with the Commission expanding efforts to attract special groups--particularly college students, upper-level candidates, and professional and scientific personnel. Centralized Commission control over registers, certification, and the "rule of three" procedures which had been relaxed were brought back. Operating agency officials, accustomed to exercising discretion in recruiting and hiring, were allowed to handle primarily procedural details and this led to increasing unhappiness.

The Korean War created a need to expand civilian personnel again. Broad agency appointing authority was reinstated, primarily by the Defense agencies. One major difference from past wartime easing of regulations was the adoption of the Whitten amendment limiting the size of the permanent competitive service. Those recruited were hired under temporary appointments and many later had to leave the service under a reduction in force. To stabilize the career service during expansion and contraction, the Whitten amendment was modified in 1954 and a career conditional system was set up which remains in effect.

Two other recruiting changes took place about this time. Agency recruiters under the Commission leadership visited college campuses and urged students to apply for Government service, and a new examination, the Federal Service Entrance Examination (FSEE), which consolidated over 100 different examinations into one, was introduced. To attract engineers, physical scientists, and others in demand occupations, the Commission was allowed to set some pay rates above the minimum.

The Bureau of Recruiting and Examining was established in 1961 and a nationwide network of area offices was set up to improve recruiting and examining practices. Services

offered included job information centers and automated procedures which gave any person from any section of the country a chance to apply for a Federal job. Other recruitment changes resulted from equal employment opportunity laws. Affirmative action goals required more positive recruitment of minorities and women. New testing ideas led to the Professional and Administrative Career Examination (PACE), which recently replaced the FSEE as the primary method of Federal service entry for college graduates. The examination is intended to better identify abilities needed for successful performance on a wider range of entry jobs.

Current status

In recruitment as in other functional areas, the Commission has many roles. It issues recruiting guidelines, gives recruiting advice and technical assistance, operates a nationwide network of Federal Job Information Centers and toll-free wide-area telephone services, and processes applicant information under a new System of Comprehensive Operations for Recruiting and Examining. The Commission also monitors and evaluates agency recruiting, enforces recruiting regulations, and adjudicates recruiting decisions when there are problems.

Interagency recruiting councils coordinate campus visits, conduct training workshops for new recruiters, and inform agencies of recruiting and hiring trends. Because the Commission and agencies are "partners" under civil service recruitment guidelines, many roles are duplicated by agency personnel offices.

Agency managers establish long- and short-term staffing requirements, and report projected needs to the Commission under the Managed Approach to Recruiting program. Agencies are also authorized to recruit to carry out staffing plans. Agency recruits must meet Commission requirements, be listed on a Commission register, and be certified eligible in rank order before they can be hired. Agencies "recruit" without using Commission registers under merit promotion plans and are allowed, in cases of great shortage or under the "quality approach" (i.e., the case of an extremely talented person) to hire a recruit without going through the registers.

Other employees may be recruited without competing with applicants on Commission registers if they entered Federal service in agencies excepted from competitive examining procedures, provided the Commission has, by agreement, recognized that particular agency's merit system as compatible with that of the Federal service generally. Excepted agencies cite recruiting flexibilities as a great advantage in hiring well-qualified candidates for Federal jobs.

Executive development programs which are geared to recruiting and preparing employees for top jobs are partially an OMB responsibility. OMB's job is to develop new programs to recruit for the upper ranks of the civil service. OMB also influences recruiting in setting manpower ceilings and imposing budget limitations.

Reactions to recently exposed merit system abuses led to a wide range of recommendations to improve recruiting (and hiring) processes and to prevent further political incursions into the career systems. Suggested changes have included giving major responsibilities to the Commission, hoping to insure wide recruiting; retaining the present partnership with minor modifications and controls; and giving agencies complete recruiting authority including direct-hire responsibility, with safeguards to insure the application of sound merit principles.

In response to the recommendations of the Sharon Merit Staffing Review Team report, the Commission has recently made some changes in recruiting. The new procedures instruct Commission offices to

"--coordinate closely with hiring agencies in developing plans for additional publicity and recruitment as needed, with a view toward assuring optimum results for the resources expended, including assurance that positive efforts are made to tap likely sources of minority and women applicants; and

"--waive requirements for additional publicity and issue recruiting or direct-hire authorities in cases where specific publicity within the preceding 6 months sufficient to assure adequate public notice has failed to produce a sufficient supply of well-qualified candidates."

A 1976 Federal personnel directors' conference discussing procedures questioned whether a practical division of recruiting might be to make the Commission responsible for recruitment publicity and the agencies responsible for all actual onsite recruitment. The conference discussion paper states, "If recruiting or direct-hire authorities were authorized, these could enhance the tools agency recruiters have at their disposal."

Mr. Rosen, in his monograph, proposed

"* * * requiring that the Job Information Centers system be used as an integral part of the recruiting process for all positions in the competitive service and for those positions excepted from the competitive service by statute whose incumbents are permitted by the Commission to transfer into the service without competitive examination."

Former Commission Vice-Chairman Sheldon, in a recent speech, urged redefining Commission-agency roles and developing more effective coordination. She suggested changes in "name request" procedures, saying,

"Once agency officials have spent their time and money on recruiting, they cannot reasonably be expected to remain neutral in trying to get their candidate certified and appointed. Public personnel policy ought to be compatible with the realities of human behavior." 1/

She proposed to use name request procedures only when the Commission has authorized agency recruitment under criteria which clearly indicates a need for direct agency involvement.

The Commisison's Bureau of Recruiting and Examining is now conducting a long-range study on recruiting.

1/Through the 3rd quarter of fiscal year 1976, 53 percent of all mid-level and 73.9 percent of the senior-level selections were through name request recruiting and certification procedures.

RECENT REPORTS AND STUDIES

The Sharon Merit Staffing Review Team Report, a Commission self-inquiry which examined problems directly related to Commission and agency staffing procedures, recommended revisions in day-to-day Commission operations and practices to remedy political incursions into merit hiring. The Commission has tightened some procedures, as recommended by task forces set up to act on the Sharon report, by revising staffing operations, monitoring and evaluating Commission and agency practices closer, and initiating further study of some issues. Additional changes which require action by the Commissioners or legislation are expected. Although the original Commission response to the Sharon report acknowledged that some of the problems resulted from emphasis on their consultant role and deemphasis of their policeman role, the question of whether these two roles are compatible was not addressed. Very few of the Sharon task force proposals require changes in Commission organization.

A 1976 speech by former Chairman Hampton suggested it may be time for a "complete reassessment of what the Civil Service Commission should be." He said:

"About the Civil Service Commission itself--the Commission is continually being called upon to perform a variety of roles, some of which are unrelated to our basic mission. The CSC is viewed by some as having authorities and responsibilities it does not have, and it is viewed by others as exercising authorities they do not believe we do have. There is controversy about having both an enforcement role and a judicial role. Additionally, there is controversy about having both a personnel advisory function as well as an enforcement function.

"The Commission is viewed by some as not having enough independence and by others as having too much independence. In between various assumptions, too many people want us to have roles and functions that do not fall into any particular mold but, from my point of view, there needs to be a complete reassessment of what the Civil Service Commission should be. I would hope that in the near future there would be an effort to examine all sides of these issues."

A "thorough appraisal of the organization for executive branch personnel administration" was conducted in 1975 by Bernard Rosen, former Commission Executive Director, at the

request of the House Post Office and Civil Service Committee. He concludes, in a monograph written for the Committee, that:

- The merit system is serving the people well.
- The Commission, in its present state, would provide a sound legal and organizational structure for dealing with Federal personnel management if it had greater and direct enforcement authority, direct responsibility to the President, increased accountability to the Congress, greater professional independence, and necessary resources.
- The Commission's many roles, particularly the two which have often been called inherently conflicting-- protector of the merit system and leader in personnel management--not only do not conflict but are mutually supportive.

Under Mr. Rosen's legislative proposals for a Civil Service Reform Act, the structure of the Commission would remain as it is but the relationships to the President, OMB, the Congress, and to both excepted agencies and those under Commission jurisdiction would be changed. He urged legislation which would:

- Remove OMB's personnel functions stemming from Reorganization Plan No. 2 of 1970 and clarify the Commission's role as the central personnel agency (a role not now assigned by legislation). He cited problems with OMB which he believes weaken the professional independence of the Commission.
- Require the Commission to present its views and its budget and ceiling requests not only to the President and OMB but also directly to appropriate congressional committees.
- Change the Commissioners' terms of appointment--their length, salaries, and the power to remove them.
- Broaden Commission authority and responsibility for some areas over all executive branch personnel.
- Strengthen the Commission's roles in oversight of merit system integrity.
- Broaden the scope of collective bargaining creating a statutory base for labor relations.

He concludes that the appeals system (the Federal Employees Appeals Authority and the Appeals Review Board instituted in 1974) appears to have earned the confidence of appellants and agency officials, and makes no recommendation for change in that area.

No bill has yet been written to implement Mr. Rosen's specific recommendations.

One bill, the Civil Service Amendments of 1976 (H.R. 12080, later amended as H.R. 13891) resulted from 1975-76 House Post Office and Civil Service Committee hearings and investigation of the merit system. This bill proposed to remove one role from the Commission--its quasi-judicial role in certain appeals. It strengthened the Commission's regulatory and enforcement role by putting into law authority now derived from Executive orders.

The bill would not only have changed some of the Commission's roles but also suggested changes in relationships although somewhat different from those suggested by Mr. Rosen. It transferred certain authorities for regulating the merit system from the President to the Commission. The intent of this provision, as described by Chairman Henderson, was as Mr. Rosen's, to avoid having the Commission "go through any President's agency like OMB to get those rules and regulations cleared for implementation."

In some other shifts in relationships, the bill assigned responsibility for personnel management to agency heads, assigned merit system compliance responsibility to agency personnel directors, who would report directly to the agency head, and gave agency heads rather than the Commission authority to approve qualifications of their candidates for noncareer executive assignments. The bill, which was never reported out of committee, did not include changes in labor management relations. The same committee did, however, have other bills before it on that subject.

Hearings on H.R. 12080 brought out several other plans for reorganization of Federal personnel management.

The American Federation of Government Employees (AFGE) testified on a plan they had proposed earlier which called for a five-member Commission with two separate groups of two Commissioners of equal rank, each group sharing the Commission Chairman as a member. One group, chosen on a nonpartisan basis, would have two juridical members, and they, with the Chairman, would deal exclusively with judicial matters.

The other co-equal body, composed of the Chairman plus two members, would be chosen on a bipartisan basis as is done at present and would handle administrative-legislative matters much as the Commission does today. AFGE also strongly urged removing personnel authority from OMB.

The International Personnel Management Association (IPMA) also testified at hearings on H.R. 12080 on possible personnel systems changes. IPMA's president suggested that the erosion of the merit system was not necessarily the result of an unworkable system but rather the malfunctioning of the system. She recommended that the Commission retain its many roles but that merit safeguards be strengthened. IPMA, most of whose members are personnel specialists, also recommended that agency personnel directors report directly to agency heads--increasing the top management's responsibility for personnel management--and that the appeals process be simplified and improved by vesting appeals authority in one body, with that body retained in the Commission.

The National Civil Service League, testifying on H.R. 12080, suggested a far-reaching examination of the existing personnel systems but also offered a tentative proposal for further study: placing personnel management functions under a single head in the Executive Office of the President and assigning investigative, ombudsman, and appeal functions to a separate agency. This proposal has been studied by past commissions, and has had support from public administration groups. According to League testimony, a central personnel department unambiguously within the executive branch reflects the League's basic conviction that merit lies in allowing the Executive and his managers to fully exercise their executive and managerial powers and responsibilities. Recognizing recent serious abuses of executive power, the League said they perhaps resulted from inflexibilities of the system, and thus, despite the abuses, flexibility within its legitimate limits is still called for.

A National Academy of Public Administration panel, reporting to the Senate Select Watergate Committee in 1974, recommended that "appropriate bodies in the Congress conduct or advocate and support a thorough and comprehensive study of the Federal Civil Service and consider and act upon the recommendations which it produces."

National Academy members did not present a specific model for change when testifying on H.R. 12080, but said that the bill constituted only a small and partial response to the very great problems which confront the civil service and the

administration of personnel activities. They feared that changes made under the bill might be construed as the total and only desirable organizational changes, and thus inhibit further study and consideration. They urged that action on the bill be delayed pending reexamination of the whole personnel system.

A 1976 National Academy of Public Administration panel report on reorganization of the executive branch again recommended a thorough reexamination of the Federal personnel systems.

Two other recent reports are:

- The Blueprint for Civil Service Reform, a report by the Fund for Constitutional Government (a group supported by a foundation active in liberal causes), proposes revisions in both Commission procedures and structure. In addition to recommending that the Commission and the Congress study ways to tighten or eliminate civil service loopholes, the report recommends removing merit system policing functions from the Commission, claiming, contrary to Mr. Rosen's monograph statement, that enforcement clashes with personnel management duties. This study also proposes a new judicial body to deal with merit system violations. The report does not discuss whether other employee appeals would be brought to the proposed new body.
- An informal draft bill to "strengthen the protection and management of the Federal merit system" was proposed as a followup to a Bureaucrat Magazine symposium on the Federal service. Fourteen persons participated, all but one of whom had served in the Federal Government in both career and noncareer positions. The draft bill, similar to the Clark bill of 1958, provided for (1) a Personnel Review Board to audit administration of civilian personnel laws and regulations and to hear appeals, and (2) an Office of Personnel Management in the Executive Office of the President to handle the present duties of the Civil Service Commission with the exception of the appeals functions which are transferred to the Board.