



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

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B-202438

APRIL 7, 1981

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental
Affairs
United States Senate

The Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
House of Representatives

*orig. concerned
OPM
MSPB - OSC*

Subject: Federal Employees Excluded From Certain
Provisions of the Civil Service Reform
Act of 1978 (FPCD-81-28)



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Section 2302 of title 5, United States Code, added by section 101 of the Civil Service Reform Act of 1978 (Public Law 95-454) protects most Government employees from specified prohibited personnel practices, such as discrimination, political coercion, and reprisals. This protection does not apply to employees in (1) Government corporations, (2) the Federal Bureau of Investigation and agencies which conduct foreign intelligence or counterintelligence, or (3) the General Accounting Office. However, employees in some of these agencies are well protected under other provisions of law. According to the Merit Systems Protection Board's Office of the Special Counsel, there have been many complaints of personnel abuse within Government corporations whose employees are not as well protected. In our opinion, employees in Government corporations covered by other parts of the Reform Act and other civil service laws and regulations should also be covered by the provisions in section 2302.

While the heads of Federal agencies are responsible for preventing personnel abuses, the Office of the Special Counsel was given the responsibility for investigating and prosecuting violations of section 2302. In addition, Federal employees are entitled to certain protections against violations of this section. For example, the Special Counsel may request the Merit Systems Protection Board to stay any personnel action if the Counsel believes that the action was taken or is to be taken as a result of a violation of section 2302. This protection applies to employees of most Government agencies.

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The General Accounting Office, under separate legislation, has its own personnel system with an independent appeals board responsible for investigating and resolving allegations of prohibited personnel practices. Employees of the Federal Bureau of Investigation are also protected against personnel abuse, and the President is responsible for providing enforcement in a manner consistent with that of the Office of the Special Counsel. Employees of certain Government corporations excluded from section 2302 generally do not have similar protection against personnel abuse, except that coverage which existed before the Civil Service Reform Act. In this respect, competitive service employees may appeal, for example, removals and suspensions for more than 14 days, to the Merit Systems Protection Board. Appeals from these actions were previously handled by the former Civil Service Commission's appellate offices. However, these Government corporation employees are not provided the type of independent review and protection that is available to most civil service employees from the Office of the Special Counsel.

We reviewed selected reports and documents of the President's Personnel Management Project and the legislative history of the Civil Service Reform Act to determine the justification for excluding all Government corporations from section 2302. While we understand the need for exempting the Federal Bureau of Investigation and agencies engaging in intelligence and counterintelligence activities, we could not identify any explanation for the need to exempt all Government corporations from this section.

According to the Special Counsel's office, it is not clear whether all corporations are excluded from section 2302. For example, in early 1980, the Office of the Special Counsel was requested to investigate serious and widespread allegations of personnel abuse within the Federal Crop Insurance Corporation. The Special Counsel declined to initiate an investigation because it believed the section excluded all Government corporations. However, the Special Counsel now believes that it has jurisdiction in this area because the Federal Crop Insurance Corporation is within the Department of Agriculture, an executive agency covered by the section. Officials of the Special Counsel's office admit that, because of the uncertainty, the Office's assertion of jurisdiction may be legally contested.

While we could find no current listing of Government corporations, we contacted 46 which were either wholly owned, partially owned, sponsored, or controlled by the Government. Thirteen have employees in competitive service positions and are required to follow other civil service laws and regulations but are excluded from section 2302. (See enclosure.) Eight of these 13 corporations are within an executive department or agency, and the remaining 5 are independent.

We talked with the personnel directors of these 13 corporations about the coverage of section 2302. While it is not totally clear that coverage extends to corporations within executive departments or agencies, the personnel directors of the eight corporations stated that they assumed that the provisions applied to their corporations. All but one--Inter-American Foundation--of the independent corporations believed their employees should be entitled to the protections that other Federal employees have. Also, the Export-Import Bank has requested legislation which would extend coverage of section 2302 to its employees.

We also discussed these matters with officials of the Office of the Special Counsel and the Office of Personnel Management. The Office of the Special Counsel told us that it agreed with our position and had suggested in its first annual report that the Congress consider extending the statutory protections to employees of Government corporations and the Library of Congress. Officials of the Office of Personnel Management told us that the primary intention of excluding Government corporations from section 2302 was to exempt those such as the Tennessee Valley Authority which have been generally excluded from most other civil service laws and regulations and operate under separate personnel, pay, and benefit systems.

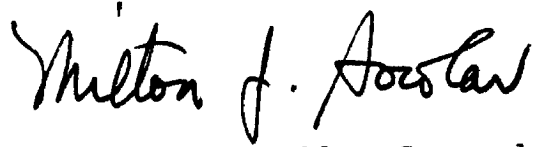
In our opinion, there is no justification for excluding certain Government corporations from the prohibited personnel practices provisions. We recommend that 5 U.S.C. 2302(a)(2)(C)(i) be amended by deleting the term "Government corporation" and inserting instead the following:

"* * * Government corporations exempted from civil service laws and regulations governing the appointment and removal of officers and employees of the United States."

This amendment would extend coverage to those corporations with employees in covered positions. Other corporations, such as the Tennessee Valley Authority whose positions are exempted from the civil service, would not be affected.

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We are sending copies of this report to the Director, Office of Personnel Management; the Chair, Merit Systems Protection Board; and the Acting Special Counsel, Office of the Special Counsel.

A handwritten signature in black ink that reads "Milton J. Aorlan". The signature is written in a cursive style with a small apostrophe over the 'i' in "Milton".

Acting Comptroller General
of the United States

Enclosure

CORPORATIONS CONTACTED WITHIN THE CIVIL SERVICE SYSTEM

<u>Corporation</u>	<u>Classification</u>	<u>Management</u>
Export-Import Bank of the United States	Wholly owned	Independent agency
Federal Crop Insurance Corp.	Wholly owned	Dept. of Agriculture
Federal Deposit Insurance Corp.	Government controlled	Independent agency
Federal Prison Industries	Wholly owned	Dept. of Justice
Federal Savings & Loan Insurance Corp.	Wholly owned	Federal Home Loan Bank Board
Government National Mortgage Assoc.	Wholly owned	Dept. of Housing and Urban Development
Inter-American Foundation	Wholly owned	Independent agency
National Credit Union Admin. Central Liquidity Facility	Government sponsored	National Credit Union Administration
New Community Development Corp.	Government controlled	Dept. of Housing and Urban Development
Overseas Private Investment Corp.	Wholly owned	Independent agency
Pennsylvania Avenue Development Corp.	Wholly owned	Independent agency
Pension Benefit Guaranty Corp.	Wholly owned	Dept. of Labor
St. Lawrence Seaway Development Corp.	Wholly owned	Dept. of Transportation