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REPORT BY THE U.S.

General Accounting Office

ACTION's Hiring And Use Of Certain Noncareer Employees And Other Personnel Matters

GAO reviewed several personnel matters at ACTION involving the hiring and use of Schedule B and C employees and the reassignment of career civil service employees. ACTION complied with regulations pertaining to the hiring of Schedule C employees and the reassignment of the career civil service employees.

ACTION uses its Schedule B authority primarily to directly hire persons who possess empathy with certain client groups. Empathy is a trait which ACTION believes cannot be identified through the competitive process and the OPM Director appears to agree with ACTION. However, OPM's competitive bilingual and cultural certification process was designed to identify such individuals. ACTION is not required to consult with OPM or use OPM to determine the practicability of filling Schedule B positions through competition. However, GAO believes the positions filled under the Schedule B authority were appropriate for consideration under the bilingual and cultural certification process.



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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-211941

The Honorable Austin J. Murphy
Chairman, Subcommittee on Select
Education
Committee on Education and Labor
House of Representatives

The Honorable Ike Andrews
Chairman, Subcommittee on Human
Resources
Committee on Education and Labor
House of Representatives

The Honorable Barney Frank
Chairman, Subcommittee on Manpower
and Housing
Committee on Government Operations
House of Representatives

The Honorable Cardiss Collins,
George Miller, Paul Simon, and Ted Weiss
House of Representatives

This report is in response to your request that we review ACTION's hiring and use of certain noncareer¹ employees. We also reviewed certain related personnel matters at the request of Senator Lowell P. Weicker, Jr., Chairman, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Senate Committee on Appropriations. Appendix I provides a detailed discussion of the results of our work on these issues.

The House request also asked that we review a number of program issues involving the Volunteers in Service to America Program, the Young Volunteers in ACTION Program, and the Vietnam Veterans Leadership Program. The results of our work on these program issues were presented in April 1983 testimony before the Subcommittee on Select Education, House Committee on Education and Labor. As requested by the Chairman's office, which acted as the representative for the other requesters, we have included our testimony statement as appendix II.

¹In this report, noncareer employees refer to individuals who were not hired through nor gain career status under the competitive Civil Service System.

Specifically for this report, we reviewed whether

- noncareer employee hiring, particularly Schedule B's and C's, was proper;²
- Schedule B noncareer employees were performing duties similar to those performed by career employees;
- ACTION had complied with the December 21, 1982, Continuing Resolution (P.L. 97-377) that prohibited its use of funds for reducing state office personnel; and
- ACTION had abused its authorities in proposing to reassign a number of career employees and terminating those who refused to relocate.

In performing our work, we reviewed records and interviewed officials at ACTION's national office and selected regional and state offices. We also reviewed laws, court decisions, regulations, and policies pertaining to ACTION's personnel practices. In addition, we interviewed Schedule B employees, both current and former career employees, and Office of Personnel Management (OPM) officials, including OPM regional office officials. Our review covered 16 of the 17 Schedule B's at ACTION at the time this phase of our work began. OPM officials reviewed for us 10 Schedule B position descriptions to determine if they could be filled through the competitive examination process. Because many of the positions required virtually the same type of skills, we did not ask OPM to review all of the position descriptions. (Our objectives, scope, and methodology are detailed in app. III.)

In summary, our review disclosed that:

- Although not required to use the competitive examination process under its Schedule B hiring authorities, ACTION filled positions using these authorities which were appropriate for consideration under the competitive process. In addition, these Schedule B employees were performing duties normally performed by career employees.

²Schedule B employees should have skills for which it is not practicable to competitively examine and who serve in non-policymaking, nonconfidential positions. Schedule C employees serve in policymaking positions or positions requiring a close confidential relationship with the agency head.

- ACTION's largest noncareer employee group, Schedule C political appointees, were appointed in compliance with OPM and separate executive order authorizations.
- ACTION complied with the continuing resolution prohibiting its use of funds to reduce state office personnel.
- ACTION did not abuse its authorities in proposing to reassign a number of career employees and terminating those who refused to relocate.

Although the legislative history of ACTION's fiscal year 1983 Appropriations Act indicates that the House and Senate Appropriations Committees were concerned about the percentage of noncareer employees at ACTION, the act did not restrict the percentage of noncareer personnel that ACTION could employ. In September 1983, ACTION's noncareer employees were 18.6 percent of total staff, which is more than 3 percentage points higher than that which existed in November 1981 when ACTION had twice as many employees.

On October 28, 1983, the House passed the Domestic Volunteer Service Act Amendments of 1983 (H. Rept. 2655). The bill included a provision limiting the number of certain categories of noncareer employees to 8.5 percent of total ACTION employees. In October 1983, the Chairman, Subcommittee on Select Education, House Committee on Education and Labor, asked us to determine the effect the 8.5-percent limit would have on ACTION's current noncareer employee numbers. We reported³ to the Chairman that had the limit been in effect on September 30, 1983, ACTION's noncareer employees covered by the bill provision could not exceed 44, which was 26 fewer than were on its rolls at September 30, 1983. The Senate's reauthorization bill (S. Rept. 1129) for ACTION did not include this provision. In April 1984, a joint House and Senate conference committee agreed to retain the 8.5-percent House provision; however, Schedule B employees were deleted from the categories of noncareer employees affected by the limit. (P.L. 98-288, May 21, 1984.)

RECOMMENDATIONS TO THE DIRECTOR OF OPM

We recommend that the OPM Director require the Associate Director for Staffing to:

³Letter to the Chairman, Subcommittee on Select Education, House Committee on Education and Labor (B-211941, HR4-Bill-1, Oct. 25, 1983).

- Reexamine ACTION's November 19, 1971, and May 12, 1978, Schedule B hiring authorities to determine ACTION's current need for such authorities. If the authorities are necessary, require ACTION to consult on a case-by-case basis with OPM competitive examiners before initiating Schedule B hirings, to determine the feasibility of filling the positions through the competitive Civil Service System.
- Review the position descriptions and actual duties performed by ACTION's current Schedule B employees to determine if the appointments should be advertised as competitive positions.

AGENCY COMMENTS AND OUR EVALUATION

Both OPM and ACTION were afforded an opportunity to comment on our report. In its response ACTION stated it does not agree with our conclusions regarding its use of OPM Schedule B hiring authority. Although OPM appears to agree with ACTION, the Director stated that OPM will soon be initiating a comprehensive review of appointing authorities with the aim of withdrawing those which are no longer necessary and clarifying those which are problematic. We have evaluated these comments and continue to believe the positions were appropriate for consideration under the competitive examination process. Our detailed evaluation of both agencies' comments is included in appendix I. Copies of the agencies' comments are in appendixes IV and V.

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We are sending copies of this report to other members of Congress and appropriate congressional committees; the Directors of the Office of Management and Budget, OPM, and ACTION; and other interested parties upon request.



Richard L. Fogel
Director

C o n t e n t s

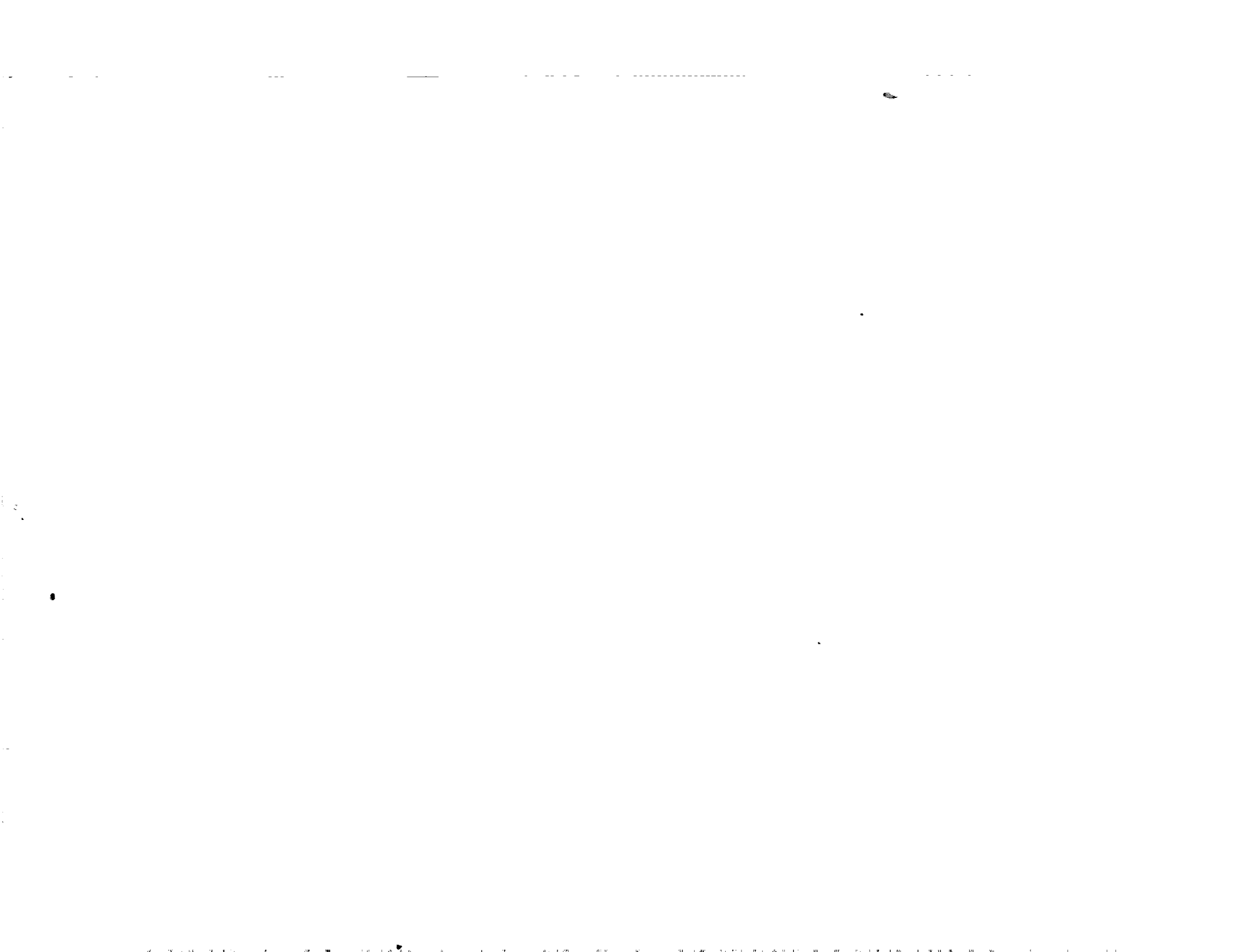
	<u>Page</u>
APPENDIX	
I ACTION'S HIRING AND USE OF NONCAREER EMPLOYEES AND OTHER PERSONNEL MATTERS	1
Congressional concern about the percentage of ACTION's noncareer employees	2
Schedule B positions were appropriate for consideration under the competitive examination process	4
Schedule C appointments complied with OPM and separate executive order authori- zations	14
ACTION did not violate the continuing resolution or abuse its authority in reassigning employees	16
Conclusions	17
Recommendations to the Director of OPM	18
Agency comments and our evaluation	18
II GAO TESTIMONY STATEMENT	23
III OBJECTIVES, SCOPE, AND METHODOLOGY	42
IV LETTER DATED JULY 16, 1984, FROM THE DIRECTOR, ACTION	44
V LETTER DATED JULY 17, 1984, FROM THE DIRECTOR, OPM	59

ILLUSTRATIONS

Numbers and types of noncareer employees at ACTION as of October 31, 1981, and September 30, 1983	3
Schedule B employees--Office of Domestic and Anti-Poverty Operations, March 1983	6

ABBREVIATIONS

GAO	General Accounting Office
OPM	Office of Personnel Management
OPP	Office of Policy and Planning
OVL	Office of Volunteer Liaison
RIF	reduction in force



ACTION'S HIRING AND USE OF CERTAINNONCAREER EMPLOYEES AND OTHERPERSONNEL MATTERS

The Chairman, Subcommittee on Select Education, House Committee on Education and Labor, two Subcommittee members, and one former full Committee member; the former Chairwoman, Subcommittee on Manpower and Housing, House Committee on Government Operations, and one Subcommittee member (now deceased); and the Chairman, Subcommittee on Human Resources, House Committee on Education and Labor, requested that we review ACTION's hiring and use of certain noncareer¹ employees. We also reviewed certain related personnel matters at the request of the Chairman, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Senate Committee on Appropriations.

The House request also asked that we review a number of program issues involving the Volunteers in Service to America Program, the Young Volunteers in ACTION Program, and the Vietnam Veterans Leadership Program. The results of our work on these issues were presented in April 1983 testimony before the Subcommittee on Select Education, House Committee on Education and Labor. (See app. II, pp. 23 to 41.)

Specifically for this report, we reviewed whether

- noncareer employee hiring, particularly Schedule B's and C's was proper;²
- Schedule B noncareer employees were performing duties similar to those performed by career employees;
- ACTION had complied with the December 21, 1982, Continuing Resolution (P.L. 97-377) that prohibited its use of funds for reducing state office personnel; and

¹In this report, noncareer employees refer to individuals who were not hired through nor gain career status under the competitive Civil Service System.

²Schedule B employees should have skills for which it is not practicable to competitively examine and serve in nonpolicy-making, nonconfidential positions. Schedule C employees serve in policymaking positions or positions requiring a close confidential relationship with the agency head.

--ACTION had abused its authorities in proposing to re-assign a number of career employees and terminating those who refused to relocate.

CONGRESSIONAL CONCERN ABOUT THE PERCENTAGE OF ACTION'S NONCAREER EMPLOYEES

Although the fiscal year 1983 Appropriation Act did not restrict the percentage of noncareer personnel that ACTION could employ, the legislative history of the act indicates that the Senate and House Committees on Appropriations were concerned about the percentage of noncareer employees at ACTION. As of September 30, 1983, ACTION's noncareer employees were 18.6 percent of total staff, which was about 3 percentage points higher than in November 1981, when ACTION had twice as many employees.

The House Committee report expressed the desire that the employment of noncareer employees should not exceed 5 percent of ACTION's total employment. The Senate report suggested that rather than have a reduction in force (RIF) of 89 career employees in December 1982, ACTION should find savings in other areas, including a review of its noncareer employee requirements. The final language in the continuing resolution did not include the 5-percent limit or prohibit ACTION from conducting the RIF. However, the continuing resolution prohibited ACTION from using any of its appropriation to close state offices or reduce the number of personnel engaged in operating its state offices. As a result of this prohibition, the number of career employees in the RIF was 20, rather than 89. The 20 in the RIF had been assigned to the ACTION national office.

During the period October 31, 1981, to September 30, 1983, ACTION's career employees decreased by about 52 percent (from 902 to 429 employees). The decrease resulted from two RIFs affecting 213 career employees; the separation of the Peace Corps from ACTION, along with 254 associated employees; and normal staff attrition. During the same period, ACTION's noncareer employees decreased by about 40 percent (from 162 to 98 employees).

The numbers and types of noncareer employees at ACTION as of October 31, 1981, and September 30, 1983, were as follows:

	<u>9/30/83</u>	<u>10/31/81</u>
<u>Schedule C</u> (Appointees serving in policymaking positions or positions requiring a close confidential relationship with the agency head.)	33	39
<u>Temporaries</u> (Appointees filling temporary positions or permanent positions on a temporary basis.)	21	47
<u>Schedule B</u> (Appointees with skills for which it is not practicable to competitively examine, serving in nonpolicymaking, nonconfidential positions.) ³	18	11
<u>Experts and Consultants</u> (Appointees with exceptional knowledge and expertise in an activity or specialized field.)	10	32
<u>Schedule A</u> (Positions that are neither policymaking nor confidential in nature, for which it is not practicable to examine, such as White House Fellows, student aides, and positions filled by the handicapped.) ⁴	7	24
<u>Senior Executive Service</u> (Positions above the GS-15 level not requiring Senate confirmation, but involving important policymaking and executive functions for a major program.)	5	5
<u>Presidential appointees confirmed by the Senate</u> (High level appointees whose duties and responsibilities are specified by statute.)	<u>4</u>	<u>4</u>
Total noncareer	98	162
Total staff	527	1,064
Percentage of non-career staff to total staff	18.6	15.2

³Does not include appointments made under Schedule B authority for professional and administrative career positions.

⁴Does not include attorneys hired under Schedule A authority.

Included in ACTION's reauthorization bill (H. Rept. 2655), passed by the House in October 1983, was a provision that would limit the number of noncareer employees in certain categories--Schedule C's, Schedule B's, experts and consultants, and temporaries GS-8 and higher--to 8.5 percent of total ACTION employees. The Senate version of ACTION's reauthorization bill (S. Rept. 1129), which was passed in September 1983, did not include a similar provision. In October 1983, the Chairman, Subcommittee on Select Education, House Committee on Education and Labor, requested that we determine the effect the 8.5-percent limit would have on the number of noncareer employees currently at ACTION. We reported⁵ that had the limit been in effect on September 30, 1983, ACTION's noncareer employees in these categories could not exceed 44, which was 26 fewer than were on its rolls as of that date.

In April 1984, a joint House and Senate conference committee agreed to retain the 8.5-percent House provision; however, Schedule B employees were deleted from the categories of non-career employees affected by the limit (P.L. 98-288, May 21, 1984).

SCHEDULE B POSITIONS WERE APPROPRIATE
FOR CONSIDERATION UNDER THE COMPETITIVE
EXAMINATION PROCESS

ACTION has authority to directly hire 28 Schedule B employees--25 in its Office of Domestic and Anti-Poverty Operations and 3 in its Office of Volunteer Liaison (OVL). Schedule B positions require special skills or are constrained by special circumstances which make it impracticable to use the competitive examination process to fill the positions. For ACTION Schedule B positions, the circumstances which may make it impracticable to use the competitive process are when (1) empathy with a client group is required, or (2) speed in hiring is needed to meet urgent problems or emergency needs, or (3) the positions are of a noncontinuing nature. In granting ACTION authority to hire Schedule B employees the Office of Personnel Management (OPM) did not require that ACTION seek OPM advice on whether particular positions were compatible with the competitive process. Accordingly, ACTION has not asked for OPM determinations for any of the positions we reviewed. We, however, did ask OPM to review 10 of the position descriptions. Based on OPM's review of the position requirements and our analysis of the special hiring circumstances, both we and the OPM officials

⁵Letter to the Chairman, Subcommittee on Select Education, House Committee on Education and Labor (B-211941, HR4-Bill-1, Oct. 25, 1983).

who made the review believe the positions were appropriate for consideration under the competitive examination process.

Schedule B appointments--Office of Domestic and Anti-Poverty Operations

In March 1983, ACTION had 14 Schedule B employees in its Office of Domestic and Anti-Poverty Operations. Five were assigned to the national office, and nine were with state offices. ACTION's Office of Domestic and Anti-Poverty Operations' Schedule B hiring authority, approved by OPM on November 19, 1971,⁶ sets forth special circumstances under which ACTION can directly hire Schedule B employees. The special circumstances are when

- a level of empathy, beyond that which can be obtained through regular competitive procedures, is required with a client group; or
- speed, beyond that which is possible under regular competitive procedures, is required to deal with urgent problems or other situations requiring immediate attention; or
- the particular position is of a noncontinuing, one-time-only nature, such that the position might not last for 1 year.

The existence of any one of these factors could make it impracticable to apply competitive examining procedures.

The following table provides information about the 14 Schedule B employees that were in the Office of Domestic and Anti-Poverty Operations (identified by letters A through N).

⁶This authority was modified by OPM in April 1980.

SCHEDULE B EMPLOYEES
OFFICE OF DOMESTIC AND ANTI-POVERTY OPERATIONS
MARCH 1983

Employee	GS	Location Wash., DC (W) Field (F)	Elapsed hiring time (months)	Special skill(s)	Time (months) on board (9/30/83)	Positions Continu- ing (C) one-time only (O)
A	12	F	3	Experience in programs for certain minority groups, contacts with state organizations.	18	C
B	12	F	7	Experience with the aged/infirm, contacts with state organizations.	13	C
C	11	F	5	Experience in programs for Eastern Europeans, contacts with state organizations, fluency in Eastern European languages.	20	C
D	11	F	4	Experience in programs for Hispanics, contacts with state Hispanic organizations and spanish-speaking ability.	21	C
E	12	F	6	Background with human service structure in state, commitment to new agency initiatives.	15	C
F	12	F	12	Experience with human service structure (health, environmental) in state, commitment to new agency initiatives.	15	C
G	12	F	2	Experience in programs for certain minority groups, contacts with state organizations.	16	C
H	12	F	5	Experience in programs for certain minority groups, contacts with state organizations.	15	C
I	12	F	4	Experience in programs for certain minority groups, contacts with state organizations.	20	C

APPENDIX I

APPENDIX I

SCHEDULE B EMPLOYEES
OFFICE OF DOMESTIC AND ANTI-POVERTY OPERATIONS
MARCH 1983

Employee	GS	Location		Elapsed hiring time (months)	Special skill(s)	Time (months) on board (9/30/83)	Positions	
		Wash., DC (W)	Field (F)				Continuing (C)	one-time only (O)
J	9	W		8	Understanding of war-zone Vietnam veteran-related problems.	22		O
K	15	W		2	Developing programs using volunteers to solve Vietnam veteran-related problems.	24		O
L	15	W		12	Developing programs using volunteers to solve Vietnam veteran-related problems.	13		O
M	14	W		3	Experience in drug use prevention for youth.	24		C
N	12	W		5	Experience in substance abuse prevention and volunteer programs for the elderly.	19		C

"Empathy" with client groups

OPM has a certification process that can provide candidates through the competitive system for positions requiring empathy with particular client groups. OPM officials who reviewed position descriptions for us said that the certification process could screen candidates possessing the cultural requirements included in the ACTION position descriptions.

In justifying Schedule B hiring authority for its Office of Domestic and Anti-Poverty Operations, ACTION maintained that some characteristics, such as age, sex, or race, might make a candidate more "empathetic" with particular client groups, and hence more desirable, and that such characteristics are not compatible with competitive examining procedures. ACTION also maintained that whenever conditions permitted, it would appoint as Schedule B employees persons whose philosophies and physical characteristics most nearly related to the projects on which they would be working.

The chief of OPM's Examining Branch for Mid and Senior Level Positions, Office of Staffing, in Washington, D.C., told us that when an agency has a position that requires special qualifications, such as language or cultural background, these factors can be considered through the competitive system. In particular, chapter 332 of the Federal Personnel Manual provides for selective certification. Specifically, selective certification is the referral of only those candidates on the list of eligibles who meet the special requirements of a job. A selective factor is a knowledge, skill, or ability that is essential for satisfactory performance on the job and represents an addition to the basic standard for a position.

OPM can provide both bilingual and cultural certifications. For example, agencies may request bilingual ability as a selective factor when the position to be filled regularly involves dealing with persons who can communicate effectively only in languages other than English; in this case, candidates could not perform satisfactorily in the job without this language ability.

Further, cultural certification considers:

"those knowledges, skills, or abilities which provide a familiarity with, and an understanding of a cultural group's lifestyle, customs, traditions, aspirations, and economic and social problems, and

an ability to communicate, establish rapport, and work harmoniously and efficiently with group members."

OPM officials in both headquarters and field offices reviewed ACTION position descriptions to determine the applicability of the requirements to the bilingual and cultural certification process. They informed us that the certification process could screen candidates possessing the cultural requirements included in the ACTION position descriptions. The examining branch chief informed us that although this process does not measure with exact precision a particular candidate's potential client-group empathy level, the process nonetheless yields candidates whose past work experiences and stated interests strongly indicate their ability to empathize with particular client groups. The official stated further that agencies normally make the decidedly subjective judgments concerning the empathy potential of candidates through a review of the applicants' qualifications and experience at the time of the personal interview. If the agency should determine that none of the OPM applicants are acceptable and is able to justify this decision, the agency can then proceed with a Schedule B appointment.

Speed in hiring was not
critical in filling positions

None of the 14 Schedule B's we reviewed in ACTION's Office of Domestic and Anti-Poverty Operations were hired to deal with emergency situations or "urgent" problems requiring immediate action, nor was "speed" in filling the positions otherwise a critical factor.

We determined that the elapsed time between ACTION's identifying its hiring needs for the 14 Schedule B employees and actually hiring them ranged from 2 to 12 months, averaging 5.5 months. (See pp. 6 and 7.) For example, 12 months prior to employee F's June 1982 hiring, a newly appointed regional director had identified and communicated to the national office the need for a program specialist in a particular state office, based on his assessment of staffing needs in that office. In employee E's case, 6 months elapsed between the time ACTION extended the employment offer and the employee actually accepted and came on board. Employees A and B were hired 3 and 7 months, respectively, after a newly appointed regional director determined the need for additional staff in two of his state offices.

OPM officials informed us that their experience in responding to agency requests with lists of qualified eligibles obtained through the competitive process is from 2 to 6 weeks.

The chief of the Mid and Senior Level Position Examining Branch told us that for national office positions (Washington, D.C., metropolitan area), OPM normally maintains an inventory or "register" of eligible candidates for positions up through GS-13, such that OPM can identify and certify the most qualified candidates to a requesting agency in 2 weeks. When inventories of eligibles are not maintained--which is the case in most OPM field offices--OPM announces the position vacancy to the general public in the vacancy's locale, soliciting applicants. OPM field officials informed us that (1) the response time to the requesting agency is from 2 to 6 weeks and (2) their general knowledge of the labor markets within their respective jurisdictions enables them in many cases to preliminarily estimate the response rate for particular position vacancies. Thus, agencies with field office vacancies can obtain informed estimates as to whether particular types of candidates are available through the competitive process, or perhaps should be sought and appointed on an excepted service basis.

Most Schedule B positions were
continuous and all positions
involved career employee duties

As originally justified, ACTION's Schedule B positions for its Office of Domestic and Anti-Poverty Operations were supposed to be noncontinuing and one-time-only in nature. In 1980, however, this requirement was modified by OPM to allow Schedule B employees to continue working for ACTION once the work was completed on the projects for which they were specially hired so long as they continued to spend at least 50 percent of their time working in their specialty areas. This modification did not alter the basic requirement that initial Schedule B appointments meet special circumstances that make it impracticable to use the competitive process, and therefore, distinguishable from career employee positions. For example, if the Schedule B positions require skills that can be provided by career employees and will be needed on a continuous basis--assuming no other special circumstances exist--then Schedule B appointments would not be appropriate.

In this regard we found that 11 of the 14 Schedule B employees in the Office of Domestic and Anti-Poverty Operations had served in positions which were of a continuing nature from the time the appointments were first made, and the duties being performed were not distinguishable from those of career employee positions. The three remaining Schedule B positions could be described as noncontinuing in that the positions were in a program that was to end after 3 years. However, because these positions were considered appropriate for consideration under the competitive examination process, we believe they should have been

term appointments rather than Schedule B hires. (Term appointments are made by OPM through the competitive examination process for specified 1- to 4-year periods.)

Through discussions with each of the ACTION field office supervisors where Schedule B's were employed, we learned that all of the positions were considered continuous in nature. The positions were described to us as (1) ongoing, continuing, and a necessary part of normal field operations, (2) involving the same program specialists duties (such as developing, monitoring, and technically assisting assigned projects) as those performed by career employees working, in most cases, in the same offices and in three cases, located in ACTION state field offices from which career employees had been involved in a RIF.

In addition, our review of work products--progress reports, project visit reports, correspondence, and other project relevant memoranda--disclosed no essential differences in the duties of the Schedule B and career employee program specialists. Employees A, G, H, and I, for example, were hired based on their experience in programs for certain minority groups, but they also managed substantial projects that served nonminorities. Likewise, career program specialists working in the same field offices managed the same mix of projects--minority and nonminority--and performed the same duties, such that there was no distinguishable differences in requirements for the program specialist position.

Further, in three instances, we found that Schedule B employees were appointed in state field offices where career persons had been involved in a RIF, and the Schedule B's were performing the same type of duties formerly performed by the career employees who were RIF'ed. For example, employees A and G were hired shortly after ACTION's November 1981 RIF, based on their experience in programs for certain minority groups. Yet, both Schedule B's were performing the same type of duties formerly performed by career employees in the RIF, including management of both minority and nonminority projects. Similarly, employee C was also hired shortly after the 1981 RIF, based on experience working with a certain ethnic group in the field office's location--a field office from which career employees had been RIF'ed. Upon reporting to work, employee C began performing career employee type duties and performed them on projects previously assigned to career employees.

The table on page 7 shows employees J, K, and L--who were assigned in ACTION's national office to the Vietnam Veterans Leadership Program--were in positions designated noncontinuing in nature. The three Schedule B appointments were made in September and December 1981 and August 1982. In September 1981 when the program was implemented, ACTION announced plans to end federal

involvement after 3 years (at the end of fiscal year 1984), such that the national office program staff also would be terminated. In our view, because (1) ACTION anticipated at the time of their appointments 2- to 3-year terms for the three employees and (2) the positions (OPM reviewed the two GS-15 positions for us, see p. 14) were appropriate for competitive examination, ACTION should have sought to make term appointments, rather than Schedule B appointments for the three positions.

Schedule B employees M and N located in the national office were placed in newly created positions; however, the positions were considered ongoing and a continuing part of normal program operations dealing with drug abuse initiatives at the agency.

Schedule B appointments--
Office of Volunteer Liaison

In 1978, ACTION requested Schedule B hiring authority for its OVL based on the office's then-recent creation and its mission--to play a major public advocacy role, including mobilizing private and governmental resources, in support of public and private sector voluntarism. In May 1978, OPM granted hiring authority for three Schedule B positions in OVL. ACTION justified Schedule B use because the positions required persons possessing a level of empathy with grass roots minority groups and organizations beyond that which could be obtained through the competitive examination process. In March 1983, there were three Schedule B employees assigned to ACTION's OVL. As of September 30, 1983, however, only one of the schedule B's was still at ACTION.

We reviewed two of the three positions. One case we reviewed was a GS-13 Schedule B employee hired in October 1981 for OVL's Office of the Assistant Director. The position description stated that the incumbent was to become the agency's primary advocate for youth programs, by aggressively implementing the administration's mandate to promote voluntary participation in runaway, delinquent, and other youth-related programs. We found, however, that during the employee's entire 24-month (as of Sept. 30, 1983) term, the employee had worked in an ACTION office other than OVL and had performed duties essentially unrelated to youth programs.

For example, upon reporting for duty in October 1981, the employee was detailed for 2 months to ACTION's Office of Policy and Planning (OPP)--which centrally was responsible for advising the ACTION Director on overall agency planning, budgeting, evaluation, and general policy development. Later, this detail was extended for another 2 months, to end February 1982. According to the employee's official personnel folder, on February 5,

1982, the employee completed the second OPP detail and reported to OVL. We found, however, that the employee had remained detailed to OPP the entire employment term, reporting to OPP's Assistant Director for Policy Development.

We also found that rather than concentrating on youth programs, the Schedule B employee had performed duties essentially unrelated to youth programs, the specialty area defined in the employee's OVL position description.

For the second case reviewed, we believe Schedule B status was justified. The employee, originally hired in January 1982 as an ACTION expert, was converted in April 1982 to GS-15 Schedule B status and made chief of OVL's Information Exchange Division. Essentially, the employee's special assignment was to develop for ACTION a national information clearinghouse on model volunteer programs and related activities. The employee had developed and operated a similar information exchange system while in the private sector.

Qualified candidates available
through the competitive Civil
Service process

At our request, OPM officials reviewed position descriptions for 10 Schedule B employees--7 GS-11/12's and 2 GS-15's in the Office of Domestic and Anti-Poverty Operations and 1 GS-13 in OVL. Six of the positions were in the field and four were in headquarters. We did not ask OPM to review every position description because many of the positions were virtually the same. OPM reported to us that "competitive examining procedures would be appropriate for these positions--," and that individuals with the requisite qualifications could be found through the competitive Civil Service process.

We asked officials in the Staffing Services Divisions in two OPM field offices to review four ACTION Schedule B field office positions--two in each office. The officials informed us that (1) the position requirements were not unique and did not warrant exception from the competitive process; (2) in their judgment, qualified candidates could be found and certified as eligible for ACTION if vacancies were announced; and (3) one of the position descriptions would generate such a large number of applicants that OPM would have to place a limit on the number of applicants accepted for consideration.

Because OPM's Mid and Senior Level Position Examining Branch in Washington, D.C., maintains registers of applicants from throughout the United States for federal positions (GS-9 through GS-13) in the Washington, D.C., metropolitan area, we asked that

the examining branch review the eight GS-11/12/13 position descriptions and determine if the registers had individuals qualified to fill the positions. The examiners performed a computer search of the mid and senior level registers and produced a listing of more than 500 potentially qualified applicants for the eight GS-11/12/13 positions. For this exercise, the examiners ignored position locations and concentrated on position requirements. From the 500 applicants, they judgmentally selected 60 for closer examination and identified at least one qualified eligible for seven of the eight positions. The chief, Mid and Senior Level Position Examining Branch, Office of Staffing, concluded that had the branch examined each of the more than 500 applicants in detail--as in actual practice--they would have satisfied each position description with individuals possessing the requisite qualifications.

OPM does not maintain registers of applicants for GS-15 positions; however, the chief, Mid and Senior Level Position Examining Branch, informed us that the position descriptions had qualification requirements that were competitive in nature and foresaw no problems in finding qualified eligibles.

SCHEDULE C APPOINTMENTS COMPLIED
WITH OPM AND SEPARATE EXECUTIVE
ORDER AUTHORIZATIONS

ACTION's 33 Schedule C employees were appointed in compliance with OPM and separate executive order authorizations, and compared in number, using OPM criteria, with the number that ACTION had on board at the end of the previous administration--late 1980. However, the percentage of such employees currently at ACTION compared to the percentage at the end of the last administration has increased substantially, largely due to the reductions in career staff that have taken place at the agency.

By definition, Schedule C appointments are grade GS-15 or below positions that involve significant policy-determining responsibilities or require a close confidential relationship with the agency head or other key appointed officials. ACTION's Schedule C appointments are excepted from the competitive service, but are authorized and governed by both OPM and a separate Executive Order (No. 12021, Nov. 30, 1977).

OPM authorized 26 of ACTION's Schedule C appointments that were on board in September 1983. The director of OPM's Non-Competitive Staffing Branch informed us that the branch does not review the specific qualifications of, or individually approve, each Schedule C appointee, but does review--and did for ACTION's appointments--each proposed Schedule C position to ensure that

it is "policy determining" or otherwise requires a "confidential relationship" with key agency officials.

OPM officials further informed us that they generally control the number of Schedule C's at agencies through comparisons with the number on board at the end of the previous administration. Such a baseline, we were informed, represents a point in time when the number of OPM authorized Schedule C's for the previous administration likely would have been highest or otherwise most representative of the number needed to carry out a given agency's then-current mission. Agency requests for Schedule C positions above such baseline numbers are required to be justified to OPM and usually are justified based on changed missions or agency reorganizations. ACTION's Schedule C baseline--the number on board in late 1980--is 24, compared to the 26 on board in September 1983.

OPM's director of the Non-Competitive Staffing Branch also told us that the branch does not consider, nor does it normally have knowledge of, the total staff at an agency when authorizing Schedule C appointments. He said the percent of Schedule C's to total staff is not a factor in deciding to approve a Schedule C position. We noted that ACTION's baseline of 24 Schedule C employees was 2.2 percent of its total staff in 1980. With subsequent reductions of over 50 percent of total agency staff, ACTION's (OPM authorized) Schedule C employees that were on board in September 1983, represented 4.9 percent of the agency's total staff.

By separate authority, Executive Order 12021, ACTION appointed seven Schedule C's as GS-15 regional office directors. Two of ACTION's nine regional directors are career GS-15 employees.

In 1975 and 1976, ACTION proposed to OPM that its regional director positions be converted to Schedule C status. OPM rejected the proposals, maintaining that the positions were not "policy determining" and did not require a "confidential relationship." Subsequently, effective November 30, 1977, ACTION sought and obtained the separate executive order authority. The executive order provided that position incumbents, who, on November 29, 1977, were in the career service--as were ACTION's two current career regional directors--would not be affected by the otherwise ordered conversion to Schedule C status.

ACTION's executive order Schedule C's, therefore, are not subject to OPM review and are not included in OPM's Schedule C baseline criteria. Further, we noted that in 1980 all ACTION Schedule C's were 2.9 percent of total staff and that as of September 1983, such employees represented 6.3 percent of the agency's total staff.

ACTION DID NOT VIOLATE THE CONTINUING
RESOLUTION OR ABUSE ITS AUTHORITY IN
REASSIGNING EMPLOYEES

During our review, the Chairman, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Senate Committee on Appropriations, requested that we review certain matters in conjunction with our work on personnel issues at ACTION. The Chairman asked that we review whether ACTION had

- violated the December 21, 1982, Continuing Resolution (P.L. 97-377) that prohibited ACTION's use of funds for reducing state office personnel;
- abused its authority in proposing to reassign a number of employees and terminating those who refused to relocate; and
- coerced an employee into resigning.

In September 1983, we informed the Chairman's office that during the October 1981 to March 1983 period, ACTION ordered 13 of its state office employees reassigned to other state offices. Three of the orders subsequently were rescinded by ACTION, six orders were accepted and the affected employees relocated, and four orders were refused and the affected employees separated from ACTION. The employees who were separated received severance payments.

We stated that the continuing resolution prohibited ACTION from eliminating employee positions, rather than individual employees in its state offices. Thus, ACTION's removal of and payment of severance allowances to the four employees who refused reassignment did not violate the continuing resolution. Also, since the continuing resolution's enactment, ACTION had increased by two the number of its authorized state office positions.

We also stated that based on our detailed review of the 13 reassignment cases, ACTION was authorized and followed proper procedures in proposing to reassign employees and terminating those who refused to relocate. We noted that the Merit System Protection Board normally will hear reassignment-related cases only when an adverse action (such as removal from service) has been taken against the complainant. In deciding appeals of adverse actions for refusal to accept reassignments, the Merit System Protection Board has upheld the removal where an agency could show that (1) a vacancy--to which the employee was ordered reassigned--actually existed, (2) the employee was qualified for the vacancy, and (3) the employee refused reassignment. One of the persons terminated for refusing to accept the reassignment

filed an appeal with the Merit System Protection Board; however, the appeal was withdrawn before being reviewed by the board.

Regarding the allegation that ACTION coerced an employee into resigning, we found that the Merit System Protection Board, after reviewing the case, determined that the employee's resignation had been voluntary.

CONCLUSIONS

With regard to the questions we were asked to address, we found the following:

- ACTION's largest noncareer employee group, Schedule C appointees, were appointed in compliance with OPM and separate executive order authorizations.
- ACTION complied with the continuing resolution prohibiting its use of funds to reduce state office personnel.
- ACTION did not abuse its authorities in proposing to reassign a number of career employees and terminating those who refused to relocate.
- Although not required to use the competitive examination process under its Schedule B hiring authorities, ACTION filled positions using these authorities which were appropriate for consideration under the competitive process. Further, these Schedule B employees were performing duties similar to those performed by career employees.

In respect to the last finding, the guiding principle in deciding whether to fill a position competitively or with a Schedule B appointment is the practicability of finding eligible candidates through the OPM competitive process. Schedule B appointments should be made only to those positions for which it is determined that competition is impracticable.

In justifying a Schedule B position, ACTION is not required to consult with OPM or use OPM registers to determine the practicability of filling the position through competition. ACTION uses its Schedule B authority primarily to directly hire persons who possess empathy with certain client populations. Empathy is a trait which ACTION believes cannot be identified through OPM's competitive process, and the OPM Director appears to agree with ACTION. However, OPM's competitive bilingual and cultural certification process was designed to identify such individuals. Specifically, the Federal Personnel Manual states that cultural certification considers "those knowledges, skills or abilities

which provide a familiarity with, and an understanding of a cultural group's lifestyle, customs, traditions, aspirations, and economic and social problems, and an ability to communicate, establish rapport, and work harmoniously and efficiently with group members." As noted above, OPM has allowed ACTION some discretion in determining the practicability of filling positions competitively; however, neither we nor the OPM officials who reviewed the ACTION positions for us believe that ACTION has a sufficient basis for concluding that competition is impracticable.

RECOMMENDATIONS TO THE DIRECTOR OF OPM

We recommend that the OPM Director require the Associate Director for Staffing to:

- Reexamine ACTION's November 19, 1971, and May 12, 1978, Schedule B hiring authorities to determine ACTION's current need for such authorities. If the authorities are necessary, require ACTION to consult on a case-by-case basis with OPM competitive examiners before initiating Schedule B hirings to determine the feasibility of filling the positions through the competitive Civil Service System.
- Review the position descriptions and actual duties performed by ACTION's current Schedule B employees to determine if the appointments should be advertised as competitive positions.

AGENCY COMMENTS AND OUR EVALUATION

Both OPM and ACTION provided comments on our report. ACTION did not agree with our conclusions regarding its use of OPM Schedule B hiring authority, and OPM appears to agree with ACTION. Based on our evaluation of these comments, we continue to believe the positions were appropriate for consideration under the competitive examination process. Copies of the ACTION and OPM comments are in appendixes IV and V, respectively.

ACTION comments

The ACTION Director takes issue with our interpretation of the OPM criteria which governs appointments made under the agency's two Schedule B hiring authorities.

The Director does not dispute that "OPM could most likely" provide eligible and qualified candidates for the Schedule B positions in the agency; however, he believes that Schedule B

appointments cannot be made relying "merely" on the competitive criteria. In particular, the Director does not believe that OPM's bilingual and cultural certification process would yield individuals possessing the degree of client empathy and/or rapport with state and local organizations sought by ACTION.

Further, the Director believes we have interpreted the Schedule B hiring authority in an incomplete and restrictive manner, inconsistent with its intent. The Director states that 1980 OPM documents make it clear that (1) there is no service time limit on Schedule B appointments and (2) Schedule B employees may perform up to 50 percent of their assignments outside their specialty area. The Director believes we were unaware of the contents of these documents and because of this lack of information we concluded that Schedule B employees are limited in the length of time they can work and also are limited to only those projects involving their specialty areas. In addition, the Director believes it is our perception that in order to use the Schedule B authority "all" special hiring circumstances must exist. The Director points out that it is ACTION's interpretation that only one of the special hiring circumstances must exist to warrant a Schedule B appointment.

GAO response

We do not agree with the Director that our interpretation of the criteria governing Schedule B hiring is incomplete, restrictive, or inconsistent with the intent of the authority. In the text of the report (pp. 4, 5, 8, 9, and 10), we have included additional information and/or made revisions to further clarify our positions. This additional information, however, does not alter our conclusion that these positions were appropriate for consideration under the competitive examination process, nor have we changed our recommendations to OPM. Following is our response to the specific issues raised by ACTION.

According to OPM regulations Schedule B positions are those which are neither confidential nor policy determining and for which it is impracticable to hold a competitive examination. In ACTION's Schedule B hiring authority, there are several special hiring circumstances that make it impracticable to hold a competitive examination and only one must exist to justify use of the authority.

We recognize that the existence of any one of these factors could make it impracticable to apply OPM competitive examining procedures. For example, the existence of an emergency requiring immediate attention may make it impracticable to use the OPM competitive process even when the technical requirements of the

position could be satisfied by OPM. Similarly, if OPM was unable to provide a person possessing the level of empathy sought by the agency, then again the competitive process may not be appropriate even though no other special hiring circumstances exist.

According to the Director the "empathy" factor is the most significant consideration in the Schedule B hiring authority. Specifically, the need exists to augment the staff with persons closely aligned in physical attributes and philosophies to the projects on which the persons would be working to ensure success at the grass roots level. In this regard the Director states that OPM's bilingual and cultural certification process cannot provide persons with the degree of empathy sought by ACTION.

OPM officials informed us that the certification process could screen candidates possessing the cultural requirements included in the ACTION position descriptions. Since ACTION has made no attempt to use the OPM bilingual and cultural certification process for any of the positions filled under the Schedule B authority, we do not believe the Director can say with certainty that the process will not work.

Additionally, ACTION's explanation for why it needs Schedule B authority is similar to the OPM Federal Personnel Manual explanation for why bilingual and cultural certifications are offered. Specifically, ACTION says it needs to hire individuals whose physical attributes and philosophies are similar to the client population. In particular the agency is looking for persons who know and understand a particular cultural group, know the subtleties of operating within the group, have the ability to establish rapport and gain acceptance by the group, and in some cases speak a second language. Similarly, the Federal Personnel Manual in explaining situations where use of cultural certification is justified states that the nature of public contacts with members of particular cultural groups is a key factor in justifying use of cultural certification. The manual states

"it is not the contacts themselves, which are important but their purpose, which should involve 'selling' programs, soliciting information, providing advice and counseling or other duties whose performance is enhanced by the possession of cultural knowledges and skills."

It seems clear to us that the purpose for OPM offering cultural certification meets closely ACTION's needs.

We recognize that based on 1980 revisions to ACTION's hiring authority there is no service time limit on Schedule B positions and that the employees in these positions can continue to work for ACTION once their initial projects are complete so long as they spend at least 50 percent of their time on projects related to their specialty areas. We considered these revisions in developing our report; however, they were not included in our initial draft report because they are not relevant to the issues discussed. In order to avoid any confusion we have included in the text of our report further elaboration on these matters.

Our view on these matters is that the initial Schedule B appointment must be to a position which meets at least one of several special hiring circumstances, thereby making it impracticable to use the competitive examination process. It is only when positions are filled properly using the criteria established by OPM that the 1980 modifications would be considered.

OPM comments and our evaluation

In his response to our draft report the OPM Director expressed the concern that certain of our conclusions did not accurately reflect the purpose of the Schedule B hiring authority. First, the Director was concerned that we were saying all special hiring circumstances must exist to warrant use of the Schedule B authority. He was also concerned that we did not realize that continuing positions can be filled using Schedule B authority when the OPM competitive process cannot fulfill agency needs. These same concerns were addressed in our response to the ACTION comments (see pp. 19 and 20), and therefore, we will not reiterate our response here.

Another concern expressed by the Director involved our conclusion that competitive examinations adequately screen candidates for all positions in which empathy with the client population is critical. The Director assumed that we concluded that "all" (emphasis ours) positions requiring empathy can be filled through the competitive process when in fact we are not concluding this. OPM recognizes that competitive examining "may" (emphasis ours) be impracticable for positions requiring a certain level of empathy, and we also recognize this may be the case in some situations.

ACTION contends that only specially qualified persons could work effectively with projects serving certain cultural groups and assumed the competitive examination process could not provide such persons. OPM's response to us indicates it does not disagree with ACTION on this matter. OPM, however, has a certification process designed to identify such persons. The

Federal Personnel Manual states specifically that cultural certification considers:

"those knowledges, skills or abilities which provide a familiarity with, and an understanding of a cultural group's lifestyle, customs, traditions, aspirations, and economic and social problems, and an ability to communicate, establish rapport, and work harmoniously and efficiently with group members."

We were informed that this process does not measure with exact precision a particular candidate's potential client-group empathy level; however, it does yield candidates whose past work experiences and stated interests strongly indicate their ability to empathize with particular client groups. Further, the agencies normally make the decidedly subjective judgments concerning empathy potential at the time of the personal interview.

We, therefore, find it difficult to imagine that in a city the size of Chicago (one case we reviewed), it was necessary to use Schedule B authority because there existed only one person who had the experience in working with local groups in a particular minority community necessary to establish rapport and organize projects to serve that minority community. The competitive system was not tested to determine if qualified candidates were available in this case or in any of the other cases. We, therefore, do not understand how the OPM and ACTION Directors can state with such certainty that the competitive system would not be practicable for such positions. In contrast to the statements of the Directors, we were told by OPM personnel in several locations who are familiar with and work with the bilingual and cultural certification process that the ACTION Schedule B positions could likely be satisfied using this process.

The OPM Director expressed the additional concern that our recommendations to him may unduly restrict OPM's authority to place particular positions in the excepted service. Our recommendations are not intended to restrict OPM's authority. We do not question OPM's authority. We do question, however, the manner in which ACTION is using the Schedule B authority granted by OPM. The Director stated in his response that OPM will soon be initiating a comprehensive review of appointing authorities with the aim of withdrawing those which are no longer necessary and clarifying those which are problematic. While this is an appropriate action, we believe the Schedule B situation at ACTION warrants specific attention. Therefore, our recommendations to the Director of OPM are appropriate.

UNITED STATES GENERAL ACCOUNTING OFFICE
Washington, D.C.

FOR RELEASE ON DELIVERY
Expected at 10:00 a.m., EST
Tuesday, April 19, 1983

STATEMENT OF
ROBERT A. PETERSON
SENIOR ASSOCIATE DIRECTOR
HUMAN RESOURCES DIVISION

BEFORE THE
SUBCOMMITTEE ON SELECT EDUCATION
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ON

ACTION'S POLICIES AND PRACTICES

Mr. Chairman, and members of the Subcommittee, we are pleased to appear today to discuss the work this Subcommittee and others asked us to undertake concerning ACTION's policies and management practices. From the list of questions raised, we have, in conjunction with the Subcommittee staff, directed our efforts toward those issues considered priority. These generally included whether ACTION's efforts to redirect the VISTA Program have included possible violations of the Domestic Volunteer Service Act; whether agency funds, particularly VISTA Program funds, have been used properly; whether ACTION's new initiatives are directed toward achieving anti-poverty related results and are using assigned volunteers properly; and whether ACTION's hiring practices and use of non-career employees have been proper. Our work is still on going and our presentation today will focus on those issues where our work is completed or nearly so.

The Domestic Volunteer Service Act of 1973 gave ACTION--the Federal volunteer agency--responsibility for domestic volunteer programs and activities. Their underlying purpose is to encourage persons from all walks of life and age groups to perform volunteer services aimed at eliminating poverty and poverty-related problems. Currently, ACTION's major programs include VISTA, Young Volunteers in ACTION (YVA) and the Vietnam Veterans Leadership Program (VVLP), as well as Older American Volunteer Programs.

VOLUNTEERS IN SERVICE TO
AMERICA PROGRAM

The Volunteers In Service to America (VISTA) Program was authorized in 1964 by the Economic Opportunity Act and was transferred to ACTION in 1971.

ACTION assigns VISTA volunteers to sponsoring projects that both meet ACTION/VISTA program standards and are engaged in solving poverty-related problems. Volunteers receive training, stipends, and other subsistence support, and serve full time for at least one year, ordinarily not to exceed two years.

A current ACTION goal is to end the VISTA Program. ACTION officials told us that (1) VISTA project benefits have not justified costs, and (2) VISTA projects have been used to organize low-income persons into confrontational citizens groups to obtain more Government provided support, resulting in their increased, long-term dependence on welfare programs.

During fiscal year 1981, there were about 1100 active VISTA projects. Currently, there are about 480 active projects. VISTA funding likewise decreased from \$33 million in fiscal year 1981, to \$11.8 million in fiscal year 1983. The President's budget proposed terminating VISTA in 1984.

ACTION Misinterpreted Fiscal
Year 1982 VISTA Funding
Requirements

During fiscal year 1982, ACTION planned to obligate less for the VISTA program than the \$16 million "floor" established by the Omnibus Budget Reconciliation Act of 1981. ACTION's

position was that VISTA had to be reduced to comply with continuing resolutions, (Public Law 97-92, December 15, 1981, as extended by Public Law 97-161, March 31, 1982), which required that each appropriation account be cut by 4 percent, but no program or project within an account be cut by more than 6 percent. ACTION planned to reduce VISTA funding during fiscal year 1982 by 6 percent or \$960,000.

In an August 18, 1982, opinion, the Comptroller General determined that since only one lump sum was appropriated and one appropriation account established for Domestic Volunteer Service Act programs, and since required reductions could be made in programs and program support areas other than VISTA without exceeding the 6 percent per program cut limit, ACTION could not lawfully reduce VISTA funding below the \$16 million floor. By letter dated September 7, 1982, to the Chairman, House Committee on Education and Labor, the ACTION Director agreed to comply with the opinion, and indicated that plans were underway to obligate the \$960,000 despite the soon-to-end fiscal year.

Given the short time available before the end of the fiscal year the \$960,000 in VISTA funds were obligated (1) as grants to existing VISTA projects (\$414,000) and VVLP projects (\$532,000), and (2) for related audit operations and publications (\$14,000).

ACTION Improperly Disapproved
VISTA Projects In 1981

On April 15, 1981, ACTION published in the Federal Register with an immediate effective date, revised VISTA guidelines dealing with criteria for funding VISTA projects. A principal revision was the deletion of "community organizing" as a required project activity for receiving ACTION's approval and funding. "Community organizing" was considered at odds with ACTION's new emphasis on individual "self-sufficiency" and non-dependency."

During the April 1981 to February 1982 period, ACTION used the revised guidelines to evaluate 566 VISTA project proposals. Of these, 274 were existing projects seeking refunding, and 292 were new project proposals. ACTION denied refunding for 176 existing projects. We identified ten that were denied solely based on their "community organizing" aspects, and 20 that were denied for "community organizing" and other reasons.

Of the 292 new project proposals evaluated during the period, ACTION denied 96. In the case of new project applicants ACTION was not required to specify its reasons for denial, and in most cases none was specified. We identified two proposals, however, where the stated basis for denial was the "community organizing" aspects of the proposed projects.

In December 1979, the Domestic Volunteer Service Act was amended to require, with limited exceptions, that

"any rule, regulation, guideline, interpretation, order, or requirement of general application" issued by ACTION must be published with a 30 day comment period in the Federal Register. Forty five days after this period, final regulations may become effective. ACTION did not follow these procedures when publishing revisions to the VISTA guidelines in April 1981.

In an October 1981 decision a Federal District Court ruled that ACTION had used unlawfully promulgated guidelines in denying renewal funding for the plaintiff organization. In November 1981--as a result of the court's ruling--ACTION, republished the new guidelines in the Federal Register, allowed time for public comment, and, on February 5, 1982, the guidelines became effective.

ACTION Denied
Funding For 3-Year Old
VISTA Projects

During late 1981, ACTION denied refunding for 14 VISTA projects on the basis that the projects had been receiving VISTA funding for at least three years. VISTA regulations in effect in 1981, allowed funding beyond 3 years, but required that ACTION competitively judge those projects seeking renewal for a fourth year, along with other "new projects".

The Director, Office of Domestic and Anti-poverty Operations told us that the 14 denials were made at regional levels; and that they apparently were made based on regional office misinterpretations of National Office guidance.

A standard letter used to notify the projects of the funding denial had been an attachment to a memorandum from the VISTA Director to all regional directors and, according to the memorandum, was to convey to older VISTA projects denied refunding, that they did not have the right to appeal the denial decision. The standard letter made no mention of appeal rights, however, and may have contributed to some regional offices thinking that such projects were not to be refunded.

In a January 1983 memorandum to regional directors, the VISTA Director stated that the three-year project period could not be used as a reason to deny project renewals, and further that all disapproved renewal applicants were entitled to a hearing to show cause why their projects should not be denied. These instructions should help preclude possible future misinterpretations of the guidelines.

YOUNG VOLUNTEERS IN
ACTION PROGRAM

In September 1981, ACTION initiated its Young Volunteers in ACTION (YVA) Program designed to have young volunteers, on a part-time, non-paid basis, assist their communities in reducing or eliminating poverty. Twelve demonstration projects were established. First year funding was provided from both VISTA funds (\$192,000) and Service Learning funds (\$319,000).

Following the one-year demonstration period, ACTION extended eleven of the demonstration projects and awarded one year grants to 64 new projects. The 75 projects were funded from VISTA funds (\$25,000), Service Learning funds (\$1,156,000), and from interagency agreement funds with the Department of Health and Human Services (\$236,000) and the Department of Justice (\$30,000).

VISTA Grant Awards To
YVA Demonstration Projects

Title I, Part A, section 108 (b) of the Act provides that no funds can be obligated under Part A for grants or contracts for new projects for direct costs of supporting VISTA volunteers unless the recipients have been selected competitively. Competitive selection involves publicly announcing through the Federal Register such matters as availability of funds, applicant selection criteria, and application and review processing details.

In a September 18, 1981, memorandum to the ACTION Director, ACTION's Associate General Counsel advised that since seven of the YVA demonstration project sponsors were already receiving ACTION funds through Retired Senior Volunteer Program grants (under Title II of the Act) the projects were not "new projects," and, thus, could be awarded VISTA grants non-competitively.

This, in our view, was a narrow interpretation of the proscription in Part A of the Act. At the same time, it should be recognized that alternative ways existed to fund demonstration projects non-competitively, that is, as direct National Office administered support. We also note that the 64 new YVA grants were awarded competitively, although no VISTA funds were involved.

YVA And YVA/VISTA Volunteers
May Not Be Performing Duties
Contemplated By The Act

The Domestic Volunteer Service Act, Title I, Part B sets forth that its purpose is " * * * to provide for a Program of part-time or short-term service learning by secondary and post-secondary school students to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems". Similarly, VISTA has as its central focus, anti-poverty related activities. Also, longstanding practice at ACTION regarding VISTA volunteers has emphasized the institutionalization of the activity engaged in by the volunteer, so that the activity, after a time, is not dependent on the volunteer, and can continue even when the volunteer departs.

We question whether YVA volunteers, now serving as "library aides," "candy strippers," tax return preparers," "gardeners helpers," "clerks," "receptionists" and "envelope stuffers"--as characterized by YVA project reports filed with the National Office--meet the purposes and intent of the Act.

Further, we question whether VISTA volunteers used on YVA projects as "clerks," "typists," and counselors" are appropriate VISTA volunteer activities.

Based on our review of YVA activity reports of the 12 YVA demonstration projects filed with the National Office it appears that more than 75 percent of the YVA Volunteer activities can be described as community services in the broadest sense, rather than poverty-related services. The YVA National Director informed us that community services while benefiting the recipient communities, also personally benefit the volunteers, some of whom, are from poverty environments. While volunteers and service recipients likely will benefit from YVA activities, we question whether the reduction-of-poverty purpose envisioned in the Act is being fully met.

VIETNAM VETERANS LEADERSHIP PROGRAM

In September 1981, ACTION initiated the Vietnam Veterans Leadership Program (VVLP). Its purpose is to engage on a non-paid basis, successful Vietnam veterans in assisting other Vietnam veterans with problems (unemployment, underemployment, lack of training, education, etc.,) that may be hindering their successful readjustment. The VVLP Project Director and veteran volunteers attempt, through public relations activities to improve the combat-veteran's general image, and through direct contacts with businesses, business leaders and community organizations, to increase available veteran services and job opportunities.

By March 1983, ACTION had 41 projects operational with plans for at least 9 more. Since 1981, WVLP funding has amounted to about \$3.6 million, including Special Volunteer Program funds (\$405,000), VISTA funds (\$970,000), and interagency agreement funds from the Department of Health and Human Services (\$1,350,000), and the Department of Labor (\$850,000).

As of September 1982, 71 VISTA volunteers were assigned to 13 WVLP projects. Prior to October 1982, the volunteers were supported directly by the National Office, and supervised by WVLP Project Directors whose salaries were paid in full by VISTA Supervision Grants.

VISTA Volunteers May Be
Used In Inappropriate
Roles

Longstanding ACTION policy guidance, republished as ACTION Order 4301.1, (VISTA Volunteer Handbook) effective September 1, 1981, defines the appropriate role of a VISTA volunteer as

"* * * focused toward mobilizing community resources and increasing the capacity of the target community to solve its own problems. * * * It is crucial to the concept of local self reliance that sponsoring organizations plan for the eventual phase-out of VISTA volunteers and for the performance of the volunteer's functions by local citizens."

"Volunteers are prohibited from performing activities or duties which would in their absence, be carried out by the staff of the sponsoring organization, for example, secretarial or clerical duties."

Quarterly reports filed by the 13 VVLP projects using VISTA volunteers, as well as our visits to two of the projects, indicated that volunteers are being used in a variety of roles. At one project, for example, a volunteer is engaged in identifying businesses willing to provide resources to support a scholarship fund for Vietnam veterans. Another project has a VISTA volunteer working with the city's housing assistance office to establish a "congregate living home" for disabled veterans in the area. Such activities, because they aim to institutionalize the results of the volunteers' work, such that the activities will continue after the volunteer leaves the project, appear to be appropriate VISTA volunteer activities.

Approximately 40 percent of the activities being performed by VISTA volunteers on VVLP projects, however, seem inappropriate. Specifically, volunteers are engaged in such direct service roles as secretaries, receptionists, clerks, typists, resume-preparers, and part-time counselors. Such direct service roles may create the kind of project dependence on VISTA volunteers that the guidelines seek to discourage.

We visited two VVLP projects with VISTA volunteers assigned. Each project was using the volunteers to perform some

administrative support functions. Both project directors told us they were unclear about proper roles for the volunteers, that they needed the kinds of support the volunteers were providing, and were unfamiliar with ACTION policy guidelines on the subject--although ACTION Order 4301.1 was available at each project office.

Some VVLP Accomplishments
May Be Overstated

In its March 1983, mid-term status report on VVLP, ACTION stated that VVLP projects have played a key role in placing more than 1,000 Vietnam veterans in jobs. About 800 of the reported job placements were attributed to projects included in our review, but our analysis of the monthly activity reports showed considerably fewer actual placements for these projects.

During late 1982, and early 1983, we visited five VVLP offices. At that time, twenty-two Vietnam veteran job placements had been documented and were presented to us as the total job placement results. Activity reports filed with the National Office by the other 15 VVLP projects included in our review showed a total of another 322 job placements.

VVLP officials at ACTION told us that all VVLP projects generally have secured far more jobs than they document and report to the National Office. They said that at times, VVLP project directors, because of the press of their duties, fail to record their accomplishments. We were told that in January 1983, the VVLP National Office requested each project to reassess its

employment activities since inception and report the results for the mid-term status report. This exercise resulted in the 1,000 job placement figure.

We held follow-up discussions with two VVLP project directors who reported large job placement increases over those filed in their monthly activity reports. They told us that the reassessment estimates they reported to the National Office were based on the number of project contacts made by or with Vietnam veterans, the number of veteran referrals made to employers and employment services, and information verbally provided by volunteers associated with the project. In our view, such estimates should not be reported by ACTION as actual job placements.

We recognize that the VVLP program has purposes other than job placements, such as "image improvement" and service referrals, that are also important, but are more difficult to measure in an accomplishment sense. Certainly, such VVLP public relations efforts as Vietnam veteran memorial dedications in various states, and VVLP efforts to reach business leaders have served to increase general awareness and focus attention on Vietnam veterans. Recognizing that many VVLP projects are now starting to compile data on employment and other assistance provided to veterans, we believe ACTION should provide VVLP projects with guidance on defining, documenting and reporting their accomplishments.

One project in St. Louis, Missouri, has had considerable success in placing veterans in jobs. Of the 344 job placements we identified for the 20 projects in our review, the St. Louis project secured 270. Apparently, the St. Louis VVLP has benefited from its close association with an established veterans organization experienced in helping local veterans find employment.

Prior to obtaining the VVLP/VISTA grant, for example, the St. Louis VVLP Project Director headed the St. Louis Area Veterans Consortium, which was established in 1974, and received funding from State and CETA grants. The consortium provides placement, training, and vocational services for veterans. In fiscal year 1982, it experienced severe budget cuts, and applied for the VVLP/VISTA grant. Now co-located and closely affiliated, though separately organized, the St. Louis VVLP and the consortium both are heavily involved in providing employment services for veterans--although such VVLP goals as "image improvement" through public relations efforts and the use of VISTA volunteers in such functions as applicant intake, counseling and referral serve generally to differentiate between the projects.

VISTA Supervision Grants For
VVLP Projects Are Far Higher
Than For Conventional VISTA
Projects

During the period March 1982 to March 1983, ACTION awarded larger VISTA Supervision Grants--used to pay project directors' salaries--to VVLP projects than such grants awarded to VISTA projects.

During the 12-month period, 13 VVLP projects, supervising 71 VISTA volunteers, received supervision grants totaling \$390,000 to pay the full amount of the project director's salaries. During the same period, 50 VISTA projects, supervising about 300 volunteers, received partial supervision grants totaling \$208,000. Comparatively, the VVLP projects averaged \$30,000 per project in supervisory costs, or about \$5,500 per volunteer supervised, whereas the VISTA projects averaged about \$4,200 per project in supervisory costs, or about \$690 per volunteer supervised.

The VISTA Director told us that full grants were justified for VVLP projects because they are small, "grass roots" organizations, with only the project director available to supervise volunteers. In addition to supervision duties, the Director also said that VVLP project directors routinely deal with high ranking elected and appointed officials and corporate leaders in their project efforts on behalf of Vietnam veterans. She said such duties require a particular expertise setting VVLP project directors apart from other VISTA volunteer supervisors.

ACTION policy on VISTA Supervision Grants provides that a project supervisor's salary ordinarily should not be funded in full by VISTA funds when, on average, fewer than eight volunteers are planned for the project during the supervisory arrangement's life. The order allows an exception to the eight volunteer rule for "grass roots" organizations during at least their first year of funding to allow such projects to get started, and to allow for the usual lack of sufficient supervisory personnel.

When the VVLP projects were approved in March/April 1982, none had eight volunteers assigned. By January 1983, six of the projects still had less than eight volunteers, and three of the projects had decided to terminate their VISTA involvement.

Thus, (1) ACTION is awarding a higher share of VISTA supervision funds to VVLP projects than to VISTA projects; (2) VVLP grants are considerably more costly; and (3) continuing such a practice may reduce the number of VISTA volunteers supported at current VISTA Program funding levels.

USE OF NON-CAREER EMPLOYEES

As of March 29, 1983, ACTION had 104 (18.9 percent) of its 550 personnel positions filled with non-career employees. Although the fiscal year 1983 Appropriation Act did not restrict the percentage of non-career personnel that ACTION

could employ, the legislative history of the Act indicates that the appropriations committees of both Houses were concerned about the percentage of non-career employees at ACTION.

The House Appropriations Committee report stated, in effect, that employment of non-career employees at ACTION should not exceed 5 percent of ACTION's total employment. The Senate Appropriations Committee report prohibited ACTION from closing, or reducing personnel in any of its state offices, and urged ACTION "to find savings in other areas including a review of its non-career personnel requirements."

ACTION had planned a reduction-in-force (RIF) for fiscal year 1983 that would have removed 89 career employees, the majority of whom were in ACTION's field offices. Instead, 21 career employees were RIFed--17 at the National Office, 3 at the Regional Offices and one from a State Office. In the prior fiscal year, ACTION had undergone a RIF of 193 career employees, in order to meet its reduced--from the previous year--personnel ceilings and appropriation level.

Questions have been raised as to whether non-career employees have been hired to replace career employees, and our future work will be focused on this issue. Specifically, we will be addressing

--whether non-career employee hiring was justified and,

--whether non-career employees are performing duties formerly performed by career employees.

Much detailed analysis remains to be performed before we will be in a position to answer the questions raised.

Before concluding, Mr. Chairman, I want to stress that our presentation has addressed only the problems we noted.

Inquiries have been made into other issues where no problems were found, such as the training and placement of large numbers of VISTA volunteers in March and April 1982, and ACTION's denial of attorney fees and travel expenses to refunding applicants attending "show cause" meetings.

This concludes our statement, we will be pleased to answer any questions the Subcommittee may have.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Chairman, Subcommittee on Select Education, House Committee on Education and Labor, two Subcommittee members, and one former full Committee member; the former Chairwoman, Subcommittee on Manpower and Housing, House Committee on Government Operations, and one Subcommittee member (now deceased); and the Chairman, Subcommittee on Human Resources, House Committee on Education and Labor, requested that we review ACTION's hiring and use of certain noncareer employees. We also reviewed certain related personnel matters at the request of the Chairman, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Senate Committee on Appropriations.

Our work was conducted at the ACTION national office, several ACTION regional and state offices, the OPM national office, and two OPM regional offices. Specifically, we assessed whether ACTION's personnel practices relating to the hiring of Schedule B and C employees and the reassignment of career employees from one state office to another were proper.

To evaluate these issues, we reviewed pertinent legislation, OPM regulations, two OPM specially granted hiring authorities, court decisions, ACTION operating procedures, and career and Schedule B employee position descriptions. We also interviewed OPM national office officials responsible for both excepted service and competitive service hiring, officials responsible for competitive service hiring in two OPM regional offices, officials in ACTION's Personnel Office, selected ACTION regional and state directors, Schedule B employees, and both current and former ACTION career employees. Our review was conducted in accordance with generally accepted government auditing standards.

ASSESSMENT OF ACTION'S SCHEDULE
B AND C HIRING PRACTICES

To determine if ACTION complied with the special requirements for hiring Schedule B and C employees, we reviewed the circumstances surrounding the employment of these excepted service employees. We wanted to determine (1) in the case of Schedule B employees whether the circumstances were such that use of the competitive examination system was not practicable and (2) in the case of Schedule C's, that the positions were policy determining or confidential in nature. We discussed with OPM its justification and review requirements relating to the Schedule B and Schedule C positions. We also discussed with supervisory personnel the reasons for hiring each of the field office Schedule B employees and compared the duties performed by these employees with the duties performed by career employees in similar

positions. Also, at our request, OPM reviewed 10 Schedule B positions to determine if they could be filled through the competitive examination process. Because many of the positions required virtually the same type of skills, we did not ask OPM to review all of the position descriptions.

ASSESSMENT OF ACTION'S REASSIGNMENT
OF CAREER EMPLOYEES

To determine if the reassignments of ACTION career employees were properly handled, we reviewed each case to determine whether ACTION procedures were in compliance with OPM regulations. Further, we reviewed the agency justification for each reassignment and discussed it with agency personnel and the affected employees.

To determine whether ACTION, when it reassigned state office personnel, violated the continuing resolution which prohibited it from using any of its appropriation to reduce the personnel levels at its state offices, our General Counsel reviewed the language of the statute itself and the legislative history including a review of the circumstances surrounding the reassignment of state office personnel.



ACTION

WASHINGTON, D C 20525

July 16, 1984

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

This letter encloses ACTION's comments regarding GAO's review of this agency. Specifically, these comments pertain to:

1. The GAO draft report of June 6, 1984.
2. The GAO interim report of February, 1984, entitled "Statement of Facts on Non-Career Employees at ACTION".
3. The testimony by Mr. Peterson of GAO before the subcommittee on Select Education, Committee on Education and Labor, House of Representatives, on April 19, 1983.

Since this is ACTION's first opportunity to clarify the many erroneous assumptions and conclusions made by GAO auditors, I request ACTION's entire response be included as appendixes in the final report, as provided in Chapter 16 of the GAO Report Manual.

Thank you for your attention to this matter.

Sincerely,

Thomas W. Pauken
Director

GAO Note

We have not included numerous documents attached to ACTION's comments. Most of the documents we already had in our possession, and they were considered in preparing the draft report. A list of the documents not included is on page 58.

ACTION's Response to GAO Review:

- 1) **Comments on "ACTION's Hiring and use of Certain Non-career Employees and Other Personnel Matters (GAO/HRD-84-57).**
- 2) **Comments on February 1984 Statement of Facts.**
- 3) **Comments on GAO Congressional testimony on April 19, 1983.**

Given the intense scrutiny and length of time--over two years--of GAO's review of ACTION, the Agency feels obligated to include in this response to the June 6, 1984, Draft Report, the February, 1984, GAO Statement of Facts and the April 19, 1983, GAO Congressional testimony, its comments regarding the manner in which this review was conducted. These comments are especially appropriate in view of the fact that GAO has found no significant improprieties on the part of ACTION.

Regarding the major area of dispute in the GAO report, the hiring and assigning of Schedule B employees, it should be noted that the GAO analysis is not based upon the official OPM Policy which ACTION has followed, but rather upon unofficial interpretation by certain OPM employees. Further, ACTION believes that the premature release of uncompleted portions of the review raised unjustified allegations and prejudiced opinion toward this Agency.

GAO staff informed us that they delivered an incomplete "report", entitled "Statement of Facts on Non-Career Employees at ACTION" to the House Subcommittee on Select Education, in February, 1984 without higher clearance through GAO's policy and legal review. We understand that GAO requires these independent reviews to insure that its reports to Congress present facts in a fair and accurate manner. It is unfortunate that these independent reviews were not performed, since the GAO document became a part of the hearing record and received widespread reading and circulation. Such reviews might have screened out the inaccuracy and imbalance contained in the report.

GAO did not adhere to its own audit standards which are required to be followed on all Government audits and which state that, "One of the most effective ways to insure that a report is fair, complete, and objective is to obtain advance review and comments by officials of the audited entity."

Furthermore, according to GAO's own General Policy Manual, "...exit conferences are an integral part of every assignment and should be conducted for the purpose of obtaining a clear and complete understanding of the issues." ACTION was never given the opportunity to comment to GAO either orally or in writing on any facts or potential findings of the audit until receipt of the Draft Report on June 6, 1984. The GAO staff did not conduct an exit conference, although they assured us that one would be held, and delivered the February, 1984 Statement of Facts Report, and the April 19, 1983 GAO testimony, to Congress without benefit of ACTION's review.

ACTION first became aware of the February, 1984 Statement of Facts Report from questions raised during the hearing conducted February 27, 1984, by the House Appropriations' Subcommittee on the Departments of Labor, Health and Human Services, Education and Related Agencies, when Congressman Stokes questioned Mr. Pauken on personnel policies and introduced the GAO "Statement of Facts" for the record.

Mr. Stokes quoted from the "Statement", which he referred to as a "Report", and questioned Mr. Pauken on its findings. In response to Mr. Stokes' question as to whether he (Mr. Pauken) had seen the "Report", Mr. Pauken stated that he had not seen it and that the GAO had not followed normal procedure which would have allowed the agency 30 days to respond to their findings.

On February 28, 1984, during the Domestic Volunteer Service Act Reauthorization Conference, Congressman George Miller quoted from the GAO "Report". This was the second time in two days that a House Member had referred publicly to the "GAO Report", which had still not been given to ACTION for the 30-day review period.

GAO's General Policy Manual states in Chapter 6 page 4 that ... "if requested, we provide copies of draft reports submitted to agencies for comment to (1) congressional requesters on assignments done for them Except as provided by law, drafts of our reports will not be provided to congressional committees or Members of Congress, except in unusual situations and then only after full review within GAO". (Emphasis ours)

These were not the first incidences of GAO non-compliance with its own standards where ACTION was concerned. During hearings before the Subcommittee on Select Education, Committee on Education and Labor on April 19, 1983, Congressman Bartlett asked Mr. Peterson of the GAO if the agency had a chance to review the preliminary results, which are now part of the June 6, 1984 Draft Report, and Mr. Peterson answered "No". GAO did not afford the ACTION Director an opportunity to look at their Draft Report before the hearing, but it was made available to a reporter with a Dallas newspaper.

Furthermore, GAO failed to include in the June 6, 1984 Draft Report information requested by Mr. Bartlett during the hearing. He asked that GAO look at the previous Administration's "non-career" level and report back. ACTION hereby includes for the official record, a chart of career versus non-career employees for April, 1980, April, 1982, and April, 1984.

Analysis of Career versus non-career employees for:

	4/80	4/82	4/84
Schedule B Positions	13	14	16
Schedule C Positions	31	31	29
Non-Career S.E.S.	4	5	6
Experts/Consultants	21	17	11
Temporary Employees	237	90	26
Total ACTION Employees	1,062	617	501
Percentage of Non-Competitive Positions	28.8%	25.4%	17.6%

ACTION and OPM should have been afforded the opportunity to discuss the Schedule B issues in more detail. We requested additional time from GAO to allow us to receive a reply from OPM on the accuracy of the GAO's conclusions and comment accordingly. GAO did not agree to this extension and stated that it had provided a copy of the Draft Report to OPM for comment only on the recommendations made for OPM action. We are including as part of our comments a copy of our June 19, 1984, letter and attachment to OPM which discusses our viewpoint on Schedule B's. (See Attachments A and B). We will promptly provide the GAO with a copy of OPM's response to our June 19th letter and our analysis of OPM's comments. ACTION requests that these comments be included in the final GAO report even though they will be provided after ACTION's July 16 deadline (OPM's deadline for response to GAO is July 19).

ACTION's response to the GAO Draft Report on ACTION's Hiring and Use of Certain Non-career Employees and Other Personnel Matters (GAO/HRD-84-57), will enhance the objectivity of the GAO final report. It is consistent with GAO policy to expect that this response will be included in its entirety and will be objectively evaluated and recognized in the report. We also trust that, resulting from this response, the report will explain why and how our comments changed the final report or why GAO considers them irrelevant.

GAO Note

In the Director's comments he expressed concerns regarding the manner in which we conducted our review. We have responded to this matter on page 57.

ACTION Response to GAO June 6, 1984 Draft Report
and February, 1984 Statement of Facts:

ACTION's Hiring and Use of Certain Non-career Employees and Other Personnel Matters (GA)/HRD-84-57).

ACTION concurs with the GAO that:

ACTION did not abuse its authorities in proposing to reassign a number of career employees and terminating those who refused to relocate.

ACTION is in compliance with the Continuing Resolution prohibiting its use of funds to reduce state office personnel.

ACTION's largest non-career employee group, Schedule C appointees, were appointed in compliance with OPM regulations and separate executive order authorizations.

There was compliance with Public Law 98-377 and that there was not abuse of reassignment authority.

The GAO Draft Report concerns itself primarily with four areas of review:

- Whether non-career employee hiring, particularly Schedule B's and Schedule C's was proper;
- Whether non-career employees, particularly Schedule B's were performing duties similar to those performed by career employees;
- Whether ACTION had complied with the December 21, 1982, Continuing Resolution (P.L. 98-377) that prohibited its use of funds for reducing state office personnel; and
- Whether ACTION had abused its authorities in proposing to reassign a number of career employees and terminating those who refused to relocate.

Issue 1: Schedule B Appointments Do Not Comply With Requirement of OPM Hiring Authorities (Page 5 - GAO draft report)

REBUTTAL

ACTION's position is that Schedule B appointments do comply with OPM hiring authorities. The analysis presented in the June 19, 1984 letter to Donald Devine provides sufficient comment on the history and requirements of ACTION's Schedule B authority.

Issue 2: Schedule B Appointments - Office of Domestic and Anti-Poverty Operations (Page 6/7 - GAO draft report)

REBUTTAL

The GAO draft report misinterprets and misrepresents ACTION's Schedule B authority by identifying and describing special hiring circumstances in such a way as to restrict the Schedule B authority significantly. The manner in which GAO apparently perceives this

authority would require that all of the special circumstances referenced must exist to justify a Schedule B appointment. Specifically, the draft report suggests that speed must always be a factor; and it is only one of four factors that may exist to warrant an appointment under the Schedule B authority.

It has never been ACTION's interpretation that all four special circumstances must exist before a Schedule B appointment can be made.

Issue 3: Qualified candidates available through the competitive Civil Service process (Page 10/11 - GAO draft report)

REBUTTAL

We do not dispute that for any single agency Schedule B authority OPM most likely has several eligible and qualified candidates. However, the nature of the single agency Schedule B authority is such that an appointment thereunder cannot be made merely on the basis of competitive criteria. As such, it's not practicable to hold a competitive examination to fill a position under this authority. To the best of our knowledge, OPM has never before asserted that Schedule B positions are limited to those which cannot be filled through the competitive process. Indeed, in its April 3, 1980 letter (see Attachment B7) which clarified our Schedule B authority within DO, OPM clearly recognized ACTION's initial 1971 request to establish the Schedule B authority when it cited that, "...this authority would be used to appoint individuals whose philosophy and physical attributes most nearly relate to the projects on which they would be working." More importantly, OPM stated in this letter that, "[w]hile we believe that competitive examining techniques usually measure effectively the knowledges, skills, abilities and personal characteristics needed for ACTION's work, we recognize that, because of the nature of your mission, some positions require a level of empathy with a client group and/or rapport with State and local organizations beyond that measured by competitive examination. The Schedule B authority is intended to meet these special needs".

Issue 4: Empathy with Client Groups (Page 11/13 - GAO draft report)

REBUTTAL

The most significant consideration in delegating this Schedule B authority was the need to augment the ACTION staff with persons so closely aligned in physical attributes and philosophies to the projects they would be working on that successful development and implementation of the project would be ensured at the grass roots level. We are certainly aware that OPM can refer individuals with foreign language skills and with knowledges, skills, and abilities reflecting certain cultural involvements. However, bilingual skills and cultural involvements cannot be substituted for the degree of empathy ACTION has sought in the use of this authority. (Please refer to page 4 & 5 of Attachment B for further comment on this issue).

Issue 5: Speed in Hiring was not Critical in Filling Positions (Page 14/15 - GAO draft report)

ACTION has never interpreted its Schedule B authority as requiring that either or both speed in filling a position and a need to provide immediate service when urgent problems arise must exist in order to warrant an appointment under the Schedule B authority. We have always interpreted the authority to include these two factors as potential, but not essential for consideration in determining the special circumstances which warrant the use of ACTION's Schedule B authority.

Issue 6: Most Schedule B positions are Continuous, not one-time-only in nature. (Page 15/18 - GAO draft report)

REBUTTAL

ACTION has consistently taken the position that the Schedule B authority contains no service limit, and as such, any employee appointed under the Schedule B authority may continue to serve after completing his or her initial project, provided of course, that a need exists for further work in their area of special expertise. This position was fully supported by OPM in its April 3, 1980 clarification letter described above (see paragraph 5, Attachment 7). For your reference, OPM's Acting Deputy Associate Director for Staffing wrote that, "[t]he Schedule B authority contains no service limit, and Schedule B employees may continue serving after completing their initial projects; but we expect their further assignments to be predominately (at least 50 percent) in their area of special expertise. Employees whom you wish to utilize in a broader range of assignments must be appointed through competitive examination."

The April 3, 1980 OPM letter and April 14, 1980 FPM letter clearly state that Schedule B employees may perform up to 50% of assignments outside their area of specialty. Therefore, in some instances there will be Schedule B employees responsible for projects that are or have typically been performed by non-Schedule B employees. This point was emphasized in more than one instance to the GAO review team but the report never recognizes this fact or the appropriate OPM documents. (April 3, 1980 letter and FPM letter 213-5 dated April 14, 1980). It seems that after months of intense review GAO has managed to conclude that Schedule B employees can work only on projects involving their "particular skills". This is an astounding interpretation of the OPM guidance.

Issue 7: Schedule B appointments - Office of Volunteer Liaison (Page 19/22 - GAO draft report)

REBUTTAL

The GAO draft report takes issue with the performance of duties by a GS-13 Schedule B employee within OVL. The GAO report contends that the identified duties actually performed were

REBUTTAL

unrelated to the specialty area defined in the employee's position description, and as such the report reflects that OPM characterizes the position as one which is appropriate for competitive examining procedures. We believe that this characterization misses the mark. Based on our above analysis and the rebuttals to related issues, we cannot accept the validity of GAO's comments. Again, it is well established that competitive examination procedures alone cannot measure the requisite qualities essential to fill a position under the Schedule B authority.

Again the April 13, 1982 letter from William Bohling was presented to the GAO review team but it is obvious that its content was never taken into consideration.

Issue 8:

"Whether ACTION had complied with the December 21, 1982 Continuing Resolution (P.L. 97-377) that prohibited its use of funds for reducing state office personnel".

Finding

"ACTION did not violate the Continuing Resolution".

Discussion

ACTION has no further comment.

Issue 9:

"Whether ACTION had abused its authorities in proposing to reassign a number of career employees and terminating those who refused to relocate.

Finding

"ACTION did not abuse its authority in reassigning employees.

DISCUSSION

ACTION has no further comment.

ACTION Response to April 19, 1983 GAO Congressional Testimony

ACTION notes that the April 19, 1983 GAO testimony before the House Subcommittee on Select Education, Committee on Education and Labor is also to be included as part of the GAO Final Report, even though it was not included as part of the GAO letter and Draft Report submitted to ACTION on June 6, 1984. We find it very strange that GAO intends to include Tom Pauken's testimony on April 19, 1983, as part of the GAO Report thereby implying that the Director's prepared testimony for the Oversight Committee constituted a response to GAO's testimony. Since ACTION learned on the evening before the hearing that GAO would present testimony the next day and had no advance knowledge of the content of the GAO testimony, the Director's testimony has no relationship to the GAO report.

We are also rather surprised to learn that GAO now considers Mr. Peterson's testimony a part of the GAO draft report since it was not labeled "draft" and was incomplete, inconclusive, and circumvented all usual GAO procedures as indicated by Mr. Peterson himself. Consequently, ACTION, without the benefit of the documentation from which the testimony was prepared, addresses the following issues.

ISSUE: GAO testified that during late 1981, ACTION denied refunding for 14 VISTA projects on the basis that the projects had been receiving VISTA funding for at least 3 years. VISTA regulations in effect in 1981 allowed funding beyond three years, but required that ACTION competitively judge those projects seeking renewal for a fourth year, along with other new projects.

According to GAO the Director, Office of Domestic and Anti-Poverty Operations, told GAO that the 14 denials were made at regional levels, and that the decisions apparently were made based on regional office misinterpretations of national office guidance.

DISCUSSION:

Some clarification is needed to fully understand the report language concerning the "3 year rule" which applied to VISTA projects. Under the previous VISTA Guidelines of September 10, 1979, VISTA projects which had completed their third year or more were not entitled to a formal appeal process if they were denied refunding. Because no appeal process existed for these projects, no reasons of denial were offered when these projects were defunded. Letters sent by the Regional/State offices to the sponsor informing them of the denial often stated that the program had been "funded at least 3 years and thus is beyond the original period of project funding anticipated by ACTION at the time of the initial award". This was interpreted to mean that because the project was three years old it was denied refunding--this was not the case. The projects simply were not offered reasons of denial because there was no official appeal process. After February 5, 1982, when the new guidelines deleting the "3 year rule" became effective, all VISTA projects denied refunding were offered the opportunity to appeal the denial.

GAO Note

GAO had agreed with ACTION to include the Director's April 19, 1983, testimony to help assure that a complete record would be available. However, because of ACTION's above comments, we do not believe it is necessary to include it in the final report.

ISSUE: The Domestic Volunteer Service Act, Title I, part B, sets forth that its purposes is "...to provide for a program of part-time or short-term service learning by secondary and postsecondary school students to strengthen and supplement efforts to eliminate poverty and poverty-related human, social and environmental problems."

GAO "question(ed) whether YVA volunteers meet the purposes and intent of the Act", and

"Whether VISTA Volunteers assigned to YVA projects as clerks, typists and counselors are appropriate VISTA volunteer activities".

Based on a review of YVA activity reports of the 12 YVA demonstration projects filed by the national office, GAO concluded "it appears that more than 75 percent of the YVA volunteer activities can be described as community services in the broadest sense rather than poverty-related services. While volunteers and service recipients likely will benefit from YVA activities, GAO questions whether the reduction of poverty purpose envisioned in the Act is being fully met".

DISCUSSION:

The ACTION Evaluation Division reported in their published Goal Accomplishment and Perceived Outcomes Evaluation of the 12 initial YVA demonstration projects that 58% of the recipients were poor or near poor. The "gardeners helpers" were helping poor people grow vegetables and other produce; "tax return preparers" were assisting the low-income elderly and non-English poor with managing money; "library aids" may be assisting with a literacy program and "candy strippers" often work with the poor in county hospitals. It is not uncommon for VISTA volunteers to fulfill support functions during the first year of operation of a small unestablished sponsor.

ISSUE: GAO testified that VISTA Volunteers assigned to the Vietnam Veterans Leadership Program (VVLP) "may be used in inappropriate roles", and that "...direct service roles may create the kind of project dependence on VISTA volunteers that the guidelines seek to discourage".

DISCUSSION:

GAO based its conclusions on only two site visits when the VVLP program was in its embryonic stage. The opinion that the "staff like" activities of some of the VISTA Volunteers serving VVLP projects create a dependence on VISTA is a supposition. The intentional design of VVLP projects provided for sunset in three years or less. Again, we point out that it is not uncommon for VISTA volunteers to fulfill support functions during the first year of operation of a small, unestablished sponsor.

Issue:

GAO stated that, in its March 1983 mid-term status report on VVLP, ACTION stated that VVLP projects have played a key role in placing more than 1,000 Vietnam veterans in jobs. About 800 of the reported job placements were attributed to the projects included in our review, but our analysis of the monthly activity report showed considerably fewer actual placements for these projects.

Discussion

GAO has asserted that documentation of VVLP job placement statistics was incomplete in late 1982 and early 1983. The GAO recommends that referrals and undocumented placements should not be reported by VVLP projects as job placements and that ACTION should provide VVLP projects with guidance on defining, documenting and reporting their accomplishments."

During the National VVLP Training Conference in January 1983, programmatic reporting requirements and procedures were a major topic of discussion at several sessions. A proposed reporting format was presented to conference attendees prior to the conference and discussed in depth at the conference. Following the conference, on March 2, 1983, a revised report format requesting job placement information was mailed to VVLP offices. In the covering memo, the VVLP National Office (ACTION) noted: "Implicit in the requirement to maintain records which identify your various program initiatives and their results is the necessity to 'follow-up' on, for example, referrals to determine if the man actually got the job...In the rush to get the job done, our principal mission, it is sometimes difficult to realize the importance of having a method of determining what actually happened a week or a month later with that veteran to whom you provided an important service. That follow-up, however, is an important part of what this program is all about. We want to be as professional in our record keeping as we are in every other area."

Within a few months of issuance of that memo, the VVLP National Office provided programs with definitions of terms used in its programmatic reporting form with regard to employment statistics. The definition of "veterans placed" is "Veterans placed in jobs directly as a result of VVLP involvement." The definitions of the terms "veterans counseled" and "veterans referred" make it abundantly clear that only those veterans placed in jobs are to be reported as such.

Moreover, the context of VVLP employment efforts must be noted here. Individual programs select their own goals and objectives subject to ACTION approval. Programs are not required to develop employment goals, and those that have chosen to do so have not been required to develop goals and objectives in terms of job placements. The primary thrust of VVLP employment efforts has, in fact, been in the area of developing a favorable climate for veterans seeking career opportunities commensurate with their needs, aspirations and abilities. This emphasis has resulted in numerous programmatic activities intended to develop such job opportunities, prepare veterans to take advantage of the opportunities, and to, generally, improve the public perception of veterans. It is to be expected that quantitative accomplishments are understated because the primary thrust of VVLP employment activities has been along such lines.

[See GAO Note on the following page.]

GAO Note

For two reasons GAO sees no need to respond in detail to ACTION's comments on our April 19, 1983, testimony statement. First, for two of the issues, ACTION has taken steps which should correct the deficiencies. Second, for the remaining two issues, the Domestic Volunteer Services Act of 1984 (P.L. 98-288, May 21, 1984) and the accompanying conference report provide clarifying language and intent which if followed by ACTION will correct the remaining deficiencies.

COMMENTS ON GAO POLICY MATTERS

In the ACTION comments to our draft report, the Director expressed concern over what he viewed as a failure on our part to conform to our policies by not affording ACTION an opportunity to provide comments on our congressional testimony given before the Subcommittee on Select Education, House Committee on Education and Labor, on April 19, 1983, and our February 1984 Statement of Facts provided to the same subcommittee. He also expressed concern over the absence of an exit conference with ACTION at which time the issues to be addressed in the report could be discussed.

The Director has misunderstood our policies on both matters. Our policy is to obtain agency comments on all draft reports unless in the case of a congressional request we are asked to do otherwise. On several occasions in his comments he referred to the congressional testimony and statement of facts as draft GAO reports. These products, however, are not draft GAO reports. It is not our policy to obtain comments on congressional testimony or statement of facts in advance of their presentation or release to the requesting congressional office.

Regarding the absence of an exit conference, we agree that such a conference was not held. At the time we completed our work at ACTION we still had work to do at OPM. It was made clear to ACTION officials that we would hold a close out meeting when we completed a draft of our proposed report. On three occasions in March 1984, ACTION officials were contacted and advised that we were willing to meet at the convenience of the agency to discuss the issues to be addressed in our draft report. ACTION officials did not respond to our offer to meet.

DOCUMENTS DELETED FROM ACTION COMMENTS

Several documents provided by ACTION along with their comments have not been included in this report. Following is a list of documents we deleted because we already had copies and we considered them in developing our report or they repeated positions included in the ACTION comments.

- Letter from the ACTION Director to the Office of Personnel Management Director dated June 19, 1984, with attachment "Analysis of ACTION's Schedule B authority."¹
- Staff Case Listing.
- Internal OPM memorandum, dated November 1971, addressing ACTION's request for Schedule B hiring authority, dated September 28, 1971.
- OPM memorandum to ACTION approving ACTION's request for Schedule B authority, dated November 1971.
- Federal Register excerpts, dated November 19, 1971.
- ACTION discussion paper regarding use of Schedule B authority prior to 1980.
- OPM memorandum to ACTION, dated April 1980, clarifying intent and limits of Schedule B authority.
- OPM Operations Letter, dated April 14, 1980, regarding use of Schedule B authority by ACTION.
- Memorandum to ACTION regional directors from ACTION's Director of Personnel regarding Schedule B's.
- Letter from OPM to ACTION's Acting Director of Personnel regarding Schedule B exceptions for three positions in OVL.

¹We have also not included a copy of a July 17, 1984, letter from OPM to ACTION responding to ACTION's June 19, 1984, letter. The OPM letter presents the same positions presented in its July 17, 1984, letter to us. (See app. V.)



United States
**Office of
Personnel Management**

Washington, D.C. 20415

In Reply Refer To

JUL 17 1984

Honorable Charles A. Bowsler
Comptroller General
Washington, D.C. 20548

Dear Mr. Bowsler:

This refers to the draft audit report entitled, "ACTION's Hiring and Use of Certain Noncareer Employees and Other Personnel Matters."

We understand that a copy of the draft report has also been sent to ACTION, which will provide independent comments. ACTION has presented arguments to the Office of Personnel Management taking issue with some findings in the draft report and supporting continued availability of excepted appointing authority for some of its positions. We have considered ACTION's comments in our response.

Certain conclusions expressed or implied in the draft report do not accurately reflect the purpose of the Schedule B appointing authorities. Specifically, we are concerned with statements that competitive examinations adequately screen candidates for all positions in which reputation among and empathy with a particular client population is critical to successful performance, that all four factors cited in the report, including urgency of staffing needs, must be present whenever exception of such positions is appropriate, and that excepted positions are synonymous with noncareer positions. Moreover, we are concerned that the findings with regard to individual appointments and specific action recommendations included in the draft report, such as that for case-by-case approval of future appointments, may unduly restrict the authority of the Office of Personnel Management to place particular positions in the excepted service in accordance with civil service rule VI.

That rule [5 CFR 6.1] assigns to OPM responsibility for determining when it is impracticable to fill positions through competitive examinations. A continuing position may meet the criteria for exception established by rule VI if competitive examination would not measure an essential qualification or would not adequately measure quality distinctions among candidates for the position, or if the position does not represent a true competitive situation. In ACTION, competitive examining may be impracticable for positions in which successful performance is determined primarily by personal standing with a particular target population, for positions in which

recruitment is limited to members of the target population, or for positions requiring a level of foreign language fluency beyond that measured by competitive examinations.

Based on the limited information available, we do not find fault with ACTION's use of Schedule B appointing authority. Within the limits of law and regulation, we try to allow management maximum discretion in making such judgments.

We suggest that the final audit report not include recommendations for specific actions (such as imposition of a requirement for prior approval of individual Schedule B appointments).

OPM will soon be initiating a comprehensive review of appointing authorities with the aim of withdrawing those which are no longer necessary and clarifying those which are problematic.

We appreciate the opportunity to comment on this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald J. Devine". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke extending to the right.

Donald J. Devine
Director

24275-

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