

GAO

Report to the Chairman, Subcommittee
on Civil Service, Committee on Post
Office and Civil Service, House of
Representatives

March 1990

**PERSONNEL
PRACTICES**

**The Department of
Energy's Use of
Schedule C
Appointment
Authority**





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

General Government Division

B-229415

March 8, 1990

The Honorable Gerry Sikorski
Chairman, Subcommittee on Civil Service
Committee on Post Office and Civil Service
House of Representatives

Dear Mr. Chairman:

This report responds to your January 31, 1990, request for information on Schedule C employees at certain offices within the Department of Energy (DOE). More specifically, you asked us to identify the current number of Schedule C employees in DOE's Office of Public Affairs and Office of Congressional and Intergovernmental Affairs and to verify that these employees occupied positions that had been approved by the Office of Personnel Management (OPM) as required.

On February 7, 1990, we briefed the Subcommittee on the results of our work. In addition to providing the requested information, we advised the Subcommittee that DOE had detailed three of its permanent Schedule C employees directly to the White House, a practice we criticized in earlier reports as an inappropriate use of Schedule C appointment authority.¹ As requested, this report summarizes information provided at that briefing.

Background

Schedule C positions are positions excepted from the competitive service because they are either policy determining or involve a close and confidential working relationship with a key official.² A key official can be a presidential appointee, another Schedule C appointee, or an SES member who is not occupying a position reserved for career members of the SES. Schedule C appointees may not report to or through officials in the competitive service and a close and confidential working relationship does not exist unless the appointees are subject to the immediate supervision of the key official.

OPM must approve not only the establishment of each permanent Schedule C position but also any subsequent position changes, such as in title, grade, immediate supervisor, and organizational location. OPM's approval

¹Personnel Practices: Federal Employees Detailed From DOD to the White House (GAO/GGD-88-33, Mar. 14, 1988) and Personnel Practices: Detailing of Federal Employees to the White House (GAO/GGD-87-102BR, July 22, 1987).

²See 5 CFR 213.3301 et seq. and Chapter 213 of the Federal Personnel Manual.

whether or not the employee was in a permanent or a temporary position. We compared this list to (1) a DOE report updated through February 1, 1990, listing all permanent and temporary Schedule C employees and (2) OPM position certification documents maintained at DOE.

To determine whether OPM approved all Schedule C positions located in these two DOE offices, we discussed with an OPM official the process OPM follows in approving Schedule C positions. We compared DOE's list of Schedule C positions with OPM's records of approved and occupied positions. These records included OPM's most recent Schedule C Position and Incumbent List and its log of approved positions through February 1, 1990. We also reviewed OPM's records for all DOE-occupied positions to verify the accuracy of OPM's Position and Incumbent List.

We visited the work station for each Schedule C employee in DOE's Offices of Public Affairs and Congressional and Intergovernmental Affairs and examined the telephone directory to verify that employees were located in the office that OPM had approved.

During our review, we noted that DOE had detailed three Schedule C employees to the White House. These details were from offices not originally included in our review. However, because of our earlier concerns with this practice, we reviewed the circumstances surrounding these details. We reviewed the personnel folders for the Schedule C employees on detail to the White House to document the beginning and ending dates for the detail, the dates entered on duty, OPM's approval of the Schedule C position at DOE, and the agreements for reimbursement. We discussed with DOE officials whether the employees were hired directly for the White House, whether the White House had reimbursed DOE, and whether DOE had reported the details to the Senate and House Committees on Appropriations, as required by law.

Our work was done in February 1990 at DOE and OPM headquarters in Washington, D.C., and in accordance with generally accepted government auditing standards.

Inappropriate Use of Schedule C Appointment Authority

DOE records show that three permanent Schedule C employees were detailed to the White House from DOE's Office of the Secretary and Office of Management and Administration. As of February 1, 1990, these employees had been detailed for periods ranging from 123 to 374 days. While these offices were not originally included in our review, we included them because of our previous concerns with details. In reviewing the justification for these positions, we found that DOE had provided inaccurate information to OPM in requesting approval to establish them.

DOE did not comply with OPM's regulations and guidelines for Schedule C excepted service appointments. These regulations and guidelines provide that agencies, upon specific authorization by OPM, may make appointments to positions that are policy determining or that involve a close and confidential working relationship with a key official. OPM approves Schedule C positions on this basis and requires that Schedule C employees be supervised directly by the key official. Any changes to this supervisory relationship must be approved by OPM.

At the time DOE provided information to OPM requesting permanent authorization for these positions, the individuals proposed for the positions were temporary Schedule C employees and had already been detailed to the White House for periods ranging from 61 to 182 days. However, DOE prepared position descriptions that showed that the positions were located within DOE and that the relationship between the Schedule C employee and the key official was confidential in nature. The position descriptions were signed by DOE officials who certified that (1) the descriptions were accurate statements of the major duties and responsibilities for the positions, (2) the positions were located in DOE, and (3) that the positions were necessary to carry out government functions.

An OPM official told us that OPM approves Schedule C positions on the basis of the paperwork submitted by the agencies. As a practical matter, OPM does not verify the accuracy of the paperwork nor does it review agencies' use of Schedule C appointment authority. As a result, unless otherwise informed, OPM has no way of knowing if such positions are being created for detailing.

When OPM approved the Schedule C positions, DOE had already detailed the incumbents to the White House. Therefore, the confidential relationship between the incumbents and the key DOE officials, the basis for a Schedule C appointment, no longer existed. In addition, DOE did not request approval from OPM to change the supervisory relationships.

if the detail extends beyond 180 days. The law also requires the President to submit an annual report to Congress showing the number of employees detailed to the five specified offices over 30 days and the reimbursements made to agencies for employees detailed more than 180 days in a fiscal year.

DOE had not billed the White House for the two Schedule C employees whose details had exceeded 180 days. As of February 1, 1990, the bills for these two employees were 66 and 94 days overdue. An official from DOE's Office of Headquarters Accounting Operations told us that DOE's procedures call for billing the White House on a quarterly basis when details are for an indeterminate length of time. Although the Director, Office of Personnel and Career Development claimed that notification of these details had been forwarded to Headquarters Accounting Operations, the accounting staff had no record of having received the notifications. On February 16, 1990, DOE arranged with the White House to expedite reimbursement totaling about \$10,000 for these two details. On February 23, 1990, DOE prepared a procedure to improve controls over the transmission of reimbursable detail agreements between the Office of Personnel and the Office of Headquarters Accounting Operations.

In our earlier reports, we also found that the 13 departments were not billing the White House for their employees detailed over 180 days in a fiscal year to perform White House functions. In the March 1988 report, White House officials said they had instituted new procedures starting in fiscal year 1988 to ensure that agencies are reimbursed when appropriate. One official said that the White House Office, in accordance with the new procedures, would monitor those agencies that do not request reimbursement. However, the official said that responsibility for requesting payment must remain with the detailing agency.

Details to Other Agencies Are Not Being Reported

Public Law 100-202, which was enacted on December 21, 1987, generally requires executive branch agencies to submit annual reports to the Senate and House Committees on Appropriations on employees detailed to other agencies including the White House. The Director of DOE's Office of Personnel and Career Development said he was unaware that such a requirement existed and therefore no such reports had been prepared.

In order to determine if this was an isolated situation, we checked with officials at the Department of Agriculture and at the Department of Health and Human Services to see if those agencies were preparing the annual reports. We selected these agencies because of their size. The

assure that they continue to be prepared in the future. We also recommend that the Secretary implement, without delay, the procedures that were recently prepared to assure that agencies are promptly billed for such details.

Recommendations to the Director, OPM

On the basis of our findings at DOE and our earlier work on details to the White House, we recommend that the Director of OPM require agencies to certify in their applications that Schedule C positions are not being established solely or primarily for details. We also recommend that the Director of OPM disapprove applications that do not contain this certification. In addition, we recommend that the Director of OPM periodically monitor agencies' use of Schedule C employees for compliance with its regulations and guidelines.

Finally, we recommend that the Director, OPM, reemphasize to agencies that Schedule C employees can only occupy positions in the agency that OPM approves. It should make clear that any changes to these assignments must be approved by OPM and it should also encourage agencies to submit annual reports as required by Public Law 100-202.

A draft of this report was discussed with DOE and OPM officials. They generally agreed with the facts presented and their comments were considered in preparing our final report.

As arranged with the Subcommittee, we plan no further distribution until 30 days from the date of this report unless you release it earlier. At that time, we will send it to the Secretary of Energy, the Director of OPM, and other interested parties upon request.

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Major contributors to this report are listed in the appendix. Please contact me at 275-5074 if you or your staff have any questions concerning the report.

Sincerely yours,



Bernard L. Ungar
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officials told us that they were not aware that such reports were required and therefore the reports had not been prepared.

Conclusions

DOE followed OPM's regulations and guidelines when it established 19 permanent Schedule C positions in its Offices of Public Affairs and Congressional and Intergovernmental Affairs. However, as our previous reports have stressed, DOE's hiring of three persons and immediately assigning them to the White House was an inappropriate use of Schedule C appointment authority. The purpose of this authority is specifically to facilitate the employment of policymakers and confidential assistants within the agency for which the positions are established. This purpose is frustrated when positions are created for some other use.

We continue to believe that a 90-day prohibition against detailing Schedule C employees would be appropriate and that OPM should reconsider our previous recommendation. In addition, we believe OPM's approval process for Schedule C positions needs to be strengthened to preclude the inappropriate hiring of Schedule C employees by agencies for the purpose of detailing them to the White House. In our view, OPM should not approve Schedule C positions being established solely or primarily for the purpose of detailing. In addition, OPM should (1) require agencies applying for a Schedule C position to certify that the position is not being established for that purpose and (2) periodically monitor agencies' use of Schedule C employees for compliance with its requirements.

DOE did not bill the White House on time for two details during fiscal year 1989 and had not prepared reports on details during fiscal year 1989 for the Senate and House Committees on Appropriations. We believe that, in order to comply with its own billing practices, DOE needs to implement procedures that make sure that agencies are billed on time. We also believe DOE needs to implement procedures to assure that required reports on detailed employees are prepared in accordance with law.

Recommendations to the Secretary of Energy

We recommend that the Secretary of Energy discontinue the practice of hiring Schedule C appointees and assigning them immediately to the White House. We also recommend that the Secretary report the three details to OPM and not renew them at their conclusion.

Additionally, we recommend that the Secretary of Energy prepare the reports on details for fiscal year 1989 and implement procedures to

Thus, DOE's action was an inappropriate use of Schedule C authority because an immediate detail to the White House does not facilitate the employment of policymakers and confidential assistants in the agency for which the position was established.

DOE's Special Assistant to the Secretary and White House Liaison told us that DOE had hired the employees under Schedule C authority for detail to the White House. She said that two of these employees never worked at DOE and that the third did only for a brief time as a temporary Schedule C employee. This official said that the employees are supervised on a daily basis by a White House official and not the DOE supervisor that OPM had approved. The official told us she did not believe anything improper had been done and was not aware that Schedule C position changes needed to be approved by OPM.

In 1987 and 1988, we reported on the practices of 13 federal departments, including DOE, in detailing employees to the White House. We found that each of the departments had inappropriately detailed Schedule C employees to the White House under circumstances similar to those described in this report. In our March 1988, report we recommended that OPM issue regulations prohibiting the detailing of Schedule C appointees within 90 days of appointment. We reported that such action would preclude the inappropriate use of Schedule C authority without precluding the White House or federal agencies from using Schedule C employees to help meet their staffing needs. Even with adoption of such a prohibition, the White House and federal agencies would still have the option to directly appoint and pay their own Schedule C employees.

The former OPM director disagreed with our recommendation. She said that if there was a legitimate need for an immediate detail of a Schedule C appointee to the White House, such a regulation would only serve as an obstacle to delay the accomplishment of an Administration task.

Delays in Billing the White House for Details Over 180 Days

Public Law 95-570, dated November 2, 1978, provides for detailing employees on a nonreimbursable basis to five White House offices—the White House Office, the Executive Residence at the White House, the Office of the Vice President, the Office of Policy Development, and the Office of Administration. These nonreimbursable details must not exceed 180 calendar days in a fiscal year. When the detailed employee is performing services that would otherwise be performed by White House employees, the White House is required to reimburse the lending agency

Approvals Were Obtained for the Schedule C Positions We Reviewed

As of February 1, 1990, DOE had 19 permanent Schedule C positions in the Office of Public Affairs and in the Office of Congressional and Intergovernmental Affairs. The following table shows the actual physical locations of these 19 permanent positions, as well as eight temporary positions that did not require OPM's approval.

Table 1: Schedule C Positions in Selected DOE Offices, February 1, 1990

DOE office	Positions		
	Permanent	Temporary	Total
Public Affairs	8	5	13
Congressional and Intergovernmental Affairs	11	3	14
Total	19	8	27

We reviewed the circumstances surrounding the approval of these 19 permanent Schedule C positions and found that OPM's and DOE's records were in agreement for 16 of the positions. There was some discrepancy for the remaining three positions. OPM had approved one position for the Office of Congressional and Intergovernmental Affairs while DOE showed the location of the position to be in the Office of Public Affairs. DOE officials told us that this organizational change resulted from a recent reorganization and that they were not aware such changes had to be reported to OPM. In addition, OPM's reports showed that two positions were located in the Office of the Secretary while DOE reported that one of the positions was in the Office of Public Affairs and the other was in the Office of Congressional and Intergovernmental Affairs. OPM's records showed that it had approved the positions for the locations reported by DOE, but OPM's report erroneously listed these two positions within the Office of the Secretary.

In reviewing OPM's Position and Incumbent List, we found that OPM included three positions in the Office of Congressional and Intergovernmental Affairs that were not reported by DOE. DOE officials told us that two of these positions were vacant as of October 1989 but for some reason had not been reported to OPM, as required. They said that the third position was vacated in January 1990. DOE reported this latest change to OPM, but OPM had not received the report at the time of our review. DOE officials told us that they would submit the required documents for OPM's approval of the changes that occurred in 1989.

of a Schedule C position is revoked immediately when the position is vacated. Even though agencies must obtain OPM approval for permanent Schedule C positions, agencies may establish temporary Schedule C positions without OPM's approval immediately following a change in the presidential administration or within 1 year following the change of an agency head or the creation of a new agency. Each temporary appointment is restricted to a 120-day period, which may be extended once for an additional 120 days. Temporary positions may also be converted to permanent Schedule C positions by obtaining OPM approval.

Results in Brief

As of February 1, 1990, DOE had 8 permanent Schedule C positions in the Office of Public Affairs and 11 in the Office of Congressional and Intergovernmental Affairs. DOE complied with OPM's regulations and guidelines in establishing these 19 positions. However, DOE had not reported to OPM changes to Schedule C positions in these two offices that it made during 1989 although it was required to do so. DOE officials said they would notify OPM of these changes after we brought the matter to their attention.

In addition to establishing the above 19 positions, DOE used Schedule C appointment authority to hire three permanent employees and detail them directly to the White House in 1989. We believe these three actions were inappropriate since, in obtaining OPM approval for these positions, DOE had certified that the positions and the appointees would be located within DOE. Use of Schedule C authority to create positions in DOE solely for the White House's use frustrates the purpose of this authority. In addition, DOE did not follow its procedures in billing the White House for two of the details and did not annually report the details to the Senate and House Committees on Appropriations as required by law.

Objectives, Scope, and Methodology

Our objectives were to determine (1) the number of Schedule C positions in DOE's Office of Public Affairs and Office of Congressional and Intergovernmental Affairs as of February 1, 1990; (2) whether OPM had approved these positions; and (3) whether the employees hired to occupy these positions were located in the office approved by OPM.

To determine the number of Schedule C positions, we had DOE prepare for us a list of these positions in the Office of Public Affairs and in the Office of Congressional and Intergovernmental Affairs. This list included each employee's name, title, grade, entrance-on-duty date, and

