



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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The Honorable James M. Frey  
Assistant Director for Legislative  
Reference  
Office of Management and Budget  
Executive Office of the President

Dear Mr. Frey:

This responds to your request by Legislative Referral Memorandum dated February 6, 1978, for our views on the Civil Service Commission's draft bill, "Comprehensive Civil Service Reform Act."

The limited time available has precluded us from thoroughly analyzing and reaching a final position at this point on the many areas involved. Consequently, the views we express here are somewhat general and tentative in nature and subject to modification upon a more comprehensive review of the material you submitted. We expect to offer more detailed comments in subsequent stages of the legislative process.

We can, however, state at this time that, while we have reservations concerning their implementation, we favor in principle many of the concepts embodied in the proposed reorganization plan and bill. These include provisions covering the separation of the personnel management functions from the appellate and merit enforcement functions, changes in the adverse action and appeal procedures, a revised performance appraisal system, more flexible selection procedures and the greater delegation of authority to the agencies, modification of veterans preference, the Senior Executive Service, and pay for performance.

In connection with the separation of functions we note that considerable effort has been made to ensure the independence of the members of the Merit Systems Protection Board (Board) and the Special Counsel by establishing terms of office and limited grounds for removal of these officers. We support the principle of an independent Special Counsel and Board, but we have some doubts as to the achievement of this independence as between the Board and the Office of Personnel Management (OPM) in light of

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several provisions dealing with their relationship. To be specific, there is some danger that OPM will be in a position to exercise undue influence over the Board if OPM has the right to request that the Board reconsider any decision which OPM believes to be based on an erroneous interpretation of law or regulation or to obtain judicial review of certain Board decisions in the United States Court of Appeals. We recognize the obvious need for open communication between OPM and the Board, but we believe that the above provisions could undermine the concept of finality in the determinations of the Board. Additionally, we question the wisdom of attempting to use the courts to settle disagreements within the Executive branch.

With regard to the Senior Executive Service, while we have certain reservations which we still have under consideration, we agree in principle with the concept. It is not clear, however, whether section 414 of the draft bill would repeal 5 U.S.C. § 5108 (1976), the existing authority for supergrade positions. Thus, section 414 could be construed as repealing the authority for the 90 supergrade positions authorized for the General Accounting Office (GAO) by 5 U.S.C. § 5108(c)(1) (1976) and other similar higher level positions specifically authorized by law for GAO, e.g., 31 U.S.C. § 52b (1976). We believe that it is entirely inappropriate that the Executive branch have authority to allocate the number of such positions within the GAO. Accordingly, we suggest that provision be made to preserve existing GAO authority for supergrades, Executive level positions, and other similar higher level positions specifically authorized by law for GAO.

As another general observation, we find the language of the proposed bill dealing with its coverage somewhat confusing and, at least at first blush, appearing to contain some inconsistencies. For example, coverage is described in various places as "the competitive service and the Executive branch" yet in the proposed new section 201 of title 5, United States Code, coverage is defined as: "(1) an Executive agency as defined in section 105 of this title; (2) the Administrative Office of the United States Courts; (3) the Library of Congress; (4) the Botanic Garden; (5) the Government Printing Office; (6) the Office of the Architect of the Capitol; (7) United States Postal Service; and (8) Postal Rate Commission." Some of these agencies, such as the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, are not in the Executive branch and it is our understanding that they have no positions in the competitive service. While we recognize that some differences in coverage

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among the various provisions are intended, we believe that there is a need for more clarity and consistency in the language describing which employees, positions, and agencies are subject to which provisions.

One other matter of particular concern to us is the proposed language concerning GAO's role in auditing personnel practices and policies. The new section 205 of title 5, United States Code, proposed by the bill may be susceptible of misinterpretation in its present form which is as follows:

"On a continuing basis, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, Executive orders and directives, rules, and regulations governing employment in the Executive branch and in the competitive service and to assess the effectiveness and systemic soundness of Federal personnel management."

We suggest that "On a continuing basis" in the first line of this section be deleted and that "As requested by the Congress or as deemed necessary by the Comptroller General" be substituted therefor. This would make clear that the function of GAO is to assist in congressional oversight and that the Executive branch is not in any way relieved of its responsibility for reviewing, evaluating, and improving personnel management or for investigating and correcting deficiencies therein. As elsewhere, GAO's role is more properly one of overseeing the working of the program, rather than intervening on a case-by-case basis.

Sincerely yours,

SIGNED ELMER B. STAATS

Comptroller General  
of the United States