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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-202713

MAY 27, 1981

The Honorable Donald J. Devine
Director, Office of Personnel
Management



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Dear Dr. Devine:

Subject: [Personnel Conversions During Presidential
Transition: Improved Monitoring Needed]
(FPCD-81-51)

The Office of Personnel Management (OPM) investigated 43 conversions 1/ processed during the recently completed Presidential transition period. These investigations, conducted at 3 agencies, led OPM to conclude that in these 43 conversion cases, 13 employees were improperly converted to positions in the competitive service.

We have reviewed conversion actions in four other agencies to determine if any of these agencies' employees were improperly converted during the Presidential transition period. While we did not find any cases of improper conversions, we did find that in each of these agencies, some attempts were made to improperly convert excepted employees to the competitive service during the transition period. We also found that these attempts were prevented because OPM and/or the involved agencies were able to monitor the conversion actions.

OPM's investigations and our review indicate that the Presidential transition period provides an opportunity for improper conversion and that OPM, by properly monitoring these conversion actions during this period, can insure that the "competitive" process is not disregarded.

1/Conversion, as used in this report, refers to the process in which an employee is converted from a position in the excepted service to a position in the competitive service.

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OBJECTIVES, SCOPE, AND METHODOLOGY

We selected for our review the Federal Trade Commission, (FTC), Small Business Administration (SBA), Department of Agriculture (USDA), and the Department of Transportation (DOT) because these agencies provide a cross section of personnel operations in the executive branch. Using personnel records, interviews with agency officials, and other documentation, we reviewed the conversion actions affecting these agencies' employees during November 4, 1980, to January 20, 1981. In addition, we looked at the steps taken by OPM and the Merit Systems Protection Board to monitor the conversion of employees during the transition and discussed conversions with officials from these two agencies. We also discussed the results of our work with OPM officials and considered their views in preparing this report.

We reviewed these conversions to determine (1) the extent to which employees in these selected agencies were moved into the competitive service, (2) how many employees were improperly converted, and (3) the actions taken by OPM and agencies we reviewed to insure that such appointments to competitive service positions were proper.

BACKGROUND

Federal statute, Executive order, or OPM regulations except certain positions from the competitive civil service. These excepted service positions include:

- Positions which require advocating the current administration's policies (noncareer Executive Assignment and noncareer Senior Executive Service).
- Positions which necessitate a confidential or policy-determining relationship between the incumbent and an administration official (noncareer Executive Assignment and Schedule C).
- Positions for which an examination of any kind is not practicable and which do not require confidentiality or policy determination (Schedule A).
- Positions for which open competitive examinations are impracticable, but are subject to basic qualification standards (Schedule B).

Employees in noncareer Executive Assignment, noncareer Senior Executive Service, and Schedule C appointments may be removed at the discretion of the Administration because they are excepted from the regulations governing the competitive service. 1/ Employees in the competitive service, however, are protected by laws and regulations which prohibit any personnel action based on factors other than job performance.

An excepted employee may legitimately be appointed to a competitive service position in one of the following ways:

- Appointment or reinstatement through a competitive selection process in accordance with the agency's merit promotion procedures.
- Reinstatement noncompetitively into the competitive service if the employee had a competitive service appointment before entering the excepted service.
- Noncompetitive appointment of former legislative branch employees under provisions of the Ramspeck Act of 1940.
- Noncompetitive appointment of former White House staff who meet certain requirements.

Further, these appointments in the competitive service must be to bonafide vacancies, and vacancies must not be announced solely to convert an excepted employee.

The difference between these two types of positions is particularly significant during periods of Presidential transition. At this time, individuals who were appointed to excepted positions because they advocated or supported the policy of the outgoing administration may improperly "burrow into" the competitive service.

1/Schedule A and B appointees can generally be removed without regard to civil service rules and regulations. However, if such employees are veterans with at least 1 year of current continuous service, or have previously served in competitive positions, their removal must be in accordance with certain prescribed procedures.

OPM OVERSIGHT DURING ELECTION YEAR 1980

The Civil Service Reform Act of 1978 permits OPM to delegate to agencies, in whole or in part, examining 1/ authority for positions in the competitive service. OPM may give an agency the authority to examine for occupations for which they are the sole or predominant employer, or in exceptional situations where delegation is in the interest of economy and efficiency. Examining authority allows an agency to establish its own list of eligible applicants. Delegated, examining authority has been granted, in varying degrees, to 684 agency personnel offices.

Agencies which do not have examining authority must request a list of eligible applicants from OPM. The agencies may request that OPM issue an open certificate (which lists the best qualified applicants) drawn from OPM's registers, or they may also request a certified applicant by name.

On January 4, 1980, OPM issued Federal Personnel Manual (FPM) Bulletin 273-18 which reminded agencies of their responsibility to insure that all appointments are based on merit. Agencies were reminded to carefully monitor actions which would move individuals from excepted to competitive positions.

During the year, OPM's Washington Area Office and Office of Staffing Services issued memoranda which re-emphasized the importance of FPM Bulletin 273-18. They required that the files supporting the conversion of excepted employees be well documented, that there be full and open competition for competitive vacancies, and that only bona-fide vacancies be filled.

OPM's Washington Area Office established a review and clearance process to certify conversion requests made by agencies not having examining authority. The process includes identifying (1) the appointing authority for the candidate's present excepted position, (2) the relationship of the candidate's current position to the proposed position, (3) how the candidate was identified for the competitive service position, (4) who the selecting official was, and

1/Examining is the process of measuring, in a practical and suitable manner, the qualifications of applicants for employment in the Federal service.

(5) whether the agency would accept a certificate even if the requested candidate was not within reach. This process enables an OPM personnel specialist to review the certification request and to recommend processing or cancelling it. The Office of Staffing Services (in Operations Letter Number 330-243) suggested that a review and clearance process be established in each OPM regional office.

OPM's INVESTIGATIONS

OPM began investigating conversion actions in three selected agencies as a result of allegations of improprieties. At these agencies, OPM reviewed 43 conversions and concluded that 13 were improper. Most of the 43 conversions involved noncompetitive reinstatement of employees who had prior competitive service, or movement of employees from one excepted position to another. These actions do not require prior OPM approval. A summary of OPM's findings at each agency follows.

U.S. Commission on Civil Rights

OPM's investigation at the Commission focused on five cases. The investigation showed that in three instances, excepted service employees were improperly converted to competitive service positions: Two Schedule C employees and one Senior Executive Service Limited Emergency appointee were noncompetitively reinstated to higher graded positions than they had previously held. Employees may be noncompetitively reinstated to a competitive service position but not at a grade level higher than they had previously held in the competitive service. Commission officials acknowledged the impropriety of the conversions and have taken action to reinstate the individuals to positions at the appropriate grade levels.

Department of Education

OPM's reports to the Department of Education discussed 12 attempts to convert excepted employees to positions in the competitive service. These 12 attempts involved 7 experts or consultants, 2 Schedule C employees, 1 Senior Executive Service employee, 1 legislative branch employee, and 1 public law appointee. The reports stated that it appeared that attempts were made to place specific individuals rather than to fill specific positions. As a result of the investigation, the Department of Education cancelled the improper

conversions of one employee, withdrew or cancelled certification requests for four employees, and made no further attempts to convert seven employees.

Equal Employment Opportunity
Commission (EEOC)

OPM analysts reviewed 26 cases at EEOC and concluded that the agency improperly converted 9 excepted employees to positions in the competitive service or to less vulnerable positions in the excepted service. Seven of these were converted on election day (November 4, 1980) or within the following week. Among other things, OPM pointed out that EEOC prepared position descriptions and notifications of personnel actions on or after the effective date of the conversion actions. The report also indicated that two cases appeared to violate civil service requirements. The report was also forwarded to the Merit Systems Protection Board for appropriate action.

EEOC's response to the report was to take corrective action in three cases. The agency disagreed with OPM's findings in the other six cases. As of April 10, 1981, these cases had not been resolved by any of the involved parties.

OUR REVIEW OF CONVERSION CASES

During our limited review at DOT, USDA, FTC, and SBA, we did not find any questionable conversions that were approved by the agencies. We identified 43 attempts to convert excepted service employees to the competitive service during the transition period. Thirty-four of these were approved, five were denied because they were improper, and four were pending at the time of our review. Among the reasons for denying these conversions were attempts to (1) place an employee in a higher graded position than the employee was entitled to and (2) convert a particular employee rather than fill a bonafide vacancy.

The four agencies we visited had established procedures which required that potential conversion actions be reviewed by their central personnel offices. Generally, these guidelines applied to excepted employees who competitively or noncompetitively applied for positions in the competitive service.

REPORTING SYSTEM CONTEMPLATED BY OPM
WOULD HAVE PROVIDED BETTER MONITORING

OPM officials stated that they did not know the total number of conversions from excepted to competitive positions during the transition period because many personnel actions were approved at the agency level without OPM review. The Associate Director of OPM's Agency Relations Group advised us that OPM had planned to require that all agencies make weekly reports of conversion activity during the transition period, but that this reporting system was not approved by OPM.

CONCLUSION

OPM's investigations and our limited review indicate that the recent transition period triggered a number of attempts to improperly convert excepted service employees. Further, OPM's finding that 13, or 30 percent, of the 43 conversion cases it reviewed were improper suggests that during transition other agencies may be improperly converting excepted employees. OPM's plans to require weekly reports on conversion actions during the transition period would have certainly enabled OPM to better oversee Government-wide conversion activity. We believe highly visible procedures for monitoring conversion actions would have been very useful during the transition period.

RECOMMENDATIONS

We recommend that the Director, OPM:


- Require agencies to report to OPM the total number of conversions from excepted to competitive positions made during the 1980 transition period.
- Review these conversions, as appropriate, to insure that the actions were proper.
- Provide, during future transition periods, more comprehensive monitoring of the conversions of excepted service employees to competitive positions.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations. This written statement must be submitted to the

House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report. A written statement must also be submitted to the House and Senate Committees on Appropriations with an agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Director, Office of Management and Budget; the Chairmen, House Committee on Government Operations and Senate Committee on Governmental Affairs; the Chairman, House Committee on Post Office and Civil Service; and the Chairwoman, Subcommittee on Civil Service.

Sincerely yours,


Clifford I. Gould
Director