

**GAO**

**Testimony**

Before the Subcommittee on Post Office  
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**PERSONNEL  
PRACTICES**

**An Overview of  
Ramspeck Act Appointments**

Statement of  
Nancy R. Kingsbury, Director  
Federal Human Resource Management Issues  
General Government Division



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**PERSONNEL PRACTICES**  
**AN OVERVIEW OF RAMSPECK ACT APPOINTMENTS**

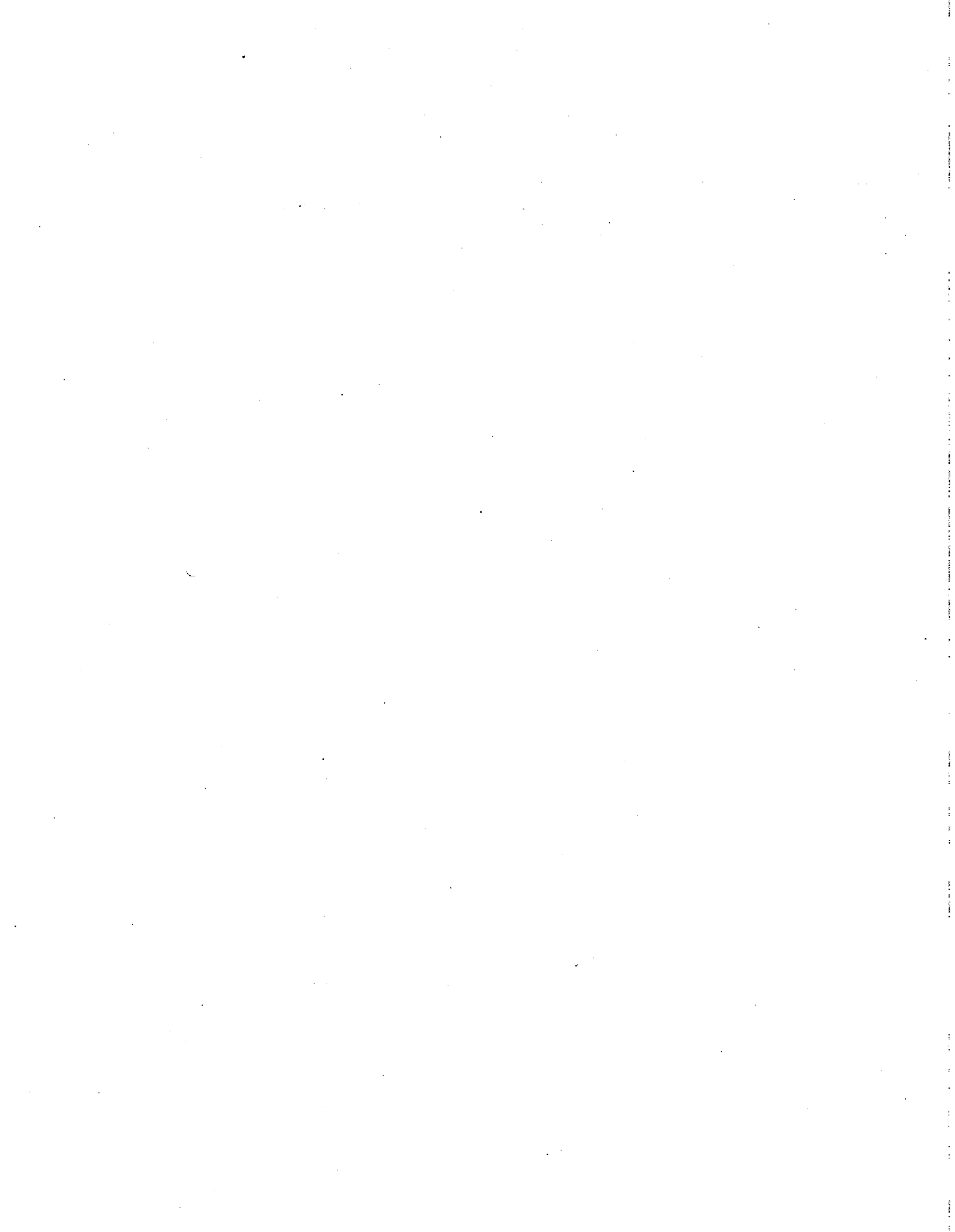
Summary of Statement by  
Nancy R. Kingsbury, Director  
Federal Human Resource Management Issues  
General Government Division

The Ramspeck Act was enacted to provide an opportunity for congressional employees who had rendered long and faithful service to Members of Congress and were involuntarily separated to apply for noncompetitive appointments to the career service. Under the act, certain conditions must be met. Among other things, a candidate must have worked for Congress for a total of 3 years and must be appointed to a career position within 1 year of separation from congressional employment. The appointing official from an executive agency must ensure that the selected candidate is qualified for the career position.

During the recent presidential transition period, GAO reviewed 50 appointments that were made under Ramspeck Act authority by 17 agencies. While all 50 adhered to procedural requirements, some raised concern. Three appointments were made under circumstances, for example, that could give the appearance that the selected candidates may have received advantages or preferences. Another eight appointments involved circumstances that raised concerns that the act was being applied in situations that it was not designed to address. In these cases, individuals' eligibility for a Ramspeck Act appointment had expired because 1 year had elapsed since their last congressional employment. To reestablish their eligibility, the individuals took short-term assignments in Congress, in some cases knowing that the assignment was limited, and almost immediately began the process to obtain a career appointment through the Ramspeck Act.

Neither the language of the act nor OPM's guidance specifically precluded the use of the Ramspeck Act under the aforementioned circumstances. However, GAO questioned whether its use under such circumstances furthered the purposes of the act. GAO recommended that Congress consider amending the Ramspeck Act to more clearly specify the circumstances under which the use of this appointment authority may not be appropriate. To provide oversight, GAO also suggested that Congress consider directing OPM to routinely review these noncompetitive appointments.

GAO's ongoing review of Ramspeck Act appointments made before and after the November 1994 congressional elections has shown that, for the 15-month period ending March 31, 1995, 107 appointments have been made under this authority. These appointments were made by 21 of the 28 agencies under review. GAO will be reviewing the appropriateness of these appointments as part of its ongoing work.



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss use of the Ramspeck Act to noncompetitively appoint congressional employees to career positions in executive branch departments and agencies. You asked us to discuss our May 1994 report<sup>1</sup> on the use of the Ramspeck Act authority during the recent presidential transition period and our recommendations for modifications to the act. You also asked us to outline the progress of our current efforts to track Ramspeck Act appointments both before and after the recent congressional elections.

In our May 1994 report, we said that 17 agencies, out of 33 that we reviewed, made 50 noncompetitive appointments at the GS/GM-11 level and above from January 1, 1992, through March 31, 1993, based on the Ramspeck Act. Our current efforts show that 21 agencies, out of 28 that we are reviewing, made 107 noncompetitive appointments at grades 9 and above from January 1, 1994, through March 31, 1995, based on the Ramspeck Act. Our current efforts also show that, during the almost 10- year period between October 1, 1984, and June 30, 1994, 36 agencies made a total of 552 noncompetitive appointments at all grade levels based on the Ramspeck Act (see appendix I).

#### THE RAMSPECK ACT OF 1940

The Ramspeck Act of 1940, 5 U.S.C. section 3304(c), was enacted to provide an opportunity to those congressional employees who had rendered long and faithful service to Members of Congress and who had acquired valuable experience in government to transfer to a position in the competitive service should their positions on the Hill terminate. Under the act, as interpreted by the Office of Personnel Management (OPM) in its former guidance<sup>2</sup>, congressional employees can achieve competitive status for transfer if the following conditions are met:

- The employee must have worked for Congress for 3 years (the service need not be continuous).
- The employee must be separated involuntarily and without prejudice. (The employee's record must be good, and the final separation must be due to circumstances beyond the

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<sup>1</sup>Personnel Practices: Presidential Transition Conversions and Appointments: Changes Needed (GAO/GGD-94-66, May 31, 1994).

<sup>2</sup>Parts of the Federal Personnel Manual (FPM), including the guidance on Ramspeck Act appointments, were abolished on December 31, 1994. Essentially, the guidance elaborated on the act's requirements. For example, it discussed the circumstances that would constitute involuntary separation.

employee's control. These circumstances include the death, defeat, or resignation of the employer, lack of work, lack of funds, or office reorganization.)

- The employee must meet the basic qualifications for the position.
- The employee must transfer within 1 year of separation from the legislative branch. (There is no minimum time for the length of the last congressional appointment.)

Once those conditions are met, the employee acquires "competitive status for transfer." Although not an entitlement to a career position, this status effectively waives the requirement for competitive examination, including passing a written test if one is required. The appointing official who selects a Ramspeck-eligible candidate must ensure that the candidate is qualified for the career position. The official does not have to consider other qualified candidates but must comply with other applicable civil service rules and regulations, including those that prohibit, among other things, discriminating for or against any eligible candidate on the basis of characteristics such as race, gender, or political affiliation.

In addition to congressional employees, the act also applies to any individual who served for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States. OPM has oversight responsibility for the noncompetitive appointments of former congressional employees. However, it does not routinely conduct preappointment reviews of these noncompetitive appointments.

Two bills that would repeal the Ramspeck Act have recently been introduced in Congress. S. 177, which was introduced by Senator McCain on January 9, 1995, would repeal the Ramspeck Act 2 years after S. 177 is enacted. Senator McCain has stated that the act affords unfair employment privileges to both Republicans and Democrats alike to the detriment of their fellow citizens who may be equally qualified but may not have had the opportunity to work in the legislative branch. A similar bill, H.R. 913, was introduced by Representative Goss on February 13, 1995. H.R. 913 would repeal the Ramspeck Act immediately.

The Ramspeck Act of 1940 is similar to another noncompetitive appointment authority available to employees who serve in the Office of the President or Vice President or on the White House staff. Section 315.602 of Title 5, Code of Federal Regulations, authorizes appointments to career positions on the basis of White House service for employees who have served at least 2 years and who are appointed without a break in service.

USE OF THE RAMSPECK ACT DURING THE  
1992-1993 PRESIDENTIAL TRANSITION

On May 31, 1994, we reported on the results of our examination of the propriety of 121 career appointments in the competitive and senior executive service during the 1992-1993 presidential transition. The career appointments included 50 that were based on the Ramspeck Act. All 50 appointments adhered to applicable procedural requirements, but some raised concerns about whether the employees may have received advantages or preferences or the act was being used in situations it was not designed to address.

Three appointments raised concerns about whether the employees may have received advantages or preferences. For example, we found that the General Services Administration (GSA) used the Ramspeck Act to noncompetitively appoint an individual to a GM-13 career position, and shortly thereafter used the act again to reappoint, and therefore in effect noncompetitively promote, the same individual to a GM-15 career position. GSA officials justified this action by stating that the individual did not lose Ramspeck eligibility after receiving the initial career appointment and that the act can be used again for a second career appointment as long as it takes place within 1 year after the individual involuntarily separates from Congress.

The Ramspeck Act as written does not preclude its application to an employee already in a career position. However, such an action raises concerns that the individual received an unfair advantage over other career employees at the expense of merit system principles. In addition to using Ramspeck Act authority for the intended purpose of helping a congressional employee find employment, GSA used the act to reappoint, and therefore in effect noncompetitively promote, the individual two grade levels after just 2-1/2 months of career service. Such an action would not be allowed under civil service regulations.

An additional eight appointments involved circumstances that raised concerns that the act was being applied in situations it was not designed to address. In these cases, the individuals' eligibility for a Ramspeck Act appointment had expired because 1 year had elapsed since their last congressional employment. However, the individuals reestablished their eligibility by accepting short-term congressional staff assignments, in some instances knowing that the assignment was limited, and then almost immediately began the administrative process to obtain a career appointment under the Ramspeck Act.

Neither the language of the act nor OPM's former guidance specifically precluded eligibility under these circumstances. However, we questioned whether the benefits conferred by the act should be available to individuals who return to Congress for short periods after a break in service of more than a year. We

also questioned whether a separation should be construed as involuntary in cases where an employee had accepted employment with a Member of Congress knowing that the Member had not been reelected or had announced his or her retirement.

OPM does not routinely monitor and review Ramspeck Act appointments. However, in December 1992, OPM initiated a special review of Ramspeck Act appointments at the Department of the Interior (DOI) after receiving a request from the Chairman of the Senate Governmental Affairs Subcommittee on Federal Services, Post Office, and Civil Service; an inquiry from us about one specific Ramspeck Act appointment; and allegations from DOI employees and other sources that the Ramspeck Act was being used improperly to provide career appointments for political appointees. OPM identified 14 Ramspeck Act appointments made by DOI between January 1, 1992, and January 11, 1993<sup>3</sup>. It determined that four of them warranted detailed investigation. Upon investigation, OPM determined that, in two of the cases, DOI had improperly used the Ramspeck Act to appoint individuals to positions specifically created for them. On February 3, 1993, OPM directed DOI to terminate the two appointments. DOI complied. One of the terminated employees appealed DOI's action to the Merit Systems Protection Board (MSPB). MSPB denied the appeal on September 24, 1993, on the grounds that the separation from congressional employment was not involuntary because the employee had accepted an appointment for a limited duration and had been separated at the end of that term.

Because Ramspeck Act appointments are not routinely monitored or reviewed by OPM, no one knows precisely how many or under what conditions these appointments are made. To provide oversight, we said in our May 1994 report that Congress should consider directing OPM to review such appointments. We also said that, because our review identified some Ramspeck Act appointments made under conditions that did not further the purposes of the act, Congress should consider amending the act to provide needed clarity.

We discussed the merits of routine monitoring and review of Ramspeck Act appointments with OPM officials. They said OPM should not be required to review those appointments. They added that there are few appointments of that type and that serious problems with them are fewer still. The most serious problem with Ramspeck Act appointments, they said, involved individuals going back to positions in Congress for short periods to reestablish their Ramspeck eligibility. They suggested changing the act to require that the most recent service in Congress be for a minimum period of time.

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<sup>3</sup>These 14 Ramspeck Act appointments were included in our review.



We disagreed with OPM's position on oversight and concluded that more oversight of these noncompetitive appointments was needed, since the circumstances surrounding some of the Ramspeck Act appointments we reviewed gave the appearance of preferential treatment. We said that appointments to career positions based on congressional service are sensitive, particularly because they are made noncompetitively. We agreed with OPM that the act needed to be amended to specify more clearly the circumstances under which use of this appointment authority may not be appropriate because some Ramspeck Act appointments were made under conditions that did not further the purposes of the act.

As we stated in our earlier report, it remains our position that Congress should consider amending the Ramspeck Act to specifically preclude individuals from returning to Congress for short periods to renew their eligibility. We believe the two approaches set forth in our report would accomplish this:

- The act could be amended to set a minimum time for the last period of congressional service; or
- the act could be amended to preclude or limit eligibility if the latest congressional staff position was accepted when the appointing Member of Congress had announced his or her retirement, had not been reelected, or when the length of the appointment would be limited for budgetary reasons.

We also continue to believe that Congress might consider amending the Ramspeck Act to preclude its use as a noncompetitive appointment authority for an individual actively serving in a career status position. This could be accomplished by restricting the act's use to one noncompetitive appointment during the 1-year period of eligibility. To provide oversight of noncompetitive Ramspeck Act appointments, Congress may wish to direct OPM to review these appointments as part of its review of other types of appointments.

All of these proposed amendments to the act have become much more significant given that OPM's guidance, which had been included in the FPM, was abolished as of December 31, 1994.

#### USE OF THE RAMSPECK ACT BEFORE AND AFTER THE NOVEMBER 1994 CONGRESSIONAL ELECTIONS

Our current work shows that, for the 15-month period ending March 31, 1995, 25 agencies, of the 28 we are reviewing, made 277 appointments of former legislative branch employees (261), White House employees (1), and schedule C and noncareer SES employees who converted from political to career positions (15). Of the 261 legislative branch employees, 107 went to career positions based on the Ramspeck Act authority (see appendix II.). This represented approximately one-half of 1 percent of the total

full-time, permanent career and career-conditional appointments made by all executive branch agencies during calendar year 1994, the most recent period for which OPM has data.

Thus far, we have focused our analysis on three agencies with a total of 27 Ramspeck Act appointments: the Department of Health and Human Services (HHS) with 8; DOI with 13; and the Department of Labor (DOL) with 6 appointments. Two of the three agencies made four temporary limited appointments, HHS one, and DOI three, and subsequently appointed these four individuals to career positions based on the Ramspeck Act. Based on our preliminary review, all 31 appointments adhered to applicable procedural requirements. However, some raised concerns that we plan to pursue further.

One appointment raised the same concern that we had with eight appointments in our May 31, 1994, report, that is, reestablishing Ramspeck Act eligibility by taking short-term assignments in Congress. This appointment took place at HHS and was made on November 21, 1994, to a GS-14 legislative analyst position in the Health Care Financing Administration. The individual had worked in Congress for 5 years (1988-1993). She left her position for one in the private sector on June 14, 1993, and thus her eligibility for a Ramspeck Act appointment expired on June 14, 1994. On July 12, 1994, she took a position as a legislative assistant to a Senator who had announced his retirement in 1993. On November 20, 1994, her congressional staff position was eliminated, and on November 21, 1994, she was appointed noncompetitively to the HHS career position based on the Ramspeck Act. Because this individual knew her congressional position would be temporary, it could appear that a primary reason for taking the position was to renew eligibility for a Ramspeck Act appointment.

We also noted that two of the three agencies--HHS and DOI--reported that several appointments were made at a time when a hiring freeze was in effect. The agencies also provided brief justifications for the appointments. For example, HHS made an appointment to a legislative analyst position during a hiring freeze and justified the appointment as being necessary to effectively carry out all legislative liaison responsibilities. In this instance, however, we found that the legislative analyst was detailed to another position 1 month after the Ramspeck appointment. While we did not find anything wrong with the Ramspeck appointment, the decision to detail the individual 1 month after the appointment can raise the question whether there was a valid need for the position and therefore sufficient justification to bypass the hiring freeze.

Finally, we noted that the dates of several of the appointments made at all three agencies were closely associated with the dates that the individuals submitted a Ramspeck application or a SF-171

and the dates positions were created. For example, in one instance at DOL, an individual submitted a Ramspeck application on November 15, 1994. A new position was created on November 28, 1994, and the individual was appointed on the same date. The proximity of these events can raise the question of whether a career position was created for the purpose of placing a Ramspeck Act applicant. Our preliminary review of these appointments has shown no evidence that this had occurred. However, we believe such circumstances warrant further discussions with agency officials.

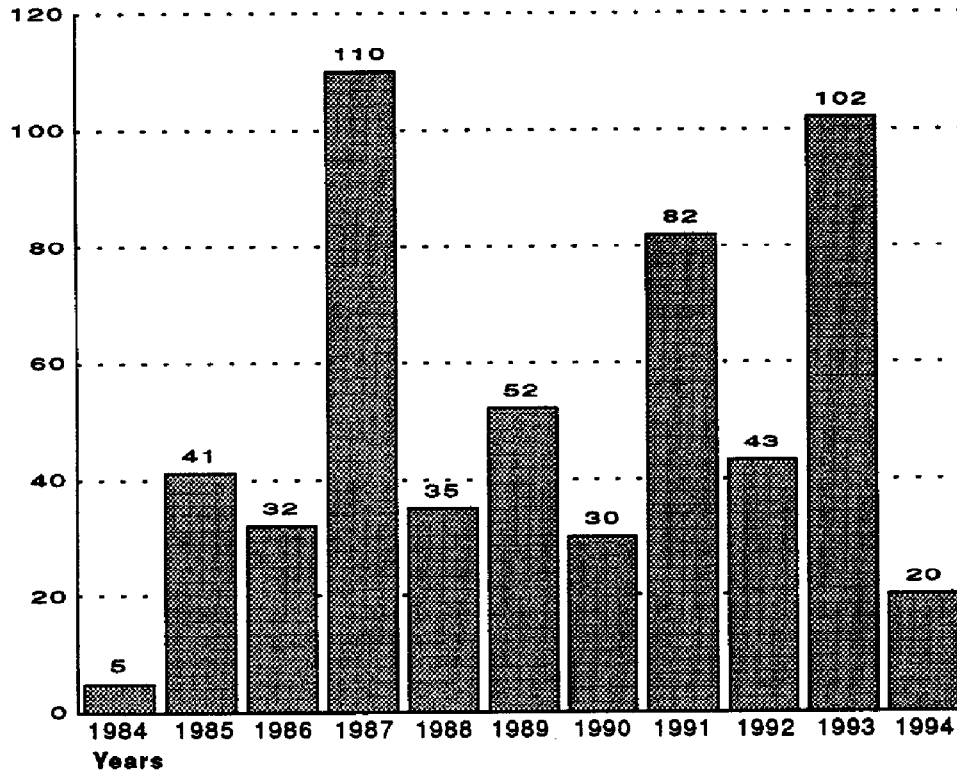
We should also note that a November 7, 1994, OPM Interagency Advisory Group Memorandum to agency personnel directors addressed the issue of considering former congressional employees for career appointments. Among other things, it pointed out that, to help avoid the appearance of political favoritism, agencies should generally avoid accepting Ramspeck Act applications unless they are also accepting applications from candidates under other noncompetitive authorities. We will be discussing the implementation of this advice with agency officials as we continue our work.

In conclusion, Mr. Chairman, we would like to note that many congressional employees serve long careers and gain invaluable experience working in Congress. This expertise can be transferred to executive branch agencies and help them better carry out their missions. In addition, White House employees are similarly eligible for noncompetitive appointments after 2 years of service and, thus they too can bring their expertise to executive branch agencies. However, we continue to believe that more oversight over Ramspeck Act appointments is needed and that the act needs to be amended to specify more clearly the circumstances under which its use may not be appropriate. We will continue to monitor executive branch appointments through the end of this year.

This concludes my prepared statement. I would be pleased to answer any questions you or Members of the Subcommittee may have.

NUMBER OF RAMSPECK ACT APPOINTMENTS  
OCTOBER 1, 1984 - JUNE 30, 1994

**Number of appointments**



Source: Office of Personnel Management Central Personnel Data File

NUMBER OF RAMSPECK ACT APPOINTMENTS  
FOR SELECTED AGENCIES  
JANUARY 1, 1994 - MARCH 31, 1995

Agency	Number
Department of Agriculture	5
Department of Commerce	7
Department of Defense, Air Force	0
Department of Defense, Army	1
Department of Defense, Navy	2
Department of Defense, Office of the	4
Department of Education	6
Department of Energy	9
Department of Health and Human Services	8
Department of Housing and Urban Development	5
Department of the Interior	13
Department of Justice	1
Department of Labor	6
Department of State	0
Department of Transportation	7
Department of the Treasury	13
Department of Veterans Affairs	7
Environmental Protection Agency	3
Office of Management and Budget	1
Office of National Drug Control Policy	0
Federal Emergency Management Agency	2
Federal Energy Regulatory Commission	2
General Services Administration	0
Office of Personnel Management	0

Agency	Number
Small Business Administration	3
U.S. Information Agency	0
U.S. Agency for International Development	2
U.S. Tax Court	0
TOTAL	107

Source: Agency data

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