

GAO

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

February 1992

PERSONNEL PRACTICES

Propriety of Career Appointments Granted Former Political Appointees



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General Government Division

B-246457

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

Dear Mr. Chairman:

This report responds to your request that we review the career appointments agencies granted employees who held either noncareer Senior Executive Service (SES) or Schedule C appointments before their career appointments. As you know, such career appointments are sensitive. The political nature of noncareer appointments creates concern about whether the individuals received unfair advantage in the merit system selection process, even the appearance of which could adversely compromise the integrity of the system. As agreed with the Subcommittee, our objectives were to (1) examine whether these appointments adhered to the merit system principles dealing with fair and open competition and Office of Personnel Management (OPM) implementing regulations and (2) to assess OPM's oversight of the appointments.

Background

Generally, federal employees who serve under noncareer SES or Schedule C appointments are political appointees. They are appointed by an administration to support and advocate the president's political goals and policies. Noncareer SES appointees receive noncompetitive appointments to SES positions that normally involve advocating, formulating, and directing the programs and policies of the administration. Schedule C appointees receive noncompetitive appointments to excepted service positions normally graded GS/GM-15 or below that involve determining policy or that require a close, confidential working relationship with the agency head or other key officials of the agency.

Noncareer SES and Schedule C appointees are permitted to apply and compete for career appointments to positions in the competitive service and SES. Such appointments are called "conversions" and must conform to the merit system principles contained in the Civil Service Reform Act of 1978 as well as to OPM regulations. Merit system principles, among other things, require that selection and advancement be determined solely on the basis of merit after fair and open competition and that all employees and applicants for employment receive fair and equitable treatment in all aspects of personnel management without regard to prohibited discrimination.

SES consists of certain positions that are classified above grade GS/GM-15 pursuant to 5 U.S.C. 5108 or levels IV or V in the Executive Schedule, or equivalent, that are not required to be filled by appointment by the President by and with the advice and consent of the Senate. SES positions are of a supervisory, managerial, or policy-making nature. Before an individual can be given an initial career appointment to an SES position, the agency must conduct a merit staffing process, and a qualifications review board convened by OPM must certify the individual's executive/managerial qualifications.

The competitive service includes all civilian positions in the executive branch of the government that are not excepted from civil service laws by statute, the President, or OPM and that are not in SES. Generally, competitive service positions must be filled through open, competitive examination or by persons who have competitive status that was gained by prior competitive appointment to the career service. Unless an agency has been delegated examining¹ or direct hire authority by OPM, it must request a certificate of eligibles (a list of qualified candidates) from OPM when it chooses to fill a competitive position with an employee who has not acquired competitive status. Under delegated examining authority, agencies test candidates or review their applications and then prepare certificates of eligibles in the order of the ratings assigned to the applicants following procedures similar to those OPM uses in its process. Direct hire authority is a procedure designed to recruit eligible candidates for positions in shortage occupations. Generally, under direct hire authority agencies can receive applications, competitively examine applicants, and make selections.

Excepted service positions are those not subject to the competitive service's appointment requirements. Examples of such positions include Schedule C positions, attorney positions, professional positions in the Military Dependents Schools System overseas, and student trainee positions established in connection with cooperative education programs.

OPM's process for reviewing conversions is spelled out in Federal Personnel Manual Bulletin 273-22, which emphasizes agencies' responsibility to ensure that (1) all appointments, including conversions, are based on merit; (2) all personnel actions are based on legitimate management needs; and (3) records pertaining to all personnel actions clearly show that the actions are proper and legitimate. The bulletin reminds agencies that once a Schedule C position has been established, the Schedule C elements (i.e.,

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

its confidential and/or policy-determining characteristics) may not be unilaterally removed from the position for the sole purpose of converting the position, along with its incumbent, into the competitive service. The bulletin informed agencies that OPM would monitor the appropriateness of conversions as part of its general procedures in processing agency requests for it to examine the qualifications of candidates for competitive service positions at grades GS-9 through 15. OPM would also monitor the appropriateness of conversions when agencies requested OPM to convene a qualifications review board to certify the executive/managerial qualifications of noncareer SES employees selected for initial career appointments to SES positions.

Under some circumstances, agencies do not need to go through OPM to obtain a certificate of eligibles when they wish to fill a competitive position through open competitive examination and, consequently, the agencies are not subject to its review during the certification process. This occurs when (1) OPM has delegated, in whole or in part, examining authority and/or direct hire authority for positions in the competitive service; or (2) when individuals including Schedule C or noncareer SES employees are eligible for reinstatement in the competitive service because the employee had acquired competitive status before being appointed to the Schedule C or SES position. The agencies are, however, still responsible for adhering to merit system principles in such cases.

Results in Brief

The propriety of conversions and agencies' adherence to merit system principles are difficult to ensure. This occurs because the merit system, like any system, can be "gamed." Processes and procedures such as advertising the positions may be followed, and the appearance of fair and open competition may be achieved. Ultimately, however, the question of whether open and fair competition actually occurs or whether a candidate has been preselected for appointment or given some other advantage rests with the intent and motivation of the agency officials involved—factors that cannot be controlled by regulation or easily discerned from review of files or discussions with agency officials.

We reviewed 46 conversions made by 6 departments and 1 agency during the period February 1988 through December 1989. We found the following:

- Thirty-seven appeared proper. Merit staffing procedures had been followed, and the appointees did not appear to have received any improper

advantage or preference that improved their prospects for career appointments.

- Seven gave the appearance that the appointee received an improper advantage or preference and, therefore, their propriety is arguable.
- Two did not fully comply with merit staffing requirements.

To help prevent improper conversions and ensure adherence to merit system principles, OPM has established a review process that has identified and prevented some improper conversions. OPM can improve its process by (1) ensuring that all examining offices in its regional offices have procedures to identify and review all conversions and (2) broadening its review process to include conversions that occur under circumstances that are currently exempted from OPM review.

Even with these improvements, however, the subjectivity in the selection process will continue to make it difficult for OPM to oversee conversions. If Congress believes additional protections or measures are needed, we suggest that Congress consider requiring agency Inspectors General to periodically review the propriety of conversions in their agencies and report the results to both their agency heads and Congress.

Approach

We developed a universe that showed that 30 departments or agencies converted 68 Schedule C² and 27 noncareer SES employees during the period February 1988 through December 1989. We selected this time frame in order to cover conversions that had occurred during the last presidential election year and the following presidential transition period and for which agency merit staffing records would be available for review. Generally, agencies are required to maintain such records for 2 years after the date of the personnel action. We selected 6 departments and 1 agency that accounted for 55, or about 58 percent, of the conversions that we identified. We judgmentally selected these agencies for detailed review on the basis of their total number of conversions and the number of Schedule C and noncareer SES appointments. We subsequently found that 9 of the 55 appointments were not conversions, and we examined the propriety of the remaining 46. We did this by

- reviewing federal civil service laws, rules, regulations, and OPM guidance on merit staffing requirements;

²This figure represents Schedule C employees graded GS/GM-12 or above who were appointed to competitive service positions graded GS/GM-12 or above or SES positions. We did not include lower level Schedule C appointees in our review.

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- reviewing documentation in agency files to assure that merit staffing procedures, such as advertising job opportunities and requesting certificates of eligibles, were followed;
 - analyzing documentation in the merit staffing and official personnel files to determine if employees converted received an improper advantage or preference during their noncareer appointments or the recruiting process that improved their prospects for career appointment; and
 - when appropriate, reviewing OPM conversion case review and certification request files.

We had discussions with and/or obtained written explanations from agency and/or OPM officials to clarify and resolve issues that surfaced as a result of our records review. Appendix I provides details on our objectives, scope, and methodology along with certain limitations to our work. We did our work in the Washington, D.C., metropolitan area between July 1990 and July 1991 and in accordance with generally accepted government auditing standards.

Propriety of Conversions

We reviewed 46 conversions at 6 departments and 1 agency and found that (1) 37 appeared to comply with merit system principles, (2) 7 were questionable, and (3) 2 did not fully meet merit staffing requirements.

Most Conversions Appeared to Comply With Merit Staffing Requirements

Thirty-seven of the conversions we reviewed appeared to comply with merit staffing requirements. Records in agency merit staffing files and official personnel folders, and in some cases OPM conversion case review and certification request files, indicated that merit staffing procedures had been followed. Further, the records did not indicate that the noncareer SES or Schedule C employees received unauthorized advantages or preferences during their noncareer appointments or the recruiting process that improved their prospects for career appointments. In general, we found that the position vacancies had been announced publicly, the noncareer employees were within the area of consideration from which the agency was accepting applications, certificates of eligibles were requested from OPM when required, and qualifications review board determinations were requested from OPM when agencies were filling an SES position by initial career appointment. In addition, our review of the records disclosed no evidence of such improper practices as unilaterally removing the Schedule C nature of the excepted service position for the sole purpose of converting the position and its incumbent into the competitive service. Our review of the records also disclosed no evidence of defining or "tailoring" the duties

and responsibilities of the competitive service position or SES position for a particular candidate.

The Propriety of Seven Conversions Was Questionable

Our analysis of the propriety of seven conversions was inconclusive. Although we found no direct evidence that these seven appointments violated any merit staffing requirement, we believe that their propriety is arguable, and our discussions with agency and/or OPM officials did not fully convince us that these conversions were consistent with the spirit of merit system principles and free from impropriety. These conversions gave the appearance that the employees may have been given unauthorized advantages, which could have adversely affected the integrity of the merit selection system. Six of the seven appointments were made under circumstances that raised the issue of whether the agency had acted to (1) fill a bona fide vacancy, or (2) move the Schedule C position's duties and the incumbent from the excepted to the competitive service by unilaterally removing the position's Schedule C elements, or (3) change an SES position incumbent's appointment from noncareer to career. An action that moves a Schedule C position's duties and the incumbent from the excepted to the competitive service by unilaterally removing the position's Schedule C elements or changes an SES position incumbent's appointment from noncareer to career is known as a "conversion-in-place." The seventh raised the issue of whether the agency had defined or "tailored" the duties and requirements of the competitive position to the Schedule C employee's qualifications.

To illustrate our concerns, we have summarized one case below. Details of the other six cases are presented in appendix III.

This case involves the propriety of an action taken by the Federal Energy Regulatory Commission (FERC), an independent commission within the Department of Energy, to fill an SES position by career appointment. The action was questionable because it gave the appearance of a conversion-in-place. At the time FERC took action to fill the SES position, the position was not vacant. According to OPM merit staffing review records, there was no intention of having the noncareer SES incumbent vacate the position. The incumbent, who had occupied the position under a noncareer SES appointment for over 2 years, applied for the "vacancy" and was selected for career appointment to the position over the only other applicant for the position.

In June 1989, FERC requested OPM's Office of Executive Personnel³ (OEP) to convene a Qualifications Review Board (QRB) to evaluate and certify the noncareer incumbent's executive/managerial qualifications for career appointment. OEP conducts a merit review of an agency's recruiting process in cases where an agency requests that a Schedule C or noncareer SES appointee be certified for initial career appointment to an SES position. In a June 1989 memorandum to the Director, Office of Executive Administration, who was his supervisor, the former Director, OEP, recommended that FERC's request be returned without QRB action. The recommendation was based on the view that the staffing process that led to the noncareer incumbent's selection for a career appointment had not been a true merit competition. The former Director found that although there were no apparent technical flaws in the conduct of the staffing process, the position advertised was not vacant, and there was no intention of having the noncareer incumbent vacate the position; thus, there was no real opportunity for anyone other than the incumbent to have been selected for the position.

The Director's analysis was based in part on a January 1982 OPM General Counsel Opinion on the conversion of SES appointments from noncareer to career. The General Counsel Opinion stated:

"Where an agency seeks to fill an SES position that it has designated as general and the agency elects to fill it by noncareer appointment it would be particularly difficult to show a reason for later choosing to fill the same position, or one carrying a slightly different title, with the same individual by career SES appointment. With the position occupied, there would be no vacancy for which to hold competition. Obviously, there would be no true competition in such a situation, since the agency clearly would be filling the position with the person who already holds it. Allowing this type of sham competition would seriously compromise the integrity of the career SES merit staffing system."

OEP later reversed its position and sent FERC's request to certify the individual for the position to the QRB. The QRB certified the individual's executive/management qualifications for career appointment to the position. The former Director, OEP, told us that he could not remember why his office changed its mind. He speculated that after discussing the case with his supervisor in 1989, they had probably felt that, in the absence of any direct evidence of any wrongdoing on the part of agency officials, OEP should give FERC the benefit of the doubt and refer the case to the QRB.

³OEP is now the Office of Executive and Management Policy.

Two Conversions Did Not Fully Meet Merit Staffing Requirements

We believe that two of the conversions did not fully comply with merit staffing requirements. In one case, the Department of Energy established a new GM-15 position at one of its Operations Offices. OPM's Sacramento Area Office granted the Operations Office delegated examining authority to conduct the recruiting for the position. The Operations Office used an area of publicity for the vacancy that OPM subsequently determined was not broad enough to generate a reasonable number of candidates to compete for the position. The Federal Personnel Manual provides that a minimum area of publicity should be established consistent with the principle that the greater the grade and responsibility of the occupation, the greater the minimum area of publicity should be. Publicity areas can range from the commuting area of the duty station of the vacancy to nationwide.

The Operations Office established statewide as the minimum area of publicity for the vacancy. The Operations Office advertised the vacancy through the State Employment Service and the Federal Job Information Center and, in addition, provided recruitment information to minority groups and universities nationwide. It received two applications for the position and determined that both applicants were qualified for the position. The Operations Office selected an employee serving under a non-career SES appointment at the Department of Energy's headquarters in Washington, D.C., for the position.

OPM's San Francisco Regional Office audited Energy's use of the delegated examining authority for the position 2 months after the employee had been appointed to the position. The Regional Office found that while the actions taken under the delegation agreement complied with merit system objectives, the publicity area for the position had been insufficient to generate a reasonable number of candidates when the position's grade and duties were taken into consideration. The Regional Office determined that of the two applicants who had applied for the position, only the headquarters employee selected for the position met the position's qualification requirements. To ensure that this situation would not occur again, the Regional Office amended the delegation agreement with the Operations Office to include minimum publicity area guidelines for each position covered by the agreement.

In the other case, the Department of Education did not submit two of the four personal qualifications statements it had received from qualified non-status⁴ applicants when it requested OPM's Office of Washington Examining Services (OWES) to issue a certificate of eligibles for a new GS-12 competi-

⁴Nonstatus describes an individual who does not have competitive status.

tive position it was recruiting to fill. Education submitted to OWES only the qualification statements of the Schedule C employee it had tentatively selected to fill the competitive position and one other applicant. As a result, OWES did not examine two nonstatus applicants that Education had determined were qualified for the position.

OWES requires agencies to submit to it all of the qualifications statements they receive from qualified nonstatus applicants. The Deputy Director of Education's Personnel Management Service attributed the failure to submit all qualifications statements to OWES to an oversight and not a willful attempt to eliminate qualified candidates from consideration for the vacancy. The Deputy Director added that since this recruiting action took place, its staff had become thoroughly familiar with and trained in the procedures for filling vacancies in cases where nonstatus applicants are considered.

OPM's Controls Can Be Improved

Despite differences of opinion between OPM and us on several conversions whose adherence to merit system principles we believe questionable, we noted that through its review process OPM had cancelled other conversions it believed inappropriate. However, we have identified opportunities for OPM to improve its review process by (1) ensuring that examining offices within its regions have procedures to identify and review all conversions and (2) expanding its coverage to include situations that are currently exempt from OPM's conversion review process.

OPM's Review Resulted in Cancellations

OWES is responsible for processing requests from agencies located in the Washington, D.C., area to issue certificates of eligibles to fill competitive service positions. OWES processed 20 of the 24 conversions in our review for which agencies were required to request certificates of eligibles from OPM in order to fill competitive service positions with nonstatus employees. OWES has a process in place to review the propriety of conversions. This includes reviewing (1) the appointing authority for the candidate's present excepted position, (2) the relationship of the candidate's current position to the proposed position, (3) how the candidate was identified for the competitive service position, (4) who the selecting official was and the type of appointment, and (5) whether the agency would accept a certificate even if the requested candidate was ineligible or not within reach for referral. OWES also requires the agency to certify that the request meets civil service merit and fitness requirements. The process is designed to enable an OWES

examiner to determine whether the certification request adheres to merit system principles or requirements.

OWES' review of agency attempts to convert Schedule C or noncareer SES appointees to career appointments in the competitive service during the period covered by our review resulted in 19 requests being cancelled by OWES or withdrawn by the agencies. OWES identified 9 agency attempts to convert political employees to competitive service positions graded GS-12 or above where it unilaterally cancelled the agencies' referral requests. Conversion case review records were available for seven of the cases. Of the seven cases, six requests were cancelled because they appeared to be conversions-in-place, and one request was cancelled because the competitive position appeared "tailored" for the employee.

In addition, OWES identified 10 other cases in which agencies cancelled referral requests before it had completed its review process. Of these latter 10 cases, 5 requests involved Schedule C employees that OWES had determined were not qualified for the competitive positions; 1 case involved a detail to the competitive position that appeared to give the employee an unfair competitive advantage; and 1 case involved an agency decision to fill the position with an individual other than the former political appointee. In three cases, it was not apparent why the agency withdrew its request.

Procedures Needed at OPM Examining Offices to Identify and Review All Conversions

Two conversions that we reviewed illustrate the need for OPM to ensure all of the examining offices within its regions have procedures to identify and review all conversions. These conversions, which we discuss in detail as cases 1 and 2 in appendix III, were the responsibility of OPM's Denver and Atlanta Area Offices, respectively. Both cases involved conversions that occurred at Small Business Administration (SBA) Regional Offices and were made under circumstances that suggested conversion-in-place. Because the Schedule C employees did not have competitive status, SBA's Denver Regional Office requested OPM's Area Office in Denver and SBA's Atlanta Regional Office requested OPM's Area Office in Atlanta to issue certificates of eligibles for the competitive service positions. The Schedule C employees were selected off the certificates of eligibles issued by the respective OPM Area Office. However, the OPM Denver Assistant Area Office Manager and Atlanta Area Office Manager told us that they were not aware that SBA's selections involved conversions of Schedule C employees to competitive service positions. Thus, the OPM Area Offices did not review the propriety of these conversions.

The OPM Denver Assistant Area Office Manager told us that if the Area Office had known the selection involved the conversion of a Schedule C employee, the Area Office would have reviewed the conversion using existing OPM guidance. The Denver Area Office had not issued instructions to agencies that would require them to disclose that a selection from a certificate of eligibles might involve a Schedule C employee.

The OPM Atlanta Area Office Manager told us that the conversion was treated like any other agency request for a referral of eligible candidates. The Area Office was not aware that the case involved a possible conversion of a Schedule C employee. Had the Area Office known that the case involved a possible conversion, the Area Office would have reviewed the request.

We do not know the extent to which other Area Offices in OPM's regions had or did not have procedures to identify and review all conversions. However, in our opinion, these two cases illustrate the need for OPM to instruct its Area Offices about the need to establish procedures to identify all conversions and review their conformity to merit system principles and OPM regulations. We discussed this need with OPM's Associate Director for Career Entry, whose office is responsible for setting policy on initial appointment to the competitive service. He agreed and said that steps should be taken to insure that all OPM regional examining offices identify and review all conversions.

OPM's Review Coverage Should Be Expanded

OPM's review process does not provide preappointment coverage of conversions when (1) the employee selected is eligible for reinstatement into the competitive service on the basis of prior career service or (2) the agency making the appointment has been provided delegated examining authority for that position. Our case analysis included seven conversions made by reinstatement and three conversions made under delegated examining authority. The circumstances surrounding one conversion in each category suggest that OPM should consider expanding its coverage to include these exemptions.

The reinstatement into the competitive service occurred at FERC and is described as case 3 in appendix III. It involved a GM-14 Schedule C employee who had competitive status because the person had held a position in the competitive service before becoming a Schedule C employee. As a Schedule C employee, the person was responsible for handling the Chairperson's speaking schedule and coordinating with the staff who wrote

the Chairperson's speeches. The individual received a career appointment to a newly established GS-13 position in the competitive service. The appointment appeared to be a conversion-in-place. The excepted position's Schedule C elements appeared to have been removed from the position for the purpose of converting the position, along with its incumbent, into the competitive service. Further, the area of consideration was reduced from "Commuting Area" to "FERC-wide" without, in our opinion, adequate justification. FERC's merit promotion plan permits a reduced area of consideration to be used when a request to do so fully documents that a smaller area of consideration would produce sufficient candidates and opportunity for competition. In this case, the request contained a bare statement that there was a sufficient number of qualified, eligible candidates within FERC to allow selection of the best applicant to fill the position. Two people applied for the position, and only the Schedule C employee was determined qualified.

Under OPM procedures individuals with prior career status do not need to be referred to OPM, although agencies need to ensure all merit system principles are followed. Consequently, OPM did not review this conversion and its adherence to civil service law under its conversion review process.

The appointment through delegated examining authority that occurred at one of the Department of Energy's (DOE) Operations Offices is discussed below and in detail on page 8. DOE established a new GM-301-15 position, and the Operations Office established the minimum area of publicity for the vacancy as statewide, although the Operations Office did include it in recruitment information sent to the Federal Job Information Center and minority groups and universities nationwide. It received two applications and selected an employee serving under a noncareer SES appointment at DOE's headquarters in Washington, D.C.

When OPM's regional office audited the use of the delegated authority, it found the publicity area for the position had been insufficient to generate a reasonable number of candidates when the position's grade and duties were considered, although it said DOE had complied with merit system objectives. OPM also determined that of the two applicants who had applied, only the headquarters employee selected for the position was qualified. To assure that this situation would not occur again, OPM amended the delegation agreement with DOE's Operations Office to include minimum publicity guidelines.

Although OPM found that DOE had complied with merit system objectives, its finding that the publicity area for the position was too narrow illustrates, in our opinion, the benefits of OPM review prior to appointment. It was not until OPM audited Energy's use of the delegated examining authority that it identified the problem. This occurred 2 months after the appointment. Such lapses in time between appointment and merit review may cause problems. First, a potentially inappropriate conversion or the appearance of one would have already occurred with the likely damage to the credibility of the merit system before OPM became aware of it. Second, the lapse in time could make it more difficult for OPM and/or the agency to take corrective action, such as removing the incumbent and recompeting the position. For example, the incumbent may be involved in an important program, and it may not be feasible to remove him or her. Finally, it may not be fair to remove the incumbent and/or reannounce the position. The incumbent may have applied for the position in good faith, given up a prior job, and even relocated from one part of the country to another. To remove the incumbent or to reannounce the position with a chance that the incumbent would not be selected because of an agency error seems unduly harsh. For these reasons, we believe it worthwhile for OPM to review conversions before appointment in cases where agencies have been given delegated examining authority. We note from our review of 46 conversions that 3 involved delegated examining authority. Consequently, a requirement for OPM review prior to appointment should not create an undue burden on the agency or on OPM. We discussed this opportunity to improve the review process with the Associate Director for Career Entry, who felt that reviewing such conversions before agencies make the appointments would be beneficial.

Agencies' Inspectors General Could Help Monitor Conversions

OPM, through its review process, has identified and cancelled a number of inappropriate conversions, and the opportunities for improvement that we found should enhance this process. Nevertheless, the nature of the conversion process and the difficulty of evaluating the intent of an agency official to give or not give a candidate for conversion an improper preference or advantage renders the process vulnerable. Because of this, Congress may wish to adopt additional measures to help monitor conversions and supplement OPM's review process. Should it believe that such measures may be desirable, we suggest that Congress consider requiring agency Inspectors General to periodically review the propriety of conversions in their agencies and report the results to both the agency heads and Congress.

In our view, such a requirement has merit. A review and report by an independent organization such as an Inspector General would serve as a form of public disclosure and, as such, could have a deterrent effect on improper conversions. For example, an agency official may think twice about pursuing an inappropriate conversion if he/she knew that it would be subject to an Inspector General review and report to the agency head and Congress. In a similar manner, the likelihood of an Inspector General review would also serve to provide increased leverage to OPM during its review activities. The Assistant Director for Washington Examining Services told us that OWES used our presence on this review in its discussions with agencies as to why some conversions should be cancelled. Essentially, they were telling the agency that the conversion would need to stand up to review and disclosure by GAO. The expectation of an Inspector General review would serve the same purpose.

While we see benefits to such a requirement, we do not believe it would place an undue burden on the agency Inspectors General. As shown in the tables in appendix II, the number of conversions seems to be spread out among agencies; the 2 highest concentrations of conversions during the 23 months covered by our review were 11 at the Department of the Interior and 10 at the Department of Energy. Of course, if an Inspector General found the number of conversions had grown to an extent that would be burdensome if all were to be individually reviewed, it could review them on a sample basis.

Conclusions

Conversions of political appointees from noncareer to career status present a dilemma. On one hand it is reasonable to permit individuals who join the government as political appointees to compete for career status if they choose to continue their federal careers. On the other hand, the political nature of noncareer appointments raises the possibility or question of favoritism and improper advantage, even the appearance of which can compromise the integrity of the merit system.

OPM has established a review process and procedures to prevent unfair practices and ensure adherence to merit system principles. It has been successful in identifying and cancelling some improper conversions, and we note opportunities for further improvement. Even with these improvements, however, inherent difficulties remain in overseeing conversions to ensure adherence to merit system principles. Ultimately, a selection decision is subjective, and an agency official can follow procedures, conceal a prohibited motive, and plausibly defend his/her decision as a legitimate

exercise of managerial discretion. If Congress believes additional safeguards are needed, a control procedure exists that we believe Congress should consider as a means of further ensuring that conversions are consistent with merit system principles.

Matter for Congressional Consideration

Should Congress believe that additional measures are desirable to monitor conversions and supplement OPM's review process, we suggest that Congress consider requiring agency Inspectors General to periodically review the propriety of conversions in their agencies and report the results to the agency heads and Congress.

Recommendations to the Director of OPM

To strengthen its oversight of conversions of Schedule C and noncareer SES employees to career appointments, we recommend that the Director of OPM

- ensure that each region establish procedures to be used by its examining offices to identify and review all conversions within their jurisdictions, and
- revise OPM's review process to include the preappointment review of conversions where (1) the employee selected is eligible for reinstatement into the competitive service on the basis of prior career service or (2) the agency has been granted delegated examining or direct hire authority.

Agency Comments and Our Evaluation

OPM agreed with the central thrust of the report that appointments of Schedule C and noncareer SES appointees to the career service warrant special attention to ensure that such appointments comply with merit principles. OPM believes that its existing controls cover most conversions of appointees to career positions and are working reasonably well. It acknowledged, however, that there are opportunities to improve. OPM agreed with our recommendations that it take steps to ensure that all of its examining offices have procedures in place to identify and review conversion cases and that conversion cases arising under agency delegated examining authorities be referred to OPM for review prior to an appointment's being made.

OPM disagreed with our recommendation to revise its review process to include the preappointment review of conversions where OPM has granted the agency direct hire authority or the employee selected is eligible for reinstatement into the competitive service on the basis of prior career service.

OPM said that direct hire authorities generally are approved for technical occupations, such as engineers or scientists, primarily at the entry levels and rarely would any Schedule C or noncareer SES appointees qualify for such occupations. While we do not disagree with OPM's statement, we do not see why the limited extent of potential conversions under direct hire authorities should be a reason for not subjecting such actions to OPM review. As in other cases where Schedule C and noncareer SES employees are subsequently granted career appointments, the question of favoritism can be raised, the appearance of which can compromise the integrity of the merit system. The fact that such conversions would be rare only means that the additional workload on OPM of such a provision would be negligible. Thus, we continue to opt for the assurance that preappointment review of such conversions would bring.

Regarding our recommendation dealing with the preappointment review of conversions made by reinstatement, OPM said that individuals who acquire competitive status before their Schedule C or noncareer SES appointments should be able to exercise that eligibility in the same manner as other individuals. It added that in order to be reinstated at a grade higher than previously held in the competitive service, the individuals must compete under agency merit promotion procedures. OPM said that it has long prohibited conversions-in-place to change an employee to a career appointment while in the same position.

We agree with OPM that individuals who serve under Schedule C or noncareer SES appointments who have gained reinstatement eligibility into the competitive service on the basis of prior career service should be able to exercise such eligibility in the same manner as other individuals. We also recognize that to be reinstated in the competitive service at a grade higher than previously held, the individuals must compete under agency merit promotion procedures, and we acknowledge that OPM has long prohibited conversions-in-place. However, as discussed on page 12, a reinstatement action can be made under circumstances that give the appearance of a conversion-in-place. Because of the potential adverse effect on the merit system that such questionable conversions can have, and to ensure that political appointees are not unfairly stigmatized when granted career appointments under questionable circumstances, we believe that preappointment review has merit.

OPM also pointed out that it tempers its approach to both direct hires and reinstatements by taking care not to adopt policies that would discriminate against individuals solely because of their prior appointments. We agree

with OPM's view, but we do not believe that OPM review would in any way be discriminatory. In our view, OPM oversight is directed at the agencies to ensure that they adhere to merit staffing principles, particularly in cases that OPM acknowledges warrant special attention. Rather than discriminating against employees, we believe OPM preappointment review would help to avoid any perception that could develop among agency employees that a former political appointee was given a career appointment on the basis of favoritism attributable to a prior noncareer appointment rather than on merit. Further, as discussed on page 13, preappointment review may protect individuals from a situation where, after they have been selected for a career appointment, a post-appointment review by OPM discloses irregularities by the agency that could require recompeting the position.

Finally, OPM questioned the value of a requirement for agency Inspector General review of conversions. On the basis of (1) the relatively few conversions that occurred during the period covered by our review; (2) the fact that our report identified only two cases where agencies did not fully comply with merit staffing requirements; and (3) that such conversions are scrutinized by OPM, GAO, and the agencies themselves, OPM does not believe that another review would contribute significantly to eliminating impropriety or its appearance.

We acknowledge OPM's point concerning the relatively small number of conversions that occur. However, our suggestion that Congress consider having Inspectors General review conversions if it believes current controls are not sufficient is not based on the number of such events. It is based on the highly sensitive nature of conversions, the negative image that can be generated by improper or questionable conversions, and the high degree of congressional interest in them, especially during presidential election years. Further, while we have been asked to, and did, report on the number of conversions during certain time periods, we have not routinely reviewed their propriety.

We believe that an independent review by Inspectors General could provide added assurance on the propriety of conversions and could help deter improper conversions. Further, we believe that the conditional nature of our suggestion recognizes the question OPM raises and provides Congress with a way to obtain additional assurance if it believes it desirable.

As arranged with the Subcommittee, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will provide copies of this report to OPM, to the agencies where we did our work, and to others upon request.

The major contributors to this report are listed in appendix V. If you have any questions, please telephone me on (202) 275-5074.

Sincerely yours,



Bernard L. Ungar
Director, Federal Human Resource
Management Issues

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Abbreviations

ARA/PAC	Assistant Regional Administrator/Public Affairs and Communications
CPDF	Central Personnel Data File
DOE	Department of Energy
FERC	Federal Energy Regulatory Commission
HUD	Department of Housing and Urban Development
NCES	National Center for Education Statistics
OEP	Office of Executive Personnel
OPM	Office of Personnel Management
OWES	Office of Washington Examining Services
QRB	Qualifications Review Board
SBA	Small Business Administration
SES	Senior Executive Service
WASC	Washington Area Service Center

Objectives, Scope, and Methodology

At the request of the Chairman, Subcommittee on Civil Service, House Committee on Post Office and Civil Service, we reviewed the career appointments to competitive service or SES positions that were granted employees who held either Schedule C or noncareer SES appointments before receiving their career appointments. Our objectives were to determine whether these types of conversions were made in accordance with the merit system principles dealing with fair and open competition and with OPM implementing regulations and to assess OPM's oversight of the propriety of the appointments. As agreed with the Subcommittee, our review covered conversions that took place during the period February 1988 through December 1989 and included (1) the conversions of noncareer SES appointees and (2) conversions of Schedule C employees graded GM/GS-12 or above to competitive service positions graded GM/GS-12 or above or SES positions. We selected this time frame in order to cover conversions that had occurred during the last presidential election year and the following presidential transition period and for which agency merit staffing records would be available for review. Generally, agencies are required to maintain such records for 2 years after the date of the personnel action.

We developed a universe of conversions of Schedule C and noncareer SES employees that took place during this period from two sources. Pursuant to earlier GAO work, we had requested 60 executive branch agencies to report to us, on a monthly basis, the number of conversions from January 1987 through February 1989. To expand our coverage of conversions through December 1989, we asked OPM for statistical information on conversions for all executive branch agencies from its Central Personnel Data File (CPDF). OPM provided this information for the period January 1, 1988, through December 1989. We then combined the data bases. In order to conform with our scope, we adjusted the information by deleting (1) conversions that took place before February 1988 and (2) Schedule C conversions that did not meet our criterion of including only employees who occupied Schedule C positions graded GM/GS-12 or above who were converted to positions in the competitive service graded GM/GS-12 or above or in the SES.

The universe we developed is subject to certain limitations. To develop the information we requested, OPM did a series of comparisons of employment status as of the last day of consecutive quarters from December 31, 1987, through December 31, 1989, to identify conversions. Changes from non-career status at the end of a quarter to career status at the end of the next quarter indicated conversions. Because OPM obtained information from the

CPDF as of the last day of each quarter, OPM's comparisons did not identify people who might have received noncareer appointments and converted to career appointments within the same quarter. In addition, OPM would not have identified people who had noncareer appointments and also left the government before December 31, 1987, and returned to the government in career appointments after December 31, 1987. We did not verify the accuracy of the information provided by OPM.

The universe that we developed showed that 30 departments or agencies converted 68 Schedule C and 27 noncareer SES employees. Six departments and one agency—the Departments of Agriculture, Energy, Education, Health and Human Services, Housing and Urban Development, and the Interior, and the Small Business Administration—accounted for 55 conversions, or 58 percent of all conversions identified in the 23-month period. We judgmentally selected these agencies for detailed review on the basis of the total number and the number of conversions from Schedule C and noncareer SES appointments that occurred at them. Subsequently, we found that 9 of the 55 appointments were not conversions and we excluded them from further review. We examined the propriety of the remaining 46 conversions. Because we judgmentally selected the departments and agencies covered by this review, the results cannot be projected to other departments or agencies.

We evaluated the propriety of the appointments by (1) reviewing federal civil service laws, rules, regulations, and OPM guidance on merit staffing requirements pertaining to the principle of fair and open competition; (2) reviewing documentation in agency files to assure merit staffing procedures were followed; (3) reviewing documentation in the merit staffing and official personnel files to determine if employees converted received an improper advantage or preference during their noncareer appointments or the recruiting process that improved their prospects for career appointment; and (4) when necessary, reviewing OPM conversion case review and certification request files.

In assessing whether merit staffing requirements were adhered to, we focussed on determining whether

- the vacant positions had been publicized,
- the appointees were within the area of consideration from which applications would be accepted,
- the appointees' Personal Qualifications Statements were signed before the closing date of the vacancy announcement,

- certificates of eligibles were requested from OPM when appropriate, or
- qualifications review board determinations were requested from OPM when SES positions were being filled by initial career appointment.

In assessing whether improper advantages or preferences were granted appointees, we concentrated on examining whether agency officials had

- acted to fill a bona fide vacancy or solely to move the duties of a Schedule C position along with its incumbent from the excepted service to the competitive service by unilaterally removing the position's Schedule C elements, its policy-determining and/or confidential relationship characteristics;
- acted to fill a bona fide vacancy or solely to change the type of appointment of an SES position incumbent from noncareer to career;
- "tailored" the SES or competitive service position's duties to the appointee's qualifications;
- used inappropriate selective or quality ranking factors to unduly restrict competition; or
- detailed an appointee to the competitive service or SES position to gain qualifying specialized experience and/or program knowledge.

We had discussions with and/or obtained written explanations from agency and/or OPM officials to clarify and resolve issues that surfaced as a result of our records review.

As agreed, we did not (1) independently determine whether the employees converted met the basic qualifications for or were the best qualified persons for the competitive service or SES positions to which they received career appointments or (2) verify the accuracy of the information in converted employees' Personal Qualifications Statements.

To assess OPM's oversight activities, we interviewed OPM officials about OPM's review process and procedures for evaluating the merit fitness of career appointments to SES or competitive service positions agencies granted former Schedule C or noncareer SES appointees. To test the implementation of OPM's review procedure, we assessed how the procedures were implemented at the Office of Washington Examining Services, which had review responsibility over most of the conversions to competitive positions included in our review, and the Atlanta and Denver Area Offices, which had each processed a conversion to a competitive position we believe to be questionable. We also assessed how the procedures were implemented at the Office of Executive Management and Policy which had

review responsibility over the career appointments to SES positions agencies granted former Schedule C or noncareer SES appointees.

We did our work in the Washington, D.C., metropolitan area between July 1990 and July 1991 and in accordance with generally accepted government auditing standards.

Extent of Conversions

For the period February 1988 to December 1989, we identified 24 noncareer SES and 62 Schedule C employees in positions GS-12 or above who were converted to career appointments in competitive service positions graded GS-12 or above or SES positions in executive branch agencies. The conversions represent 3.5 percent of the 681 noncareer SES appointees and 5.5 percent of the 1,124 Schedule C appointees at grades GS/GM-12 and above who were employed by executive branch agencies as of December 30, 1987.

The conversions were made by the 30 agencies listed in table II.1. The 6 departments and 1 agency included in our review—Interior, Health and Human Services (HHS), Energy, Education, Agriculture, Housing and Urban Development (HUD), and SBA—accounted for 46 of the conversions. This was about 54 percent of the conversions made during the 23-month period.

**Appendix II
Extent of Conversions**

Table II.1: Conversions by Type of Appointment Held Before Conversion: February 1988 to December 1989

Agency	Schedule C	Noncareer SES
Agriculture	2	1
Army		1
Defense	1	
Education	8	1
Energy	8	2
Environmental Protection Agency	2	1
Farm Credit Administration	1	
Federal Emergency Management Agency	1	1
Federal Housing Finance Board	2	
Federal Labor Relations Authority	1	
Federal Mediation and Conciliation Service	1	
Federal Trade Commission	1	
General Services Administration	2	
Health and Human Services	4	
Housing and Urban Development	3	
Interior	4	7
Justice	1	1
Labor	1	
National Aeronautics and Space Administration	1	1
National Archives and Records Administration	1	
National Labor Relations Board	1	1
Nuclear Regulatory Commission		2
Office of Management and Budget		1
Office of Personnel Management	1	
Small Business Administration	5	1
Transportation	3	2
Treasury	1	
U.S. Arms Control and Disarmament Agency	1	
U.S. Information Agency	4	1
Veterans Affairs	1	
Total	62	24

Table II.2 shows the number of conversions at the 30 agencies categorized by the level of the position to which the conversions were made. About half of the conversions that occurred were into positions in SES or at GS-15 grade level positions in the competitive service. The six departments and one agency in our review made about 41 percent of the conversions to SES level positions and about 73 percent of the conversions to GS-15 grade level positions. Further, they accounted for about 56 percent of the

**Appendix II
Extent of Conversions**

conversions to GS-14 grade level positions, about 80 percent of the conversions to GS-13 grade level positions, and about 29 percent of the conversions to GS-12 grade level positions.

Table II.2: Conversions by Level of Position to Which Appointed: February 1988 to December 1989

Agency	Level				
	SES	GS-15	GS-14	GS-13	GS-12
Agriculture		2			1
Army	1				
Defense		1			
Education	2	3	1		3
Energy	1	5	3	1	
Environmental Protection Agency	1				2
Farm Credit Administration					1
Federal Emergency Management Agency	1			1	
Federal Housing Finance Board					2
Federal Labor Relations Authority					1
Federal Mediation and Conciliation Service					1
Federal Trade Commission		1			
General Services Administration		1	1		
Health and Human Services		2		2	
Housing and Urban Development			3		
Interior	3	3	2	3	
Justice		1	1		
Labor					1
National Aeronautics and Space Administration	1		1		
National Archives and Records Administration					1
National Labor Relations Board	1			1	
Nuclear Regulatory Commission	2				
Office of Management and Budget	1				
Office of Personnel Management					1
Small Business Administration	1	1		2	2

(continued)

**Appendix II
Extent of Conversions**

Agency	Level				
	SES	GS-15	GS-14	GS-13	GS-12
Transportation	1	2	1		1
Treasury					1
U.S. Arms Control and Disarmament Agency			1		
U.S. Information Agency	1		1		3
Veterans Affairs			1		
Total	17	22	16	10	21

Summary of Conversions Whose Propriety Appeared Questionable

In addition to the conversion discussed on page 6, we identified six others where the circumstances gave the appearance that unauthorized advantage might have been granted the Schedule C employees. Five of the six raised the issue of whether the agency was acting to fill a bona fide vacancy or solely to move the excepted service position's duties and responsibilities, along with the incumbent, from the excepted service to the competitive service. An action of this type is commonly referred to as a "conversion-in-place." The sixth appointment raised the issue of whether the agency had "tailored" the duties and responsibilities of the competitive service position for the excepted employee who was eventually appointed to the position, which would give the employee a competitive advantage over other applicants. Both of these practices violate the Civil Service Reform Act of 1978 prohibition against granting unauthorized advantages, including defining the scope or manner of competition or the requirements for any position to any individual, for the purpose of improving or injuring the prospects of any particular person for employment.

These six conversions are discussed below.

Case 1: The propriety of SBA's Denver Regional Office action in filling a competitive service position with a Schedule C employee was questionable. The action appears to have been a conversion-in-place. The organizational location and reporting relationship of the Schedule C position the employee occupied and the competitive position to which the employee was appointed were the same. In addition, the competitive position's responsibilities and duties were similar to the Schedule C position's responsibilities and duties, and the functional title of both positions was Assistant Regional Administrator/Public Affairs and Communications (ARA/PAC). Also, the Regional Administrator, who was the supervisor to whom both positions reported, stated in a memorandum to the files regarding the candidates he interviewed for the competitive position that the Schedule C employee had occupied the ARA/PAC position for 25 months and was interested in continuing to work for the government.

Until the employee's January 1989 appointment to the Public Affairs Specialist, GS-1035-13, position in the competitive service, the employee occupied a Schedule C Special Assistant to the Regional Administrator, GM-301-14, position in the Office of the Administrator. The employee had been promoted to this position in February 1988 after being appointed to a Schedule C Special Assistant to the Regional Administrator, GM-301-13, position with similar duties in October 1986. The Schedule C position incumbent's responsibilities included coordinating and implementing

strategies and advising the Regional Administrator on matters relating to the most effective means of utilizing and presenting agency information to state legislators, congressional committees, the news media, the small business community, and the general public. The position required a close, confidential relationship with the Regional Administrator. The position's duties included (1) establishing and maintaining effective working relationships with members of the news media; (2) developing and implementing plans to improve and present SBA programs to the small business community and general public; (3) preparing and issuing news releases, statements, pamphlets, and other informational materials about SBA's programs and activities; and (4) preparing speeches for the Regional Administrator.

The competitive position's responsibilities included planning, coordinating, directing, and executing information, communications, and public affairs programs throughout the region. The position's duties included (1) establishing and maintaining effective working relationships with members of the print and electronic news media; (2) analyzing and evaluating regional program needs to advise the Regional Administrator of the information that should be made available to the public; (3) using a variety of methods and techniques in achieving communication goals, such as news releases, radio and television scripts, feature articles, brochures, and pamphlets; (4) preparing fact sheets, special reports, speeches, and other material for public dissemination; and (5) preparing the annual regional operating plan for public affairs and communications.

Comparing the Schedule C and competitive service positions, we found that

- the positions were located in the Office of the Regional Administrator and reported to the Regional Administrator,
- the positions had similar duties, and
- the Schedule C position included a requirement for a confidential relationship with the Regional Administrator but the competitive position did not.

Our review of the Personal Qualifications Statement that the Schedule C employee submitted for the competitive service position showed that the employee had apparently been doing the competitive service position's duties while serving in the Schedule C position. The statement shows that the employee had served as the Assistant Regional Administrator for Public Affairs/Communications since October 1986. In that capacity, the statement showed that the employee

- wrote and edited various publications, including press releases, congressional hearing statements, editorials, and a regional newsletter;
- organized and publicized special events; and
- prepared and implemented a regional operating plan for public affairs and communications.

During July 1988, the Public Affairs Specialist position was reestablished at the request of the Regional Administrator. The position had been vacant since 1982. The Assistant Regional Administrator for Administration told us that during 1988 the Denver Region was 1 of 2 regional offices, out of 10, that did not have a dedicated, full-time Assistant Regional Administrator/Public Affairs and Communications position in the competitive service. The Assistant Regional Administrator told us the Denver Regional Administrator decided to reestablish the position to bring the Denver Region's organization structure more in line with the other regions and more properly emphasize and manage the significant public affairs and communications duties delegated from the central office.

The Denver Regional Office advertised the position under its merit promotion plan and through a recruiting notice issued by OPM's Denver Area Office. Applications were accepted from September 19 to September 30, 1988. The Denver Regional Office received five applications from individuals who applied for the position under SBA's merit promotion plan announcement and determined that two of the five individuals qualified for the position. Both of the qualified individuals were referred to the selecting official for consideration. OPM's Denver Area Office received applications from 21 individuals, and it determined that 19 were qualified for the position. The Area Office issued a certificate of eligibles to the SBA Regional Office that included the names of the top seven ranked individuals. The Schedule C employee was the top ranked individual on the certificate and was selected for the position.

The OPM Denver Assistant Area Office Manager told us that the Area Office was not aware that the agency's selection involved a conversion of a Schedule C employee to a competitive service position. The Denver Assistant Area Office Manager told us that if the Area Office had known that the selection involved the conversion of a Schedule C employee, the Area Office would have reviewed the conversion using existing OPM guidance. Thus, the Area Office did not review the recruiting process to evaluate whether the agency was acting to fill a bona fide vacancy or trying to move the excepted service position's duties, along with its incumbent, to the competitive service.

In our view, the conversion is questionable. The Regional Office's public affairs functions had been accomplished in the excepted service for 6 years prior to their return to the competitive service during 1988. We recognize management's right to organize its resources to accomplish the Regional Office's objectives. However, given the movement of the public affairs functions from the competitive service to the excepted service and back to the competitive service over a 6-year period, this case raised the question of whether the Regional Office was acting to fill a bona fide vacancy or to move the duties of the Schedule C position, along with its incumbent, to the competitive service.

Case 2: The propriety of SBA's Atlanta Regional Office action in filling a competitive service position with a Schedule C employee was questionable. The action appears to have been a conversion-in-place. The organizational location and reporting relationship of the Schedule C position the employee occupied and the competitive position to which the employee was appointed were the same, and the competitive position's duties were similar to the Schedule C position's duties.

Until the employee's January 1989 appointment to a Public Affairs Specialist, GM-1035-13, position in the competitive service, the employee occupied a Special Assistant to the Regional Administrator, GM-301-13, Schedule C excepted service position in the Office of the Regional Administrator. The employee had been appointed to the excepted service position in October 1985. The Schedule C position incumbent's responsibilities included coordinating strategies and advising the Regional Administrator on matters relating to the most effective means of utilizing and presenting agency information to state legislators, congressional committees, the news media, the small business community, and the general public. The position's duties included (1) coordinating and advising on the presentation of SBA programs to the small business community and the public; (2) providing advice, assistance, and support for the preparation and dissemination of public information material; (3) disseminating information about SBA to the media; (4) maintaining liaison with the media, trade associations, and other similar groups; and (5) preparing and issuing news releases, pamphlets, and other informational material. The position required a personal and confidential relationship with the Regional Administrator.

The competitive position's duties included planning, directing, coordinating, and executing the SBA information and communication and public affairs programs throughout the region. The competitive position's

duties included (1) planning, organizing and implementing a public affairs program for the region; (2) establishing and maintaining working relationships with all media; (3) developing and disseminating informational material to the public; and (4) writing speeches for the Regional Administrator. The position's incumbent serves as the Assistant Regional Administrator for Public Affairs.

Comparing the excepted service and competitive service positions, we found that

- the positions were located in the Office of the Regional Administrator and reported to the Regional Administrator,
- the positions had similar duties, and
- the Schedule C position included a requirement for a confidential relationship with the Regional Administrator but the competitive position did not.

Our review of the Personal Qualifications Statement that the Schedule C employee submitted for the competitive service position showed that the employee had apparently been doing the duties of the competitive service position while serving in the Schedule C position. The statement showed that the employee had served as the Assistant Regional Administrator for Public Affairs and Communication since October 1985. In that capacity, the statement showed that the employee

- planned and coordinated overall public communications for the region,
- served as the focal point for all news and public information distributed to the print and electronic media,
- prepared press releases and other information,
- advised the Administrator and other program heads on contacts with the press,
- prepared speeches and other material for the Regional Administrator for presentation at various meetings, and
- coordinated the operation of audiovisual aids at SBA events.

During September 1988, the SBA Atlanta Regional Office began recruiting to fill the Public Affairs Specialist position. The competitive position had been vacant since 1983, when the then incumbent transferred to another SBA regional office. The position description for the position had been prepared in September 1986. The Acting Atlanta Regional Administrator told us that the ARA/PAC position had traditionally been in the competitive service, but while the position was vacant the duties of the position were performed by a Special Assistant to the Regional Administrator. The Acting

Administrator told us that the Schedule C employee did the duties of the ARA/PAC position because the position ceiling during the period the position was vacant limited the number of positions in the region, and the region did what it had to do to get the work done. The Acting Regional Manager said that the ARA/PAC position was not established in the excepted service and that the Regional Office decided to fill the competitive position because it was available to be filled.

The Atlanta Regional Office advertised the position under SBA's merit promotion plan and through a recruiting notice issued by OPM's Atlanta Area Office. The position was advertised at the GS-12/13 grade level by the OPM Area Office at SBA's request. Applications were accepted from September 12 to September 23, 1988, by the Regional Office and from October 3 to October 17, 1988, by the OPM Atlanta Area Office. The SBA Regional Office told us that it received an application from one individual under SBA's merit promotion plan announcement. The Regional Office determined that the individual was qualified for the position and referred the individual to the selecting official for consideration. OPM's Atlanta Area Office received applications from 94 individuals; it determined that 6 were qualified for the position at the GS-13 level, and 12 were qualified for the position at the GS-12 level. The Area Office issued a certificate of eligibles to the SBA Regional Office that included the names of the 6 individuals who had qualified at the GS-13 grade level and another certificate of eligibles that included the names of 10 of the 12 individuals who had qualified at the GS-12 level. Two of the applicants who had qualified at the GS-12 grade level had indicated that GS-13 was the lowest grade level they would accept and were not certified at the GS-12 grade level. The Schedule C employee was among the two top ranked individuals on the certificate at the GS-13 level and was selected for the position.

The Atlanta Area Office Manager told us that the Area Office had not realized that the agency's selection involved the selection of a Schedule C employee for the competitive service position. Had the Area Office been aware that the case involved a possible conversion, the Area Office would have reviewed the request. Thus, the Area Office did not review the recruiting process to evaluate whether the agency was acting to fill a bona fide vacancy or to unilaterally remove the Schedule C nature of the excepted service position for the sole purpose of moving the position, along with its incumbent, to the competitive service.

In our opinion, the SBA Regional Office's rationale for taking action to fill the competitive service position was questionable and gave the appearance

that it was done in order to move the Schedule C incumbent into the competitive service. While position ceilings, as the Acting Regional Administrator told us, do limit the number of positions that may be occupied at any given time, position ceilings do not affect the type of positions—competitive or excepted—that may be established to accomplish the agency's objectives. Thus, an agency has discretion to accomplish its work through a position in the competitive or excepted services. Apparently, the Regional Office chose to accomplish its public affairs work in an excepted service position beginning in October 1985. In August 1988 the Regional Office chose to perform its public affairs work in the competitive service position that had been vacant since 1983. The Schedule C employee could have continued doing the region's public affairs work for as long as the employee had the trust and confidence of the Regional Administrator, whoever that might have been. In our view, it is questionable whether the agency was acting to fill a bona fide vacancy or to move the Schedule C position's duties, along with its incumbent, from the excepted to the competitive service by unilaterally removing the Schedule C position's confidential relationship requirement.

Case 3: FERC's action to fill a newly established competitive service position with a Schedule C employee was questionable. The action appears to have been a conversion-in-place even though (1) the organizational locations and reporting relationships of the Schedule C position the individual occupied and the competitive position to which the individual was appointed were different, and (2) the competitive position did not include all of the duties that had been included in the Schedule C position.

Until being granted a career appointment on June 19, 1988, to a newly established GS-301-13 position in the competitive service, the individual occupied a Schedule C Special Assistant to the Director of External Affairs, GM-301-14, position in the excepted service. The Schedule C position incumbent was responsible for handling the FERC Chairperson's speaking schedule and coordinating with staff who wrote speeches for the Chairperson. The position required a close, confidential relationship with the Director, Office of External Affairs, and the FERC Chairperson.

Comparing the two positions, we found that the following:

- The competitive position was located one management level below the Office of the Director of External Affairs, where the Schedule C Special Assistant position was located.

- The competitive position did not report to the Director of External Affairs, but the Schedule C position did.
- The competitive position included 4 of 7 groupings of duties that had constituted the Schedule C position and 11 other groupings of duties related to public and intergovernmental affairs functions.
- The Schedule C position included a requirement for a confidential relationship, but the competitive position did not.

Both positions included the following duties:

- receiving and accepting requests for speaking engagements for the Chairperson based on a knowledge of the Chairperson's interests and priorities;
- ensuring that the Chairperson appeared before a variety of groups at times that were coordinated with current issues before the FERC;
- making logistical arrangements for the Chairperson's speaking schedule and, when requested, accompanying the Chairperson on speaking trips to provide staff assistance; and
- using editorial and policy judgment in determining elements to be included in speeches, data to be included in back-up material, and recommendations to be made to the Chairperson regarding the manner of delivery, concerns of the audience, and potential questions from the audience that the Chairperson might be called upon to answer.

FERC's Director of Personnel told us that the competitive position was established by the then Director of External Affairs, who has since left FERC, to meet a legitimate management need and not for the purpose of placing a Schedule C incumbent into a competitive service position or moving the Schedule C position to the competitive service. The Director of Personnel said the two positions were different; the Director of Personnel was not aware of the management reason for establishing the competitive position with duties taken from the Schedule C position. The Director of Personnel also could not explain why a confidential relationship was no longer required to do duties that previously required such a relationship. The Director of Personnel said that the nature of the work of the Office of External Affairs makes it very difficult to distinguish those duties that are of a confidential nature as opposed to those duties that are not.

In addition to the question of why a new position was needed to fulfill the duties already being carried out by the Schedule C employee, we noted that the area of consideration from which applications would be accepted for the Intergovernmental Affairs Specialist position was reduced from "Commuting Area" to "FERC-wide."

FERC's Merit Promotion Plan provides that (1) the minimum area of consideration for grades GS/GM-13, 14, and 15 positions is "Commuting Area"; and (2) exceptions to this requirement may be requested in writing from the Director, Division of Personnel Operations. The request must "document fully that a smaller area of consideration will produce sufficient candidates and opportunity for competition." A copy of the request is to be maintained as part of the merit promotion file supporting the recruitment action. The exception request in the file did not appear to meet the criterion for reducing the area of consideration. The request contains a bare statement by the selecting official, the then Director of External Affairs, that he believed that "there is a sufficient number of qualified, eligible candidates already within the FERC to allow selection of the best applicant to fill the position." The request does not contain any supporting evidence of how the selecting official arrived at his conclusion. FERC received applications from two individuals for the position. Only the Schedule C employee was determined qualified for the position. As a result, we believe that the reduced area of consideration did not produce a sufficient number of candidates to provide an opportunity for competition. The Schedule C employee had no competition for the position.

We discussed the decision and rationale to reduce the area of consideration with FERC's Director of Personnel. He told us that the selecting official's statement was sufficient to support a request to reduce the area of competition. He also told us that the area of consideration is an area of search rather than a restrictive zone and would not prohibit the consideration of candidates from other sources. While we agree that this is true, the fact that a position is advertised with a specific area of consideration may dissuade other individuals outside that area from applying in the belief that they would not be considered. Further, in this case, the fact that only two people applied, and only one was qualified, suggests that there was insufficient competition.

Because the Schedule C employee had obtained competitive status earlier in the employee's career with the government, the individual was eligible to be reinstated into the competitive service. Consequently, the merit fitness of this conversion was not reviewed by OPM under its conversion review process. OPM's conversion review process does not provide for identifying and reviewing conversions before an appointment is made when conversions are done by career reinstatement.

In our opinion, this conversion is questionable because it gives the appearance that the Schedule C employee received an improper advantage or

preference. Among other things, the competitive position was designed to include duties taken from the Schedule C position. In addition, the selecting official limited, without clear justification in our view, competition to a smaller area than provided for in the merit promotion plan and made a selection for the position even after only one candidate out of two who applied was determined qualified for the position. In our view, these circumstances cast doubt on whether the agency was acting to fill a bona fide vacancy or to convert the excepted service position and its incumbent into the competitive service.

Case 4: The propriety of the Department of Agriculture's action in filling a new competitive service position with a Schedule C employee was questionable. The action gives the appearance of a conversion-in-place because the competitive position's duties were similar to the Schedule C position's duties. In addition, Agriculture and OPM records showed that Agriculture informed OPM that the Schedule C position was clearly quite similar to the competitive position. The main difference between the competitive position and the Schedule C position was that the competitive position did not include duties of a confidential and policy-determining nature characteristic of a Schedule C position.

Until the Schedule C employee's November 1988 appointment to a newly established Coordinator, Agricultural Labor Affairs, GM-301-15, position in the competitive service, the employee occupied a Schedule C Special Assistant for Agricultural Labor, GM-301-15, position in the excepted service in the Office of the Assistant Secretary for Economics. The employee was appointed to the excepted service position during August 1987 after being detailed to it during January 1987. The Schedule C position's duties included

- conducting special political studies and assessments of industry concerns and labor problems related to the agriculture work force;
- advising top officials on the development, planning, coordination, and implementation of policies related to agricultural labor affairs;
- serving as a personal representative of the Assistant Secretary before trade and industry groups;
- serving as the interagency and intra-agency liaison for all matters related to agricultural labor affairs;
- studying and commenting on legislative proposals and preparing confidential reports on legislative recommendations based on a consideration of political factors and technical program information; and

- conducting confidential special assignments on program and policy matters as a representative of the Assistant Secretary.

The position required a confidential relationship with the Assistant Secretary for Economics.

The competitive service position was established during February 1988 by the Director of the Economic Analysis Staff. The competitive position's incumbent serves as Agriculture's authority, principal policy analyst, and primary advisor on agriculture labor issues and affairs. The position description included the following duties and responsibilities:

- serving as the principal analyst for the development of policy options on complex agricultural labor issues and framing options in an area where differences of opinion may be sharp, political consequences great, and public understanding of the issues very limited;
- planning, developing, organizing, and coordinating studies on complex policy and program issues relating to agricultural labor;
- reviewing the history of government policy efforts and measures in dealing with labor issues that affect American agriculture and the agricultural economy;
- analyzing, evaluating, and preparing reports on legislative proposals concerning agricultural labor issues for policy and program implications; and
- representing Agriculture in contacts with associations of producers, manufacturers, and consumers to discuss the economic impact of existing and proposed Agriculture policies in the agricultural labor area.

Comparing the excepted service and competitive service positions, we found the following:

- The competitive position was located in the Economic Analysis Staff, one management level below the Office of the Assistant Secretary for Economics, where the Schedule C Special Assistant position was located.
- The competitive service position reported to the Director of the Economic Analysis Staff, who reported to the Assistant Secretary for Economics, while the Schedule C position reported directly to the Assistant Secretary for Economics.
- The positions had similar duties.
- The Schedule C position included a requirement for a confidential relationship, but the competitive position did not.

Our review of the Personal Qualifications Statement that the Schedule C employee submitted for the competitive service position showed that the employee had apparently been doing some of the competitive service position's duties while serving in the Schedule C position. The qualifications statement showed that the Schedule C employee had served as the Special Assistant for Agricultural Labor since January 1987; however, Agriculture did not request, and OPM did not approve the establishment of the Schedule C position until August 1987. In that capacity, the employee

- compiled special studies and assessments of agribusiness interests' concerns and problems related to the agricultural work force based on a thorough knowledge of the Assistant Secretary's viewpoints and philosophies;
- assessed the legislative impact of various issues and drafted policy statements and legislative proposals;
- advised senior officials on issues pertaining to the development, planning, coordination, and implementation of policies and activities related to agricultural labor affairs;
- represented the Assistant Secretary for Economics and communicated his views on agricultural labor policy matters to various agricultural constituencies;
- monitored and evaluated legislative and regulatory proposals;
- coordinated the drafting of Agriculture's rule defining "seasonal agricultural services" necessary for the implementation of the Special Agricultural Worker program provided for in the Immigration Reform and Control Act of 1986; and
- served as Agriculture's liaison with the Interagency Migrant Coordinating Group, which comprised federal agencies administering migrant farm worker programs, state officials, farm worker advocates, and industry representatives.

During February 1988, Agriculture initiated recruiting action to fill the Coordinator, Agricultural Labor Affairs, GM-301-15, position. Agriculture received applications from six individuals and determined three were qualified for the position. One of the qualified individuals had competitive status, but the other two qualified individuals, including the Schedule C employee, did not. The three qualified applicants were referred to the selecting official, who chose the Schedule C employee for the position. Because the Schedule C employee did not have competitive status, Agriculture was required to request OPM to issue a certificate of eligibles for the competitive service position.

In April 1988, the Director, Personnel Division, Economics Management Staff, Office of the Assistant Secretary for Economics; and the Deputy Director, Office of Personnel, Assistant Secretary for Administration, reviewed the request for a referral of eligibles package for the Agricultural Labor Coordinator position that was going to be forwarded to OPM's Office of Washington Examining Services (OWES). In an April 1988 memorandum, the Director of the Personnel Division informed the Director of the Economics Management Staff of the status of the recruiting action to fill the Coordinator position. The memorandum presented the following:

- The Deputy Director, Office of Personnel, had reviewed the package and found that it was technically correct and in good order, but it would obviously raise questions about converting a political appointee to a career position. The Deputy Director suggested the only thing that might be done was to make some changes to the position description or the Schedule C employee's personal qualifications statement so they did not look so identical.
- This action had been first discussed several months ago by the Director of Personnel, Assistant Secretary for Economics, and Agriculture's Liaison to the White House.
- The Liaison had informed the Deputy Director of Personnel that the Secretary had approved this action a long time ago, and the position should have been career to start with.
- There was no good reason to modify the position description or ask the Schedule C employee to revise his/her personal qualifications statement.
- The job to be filled was the job the Schedule C employee presently occupied with only minor modifications to take some of the "confidential" language out of the position description. Changing a few words here and there to reduce the similarity from 98 percent to 95 percent would change nothing.
- If OPM raised questions, all that could be said was that the new position was properly a permanent career position, it had been advertised properly, and the Schedule C employee applied for the position and was a highly qualified candidate who was entitled to be rated and certified for it.

OWES received Agriculture's request during early May 1988 and initiated a merit review of the staffing process. As part of the certification process, OWES requires agencies to explain the relationship of a candidate's excepted position to the competitive position being filled and, if the duties are similar, why the position is being moved to the competitive service or to a different type of appointment. In describing the relationship between the Schedule C and competitive position, Agriculture stated

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“...the Immigration Reform and Control Act of 1986 established several new programs affecting agriculture and added significant new responsibilities to the Department. It quickly became apparent that there was an urgent need for a position in the Office of the Secretary to serve as the internal focal point and external contact for the myriad of activities necessary to implement the provisions of the Act. It was also recognized that there was already on board in the Department a person with precisely the background, experience, and skills needed to fill this role. Since this candidate was on a Schedule C appointment, the new position was established as a Schedule C position and he was appointed to it. In retrospect, one could question whether the position should have been a Schedule C position to begin with. Certainly, the incumbent would be directly and heavily involved in significant decision-making within the Department, and in representing the Department’s positions externally, in implementing the provisions of the Act; and certainly it was essential that the highest level officials of the Department have full faith and confidence in the incumbent. On the other hand, the policy determinations and decision-making the incumbent would be involved in are not truly of a “partisan political” nature, and the expertise and abilities of the incumbent were of paramount importance. In short, the action taken to establish and fill the position at the time was a right and proper thing to do, but it was not a situation in which a Schedule C appointment was clearly and obviously the only legitimate approach.

“Since that time, it has become apparent that the Department needs a permanent and continuing position to coordinate matters relating to agricultural labor, and that duties of a confidential and policy-determining nature will not be a part of such a permanent position. Accordingly, a more appropriate policy analyst, policy advisor type position has been established in the Economic Analysis Staff, and an all-sources search was initiated to fill the position on a competitive basis.”

Agriculture also informed OWES that the Schedule C position would be abolished if the Schedule C employee were appointed to the competitive position.

By the end of June 1988, after four levels of review within OWES, OWES informed Agriculture’s Economics Management Staff Personnel Director that it was cancelling the referral request because its examiners had identified the following areas of concern regarding the conversion request:

- The Schedule C position and the competitive position were quite similar, the main difference being that the competitive position did not include duties of a confidential and policy-determining nature. However, the position description of the competitive position stated that the incumbent would serve as the department’s principal analyst for the development of policy options.
- On the basis of the similarities of the two positions and the decision to move the position from the excepted service to the competitive service, one must conclude that the purpose of the request was to convert the Schedule C employee to the career service rather than fill a bona fide vacancy through full, fair, and open competition.

Thus, OWES concluded that the action was a conversion-in-place.

In July 1988, OWES reversed its decision to cancel Agriculture's request for a referral of eligibles; however, OWES decided to conduct additional recruiting to fill the position. On August 8, 1988, OWES issued a recruiting notice to solicit applicants for the position. OWES received applications from five individuals and determined that two were qualified for the position. The Schedule C employee was the top ranked candidate on the certificate of eligibles; the employee was selected and appointed to the position in November 1988.

Documentation of OWES' rationale for reversing its decision to cancel Agriculture's request was not in the conversion case file. The Assistant Director for Washington Examining Services told us that he recalled meeting with Agriculture officials after OWES had cancelled the request and being convinced that there was a need for the competitive position. He did not recall the specifics, however, that caused OPM to change its mind. However, to insure that competition would be full, fair, and open, he said that OWES decided to re-advertise the position and rate and rank the qualifications of individuals who applied.

In our opinion, this conversion is questionable because it gives an appearance that the appointment was for the purpose of converting the Schedule C employee to the career service rather than filling a bona fide vacancy through full and fair competition. Our view was evidently shared by OWES, which initially rejected Agriculture's attempt to appoint the Schedule C to a career position for similar reasons. While OWES later reversed its decision, it had no details on its rationale. Therefore, we found OWES' decision for doing so unconvincing.

Case 5: The propriety of the Department of Education's action in filling a newly established position in the competitive service with a Schedule C employee was questionable. The action was made under circumstances that suggest it could have been a conversion-in-place. The organizational location and reporting relationship of the Schedule C position and competitive position were the same, and the competitive position's duties were similar to the Schedule C position's duties. In addition, the Schedule C employee appeared to have been doing many of the duties of the competitive position while serving as a Schedule C appointee.

OWES reviewed and approved the merit selection process conducted by the agency and found no impropriety. OWES said that the employee's service in

the Schedule C position did not give the employee an unfair advantage over other candidates for the competitive position. OWES determined that the Schedule C employee had gained the experience that qualified the employee for the competitive position prior to the employee's entry into the federal service.

Until the employee's May 1988 appointment to a newly established Education Program Officer, GM-1720-15, position in the competitive service, the employee occupied a Schedule C Special Assistant to the Executive Assistant for Private Education, GM-301-15, position in the excepted service in the Office of the Secretary at the Department of Education. The employee had been appointed to the excepted position during December 1983. The Schedule C position incumbent was responsible for a broad spectrum of special and continuing assignments concerned with policy and confidential program matters and representing the Executive Assistant at meetings and conferences, particularly those that were politically sensitive and required an intimate knowledge of the administration's views. The position required a close, confidential relationship with the Executive Assistant for Private Education. The position's duties and responsibilities included

- special and continuing assignments and projects of a confidential and policy-making nature concerning a variety of program issues of special concern to the Executive Assistant;
- obtaining the advice, assistance, and cooperation of offices within and outside the Department on matters before the Executive Assistant;
- undertaking policy research and policy analysis and preparing reports and research papers of a confidential nature;
- serving as an advisor to the Executive Assistant on broad initiatives and high-priority issues; and
- providing comprehensive analysis related to proposed initiatives and developing general plans to coordinate work to be undertaken.

The competitive service position was established in May 1987 by the then Executive Assistant for Private Education, who has since left the agency. In response to our request for information on why this new position was needed, Education stated that the new competitive service position was established to "fulfill programmatic needs of the Office of the Secretary." The new position's duties included the following:

- serving as senior policy advisor and program liaison officer for the Executive Assistant;

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- planning, designing, and overseeing policies, procedures, and programs to carry out the goals and functions of the office;
- speaking for the Executive Assistant at meetings and conferences within and outside the agency on programs and policies relating to private education and public and private school cooperative arrangements and communications;
- designing and implementing the management information system;
- serving as principal advisor to the Executive Assistant and senior liaison officer to the National Center for Education Statistics (NCES) and negotiating data items acceptable to all elements of the private school community;
- planning initiatives to carry out the goals of the office, the Secretary, and the President on private education that have a major impact on plurality in education, parental choice, and mutual responsiveness by public and private school leaders in the areas of governance, aid, and cooperative working relationships;
- serving as office manager overseeing assignments in relation to other department offices;
- devising plans or initiatives for promising solutions to problems that hamper or prevent good public/private school work relationships;
- serving as principal advisor to the Executive Assistant regarding the statutory provision bypassing state and local public school systems where there was substantial failure or unwillingness to serve eligible private school children equitably;
- assisting the Executive Assistant in recommending legislative language and rationale for administration initiatives, when requested, such as tuition tax credit and education vouchers;
- developing policy papers; and
- performing special assignments.

Comparing the two positions, we found that

- the positions were located in the Office of Private Education in the Office of the Secretary;
- the positions reported to the Executive Assistant for Private Education;
- the positions had similar duties; and
- the Schedule C position included a requirement for a confidential relationship, but the competitive position did not.

Our review of the Personal Qualifications Statement that the Schedule C employee submitted as part of his application package for the competitive service position showed that the employee had apparently been doing

many of the competitive service position's duties while serving in the Schedule C position. The Schedule C employee's Personal Qualifications Statement indicated that the Schedule C employee

- was top advisor to the Executive Assistant on all matters relating to private education issues;
- performed various office management duties;
- performed liaison duties, including liaison with NCES;
- represented or spoke for the Executive Assistant;
- performed policy analysis and wrote policy papers;
- acted for the Executive Assistant in his absence;
- worked on a task force that monitored provision of services to private school children;
- was primary staff officer for the development and implementation of activities designed to improve the relationship between public and private educators; and
- drafted several major analyses on issues, such as educational reform legislation.

During February 1988, Education advertised the Education Program Specialist position under Education's merit promotion plan. Nineteen persons applied for the position, and Education determined that 12 were qualified for the position. Merit staffing records indicated that 11 of the 12 candidates were referred to the selecting official, the Executive Assistant for Private Education, for selection consideration. The records did not clearly show whether one candidate had been referred to the selecting official for consideration. Merit staffing records showed the selecting official did not interview any of the candidates referred to him for selection consideration. The selecting official tentatively chose the Schedule C employee for the position. Because the Schedule C employee did not have competitive status, Education was required to request OPM to certify the employee's selection for the position. During March 1988, Education requested OWES to certify the Schedule C employee, along with other eligible candidates, for the position and provide Education a certificate of eligibles from which it could make a selection for the position.

Between March and May 1988, OWES reviewed the recruiting process that led to the agency's selection of the Schedule C employee for the competitive position and found no impropriety. In explaining the basis for its determination that the agency's action was not a conversion-in-place, OWES said that the Schedule C employee obtained the experience that had qualified the employee for the competitive position prior to entering the federal

service. And, because the individual was highly qualified prior to entering the Schedule C position, OWES decided that the individual's service in the Schedule C position did not give the individual an unfair advantage over other candidates; therefore, the employee's selection for the competitive position met Schedule C conversion requirements. During May 1988, OWES issued a certificate of eligibles that certified the Schedule C employee and two other candidates for the position. Education selected the Schedule C employee from the certificate.

We recognize that the Schedule C employee may not have gained a competitive advantage over other candidates for the competitive position as a result of the employee's service in the Schedule C position. However, OWES' rationale for processing the action did not address agency management's reason for establishing the new position in the competitive service with duties similar to the Schedule C position and/or duties that the Schedule C employee was already doing. The agency's rationale for establishing the new competitive position was vague. The Schedule C employee could have continued doing the duties that the employee had been doing in the excepted service position. In our view, the circumstances of this conversion make it questionable whether Education was acting to fill a bona fide vacancy or to move the duties of the Schedule C position and its incumbent from the excepted service to the competitive service.

Case 6: The propriety of the Department of Housing and Urban Development's (HUD) action to fill a competitive service position with a Schedule C employee was questionable. The competitive position to which the employee was appointed appeared to have been tailored for the individual in that the position included (1) duties that had been part of the Schedule C position the employee occupied, (2) duties that had been part of an SES position to which the employee had been detailed, (3) duties that required the incumbent to have the trust and confidence of key agency officials, and (4) a reporting relationship that placed the position incumbent under the joint supervision of the director of the office in which the position was located and the HUD Secretary and Under Secretary.

Until being granted a career appointment during January 1989 to a Supervisory Correspondence Analyst, GM-301-14, position in the competitive service, the individual occupied a Schedule C Special Assistant to the Secretary, GM-301-15, position in the excepted service. The individual had been promoted to the excepted position during September 1986. The Schedule C position's duties included (1) reviewing and monitoring action on selected correspondence related to special problems

and issues of particular interest to the Secretary, (2) reviewing congressional inquiries that were directed to the Secretary personally and determining information sources necessary for reply, (3) drafting and rewriting correspondence related to policy matters and departmental issues, and (4) assisting the Executive Assistant to the Secretary with correspondence for the Secretary's signature to assure that all replies addressed departmental policies and issues. In addition, the position included other duties common to special assistant positions, such as doing special assignments for or representing the supervisor in meetings and advising the supervisor on program issues.

During July 1987, the individual was detailed to the position of Acting Executive Assistant to the Secretary, a position normally filled by SES appointment. The Executive Assistant position's duties included (1) reviewing correspondence relating to policy issues of particular interest to the Secretary and (2) preparing correspondence for the Secretary.

Our review of the Personal Qualifications Statement that the individual submitted to apply for the competitive position revealed that the individual did the duties of both the Special Assistant and Acting Executive Assistant positions while on detail. The duties the individual performed as Acting Executive Assistant included (1) reviewing incoming and outgoing correspondence, including correspondence from the President, White House staff, and Members of Congress, for the Secretary and assuring that highly sensitive documents prepared by or for the Secretary reflected HUD policies; (2) working with all HUD offices, including the Office of the Executive Secretariat, to ensure timely and appropriate responses to correspondence addressed to the Secretary; and (3) serving as liaison between the Secretary and the Office of Executive Secretariat.

During July 1988, HUD took action to fill a Supervisory Correspondence Analyst position in the Office of Executive Secretariat that had been vacated earlier in the year. The organizational title of the position was Deputy Director, and in that capacity served as a source of continuity of operations when the Director or administration changed. Prior to initiating recruiting action, HUD redescribed the position's duties and responsibilities and, as a result, upgraded the position from a GM-301-13 to a GM-301-14 classification. The GM-13 position duties emphasized supervision of a subordinate staff, while the GM-14 position duties emphasized a working relationship with superiors, the HUD Secretary, and Under Secretary. For example, the GM-13 position's duties included (1) supervising a staff of more than 12 subordinates, (2) designating program officials to respond to

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incoming inquiries, (3) planning and implementing correspondence distribution and tracking systems, (4) working with the White House correspondence staff to resolve ways to answer mass mailings from the public on HUD actions, and (5) serving as a Government Technical Representative for typing services performed under contract. The incumbent's supervisor was the Director of Executive Secretariat.

In contrast, the GM-14 position's duties included (1) serving as liaison between the Office of the Executive Secretariat and other HUD officials regarding matters for the Secretary and Under Secretary and, in such capacity, being able to secure the trust and confidence of other HUD officials; (2) directing the staff of the Executive Secretariat in the absence of the Director and assisting the Secretary and Under Secretary by screening out matters that could be handled by other Department officials, reviewing matters referred to the Secretary for conformity with administration and HUD policies, and assuring responsiveness of all offices to the wishes of the Secretary and Under Secretary; (3) carrying out ad hoc assignments for the Secretary and Under Secretary and serving as liaison for them on correspondence matters involving White House Staff, congressional offices, and other government departments and agencies; (4) reviewing for assignment of action all correspondence addressed to the Secretary and Under Secretary of a national policy nature or of operational importance and ensuring follow-up was done until completion of action assignments; (5) assuring availability of materials for briefings of the Secretary and Under Secretary for their meetings with the President, Cabinet, and other parties; (6) controlling the handling of highly sensitive communications prepared by or for the President, the Secretary, or Under Secretary, including insuring that all materials reflected the administration's or HUD policies; and (7) serving as the Government Technical Representative for work performed on contracts. The position description stated that while the position was organizationally located in the Office of the Assistant Secretary for Administration, the incumbent would work independently, serving the Secretary/Under Secretary. General policy direction was to be provided by the Secretary, Under Secretary, and Director of Executive Secretariat, all of whom would evaluate the incumbent in terms of results achieved.

In response to the vacancy announcement for the Supervisory Correspondence Analyst position, HUD received applications from 13 people and determined 5 were best qualified for the position. On September 6, 1988, HUD tentatively selected the Schedule C employee for the position. Because the employee did not have competitive status, HUD requested OWES to certify the employee along with one other nonstatus

applicant determined best qualified for the position and refer a certificate of eligibles for the position.

In October 1988, after four levels of review within OWES, OWES concluded that HUD's request should be cancelled. OWES informed HUD's Director of Personnel and Training that it had cancelled the referral request because it had determined that the Schedule C position's duties and reporting relationship had been incorporated into the competitive service position; the competitive position had been tailored for the Schedule C employee; the request appeared to have been made solely for the purpose of converting the employee to the competitive service; and full, fair, open competition would not be possible.

In a November 2, 1988, letter to OWES, the HUD Director of Personnel and Training stated that the selection of the Schedule C employee was appropriate and managerially sound and requested OWES to reconsider its decision cancelling the referral request. HUD based its request to reconsider on the following:

- The newly established competitive position differed significantly from the Schedule C position because the competitive position focused exclusively on ensuring the effectiveness and efficiency of the Department's system for responding to written inquiries and would direct most day-to-day operations. In contrast, the Schedule C position focused on providing the Secretary extensive advice and assistance, doing sensitive projects, and representing the Secretary at meetings with representatives of other agencies and state and local governments. Reviewing correspondence was only one facet of the position.
- Although the competitive position's function was to provide support for the Secretary, this did not mean that the incumbent would report directly to the Secretary or deal with the Secretary on matters other than those immediately concerned with correspondence. Personal interaction would be the exception, not the rule.
- The position was not "tailored" for the Schedule C employee. The position was created in conjunction with a reorganization of the Office of Executive Secretariat. An organizational review highlighted the need for a career appointee in management ranks because the Office's higher level staff comprised solely Schedule C employees. The intent was to appoint a deputy director who would provide a sense of continuity and stability and insure that the Office had some institutional memory.

In a November 30, 1988, letter to the HUD Director of Personnel and Training, OWES informed HUD that after carefully reviewing and giving full consideration to the points that HUD had raised, its decision to cancel the referral request remained unchanged.

In a December 1, 1988, letter to the Director, Office of Personnel Management, HUD's Assistant Secretary for Administration strongly protested OWES' denial of HUD's request to appoint the Schedule C employee to the competitive service position. The Assistant Secretary offered the following in support of HUD's protest:

- The competitive position was not created for the Schedule C employee. A career Deputy position had existed in the Executive Secretariat for at least 10 years, and the grade level of the position had ranged from GS-12 to GS-14, depending on the Executive Secretariat's needs. To make management improvements, the Executive Secretariat was reorganized and a key feature of the reorganization was to upgrade the Deputy position.
- The Schedule C position and the competitive position were not the same. Although the incumbents of both positions reviewed correspondence, the nature of the review differed. OWES had not grasped the differences between the two positions. The competitive position was process oriented, while the Schedule C position was policy oriented.

In a December 16, 1988, letter to the Director, Washington Area Service Center (WASC), HUD's Assistant Secretary for Administration submitted a new position description that the Assistant Secretary said was a more accurate statement of the Deputy's duties than the position description that had caused OWES to conclude that the position had been "tailored" for the Schedule C employee. The "new" position description was a position description that had been previously used for the Deputy position during the early 1980s.

The resubmitted position's duties included (1) acting for the Special Assistant to the Secretary for Executive Secretariat Operations in his/her absence and doing assignments related to highly sensitive and critical matters of major importance to the Secretary and Under Secretary; (2) participating fully in the management of the Executive Secretariat; (3) monitoring the day-to-day operation of the Correspondence Unit, Records and Files Management Unit, and the Director's Office; (4) doing writing and editing of sensitive and high priority correspondence for the Secretary and Under Secretary; and (5) maintaining contact on a day-to-day basis with the Secretary and Under Secretary regarding the handling of priority

correspondence, specific substantive questions, and editorial preferences and gaining the trust and confidence of key HUD officials to keep current on priority and sensitive matters. The position included responsibility for both the substantive and procedural aspects of materials addressed to and/or prepared for the Secretary and Under Secretary.

On December 19, 1988, after reversing its decision, OWES issued a certificate of eligibles that included the Schedule C employee. On December 28, 1988, HUD selected the Schedule C employee for the position from the certificate.

In a January 1989 memorandum to the file, OWES documented its rationale for reversing its position on whether HUD had "tailored" the competitive position for the Schedule C employee. The memorandum stated the following:

- OWES never had any question as to whether HUD was attempting to fill a bona fide vacancy. A position supervising the correspondence function had been previously incumbered and, at one point, at the GS-14 grade level.
- HUD supported its contention to WASC management that the resubmitted Supervisory Correspondence Analyst position description represented a more accurate description of the operational duties in the position than the initial submission.
- OWES' analysis of the knowledge, skills, and abilities for the positions and the rating schedules that would have been developed to rate and rank the applicants for the positions indicated the relative ranking of the applicants under each schedule would have been the same.
- The Schedule C employee was qualified for either version of the position.

On February 11, 1990, the Deputy Director position that the Schedule C employee was converted to was abolished as a result of a reorganization of the Executive Secretariat. The responsibilities of the abolished Deputy Director position were transferred to an SES position and Schedule C positions in the Executive Secretariat. The Deputy Director was reassigned within HUD to another competitive service position dealing with the management of correspondence.

We believe the propriety of this conversion is questionable for several reasons. First, the competitive position as initially described by HUD and submitted to OWES seems to have been tailored for the Schedule C employee since the duties and reporting relationships of the Schedule C position had been incorporated into the competitive position. Second, HUD's argument,

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and OWES' acceptance, that the position description for the career position that was initially submitted to OWES was not an accurate description of its duties is unconvincing. The determination of its "inaccuracy" was made nearly 5 months after the position was redescribed and approved within HUD and after HUD attempted to persuade OWES to reverse its initial decision to reject the conversion. These facts suggest that the inaccuracy of the initial position description may have been an argument of last resort. Finally, the need for the career position as redescribed is questionable. According to HUD it was created in conjunction with a reorganization of the Office of Executive Secretariat and a need for a career appointee in management ranks. However, in February 1990, 13 months after the Schedule C was converted, the career position was abolished and the employee was reassigned. The duties of the abolished position were then transferred to an SES position and Schedule C positions.

Comments From the Office of Personnel Management

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

DEC 6 1992

Mr. Richard L. Fogel
Assistant Comptroller General
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Fogel:

Thank you for giving us the opportunity to review your draft report entitled PERSONNEL PRACTICES: Propriety of Career Appointments Granted Former Political Appointees.

We agree with the central thrust of this draft report that appointments of Schedule C and noncareer Senior Executive Service (SES) appointees to the career service warrant special attention to assure compliance of such appointments with merit principles. It is this concern that has prompted OPM for many years to issue special instructions to agencies during election years, when these types of appointments are most likely to occur.

(The draft report uses the term "conversion" to describe appointments of Schedule C and noncareer SES appointees to career positions. As used in the civil service system, however, this term has a much broader meaning. A conversion documents an employee's change from one appointment to another appointment in the same agency without a break in service and is used consistently, regardless of the appointing authorities involved. For example, a change from a temporary appointment to a career-conditional appointment is done by means of a conversion action.)

As noted in the draft report, OPM's instructions remind agencies of their responsibility to assure that personnel actions are proper and legitimate and that OPM will monitor agency requests for authority to change Schedule C and noncareer SES appointees to career appointments. In addition, OPM's Office of Washington Examining Services (OWES) has issued detailed procedures for agencies to assist OWES in monitoring such requests for positions at and below the GS-15 level. Similar safeguards are in effect for the Senior Executive Service. Taken together, these controls would cover most actions that fall within the rubric of your report. Based on the statistics cited in the report on the number of cases OWES was responsible for eliminating, we conclude that these procedures must be working reasonably well.

See comment 1.

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Nevertheless, we agree that OPM's controls can be improved. We concur with the recommendation that OPM take steps to assure that all our examining offices have procedures in place to identify and review conversion cases. Although only a very small number of cases might occur outside the Washington, DC, area, we will assure that our field offices take appropriate steps for processing such cases when they arise. Similarly, we agree with the recommendation that cases arising under agency delegated examining authorities should be referred for OPM's prior approval.

We disagree, however, with the recommendations that direct hire and reinstatement appointments be submitted for OPM's prior approval. Direct hire authorities generally are issued for technical occupations (such as engineers and scientists), primarily at the entry levels. It would be rare for any Schedule C or noncareer SES appointees, whose positions require nonspecialized administrative skills, to qualify.

As for reinstatements, we believe individuals who acquired competitive status prior to their Schedule C or noncareer SES appointments should be able to exercise that eligibility in the same manner as other individuals. They must compete under merit promotion procedures to be reinstated at a grade higher than previously held in the competitive service. In addition, OPM has long prohibited "conversions in place" to change a Schedule C employee to a career appointment while in the same position. We believe these controls are sufficient to prevent abuse of the reinstatement authority. Furthermore, our approach to both direct hires and reinstatements is tempered by the view that we must be careful not to adopt policies that discriminate against individuals solely because of their prior appointments.

Additionally, we believe it is important to point out that a noncareer SES appointee cannot receive a career SES appointment without first being subject to competitive staffing. Thus, we suggest you revise the last sentence of the last paragraph on page 2 of the report to read: "Before an individual can be given an initial career appointment to a SES position, there must be a merit staffing process conducted by the agency; and the individual's executive/managerial qualifications must be certified by a qualifications review board convened by OPM." (Underlined material added.)

The report also suggests that Congress consider requiring agency Inspectors General to periodically review the propriety of these appointments in their agencies and report results to agency heads and Congress. We are uncertain of the potential impact of such a requirement but doubt that there is a problem significant enough to warrant involvement by Inspectors General.

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The report covers 86 appointments during the period February 1988 through December 1989. The report states that these appointments represent 3.5 percent of noncareer SES appointees and 5.5 percent of Schedule C appointees at GS-12 and above, as of December 30, 1987. However, on an annualized basis, the appointments represent only 1.8 percent of noncareer SES appointees and 2.9 percent of the Schedule C group as of the end of 1987. (If the report had compared these appointments with the total number of Schedule C and noncareer SES appointees who served during the 23-month period rather than the number serving as of the end of 1987, the percentages would have been even less.) Furthermore, the report made a firm determination of impropriety in only 4 percent of the cases studied.

When viewed from this perspective, an added review by agency Inspectors General seems unnecessary. These actions now are scrutinized by OPM, GAO, and the agencies themselves. We do not see that another review will contribute significantly to eliminating actual impropriety or its appearance, which this report acknowledges is not easily discernible from records or discussions. Furthermore, we note that Inspectors General even now may review such actions in their agencies if they believe such a review is warranted.

We appreciate the opportunity to comment on this draft report.

Sincerely,


Constance Berry Newman
Director

GAO Comment

1. Regarding our use of the term "conversion" to describe the appointments of Schedule C and noncareer SES appointees to career positions, OPM pointed out that this term has a broader meaning as used in the civil service system. It said that a conversion documents an employee's change from one appointment to another appointment in the same agency without a break in service and is used regardless of the appointing authorities involved. We recognize this broader meaning within the civil service system, but we use the term within the report to describe appointments granted noncareer, political appointees to career positions. We define the term as used in this report for the reader on page 1.

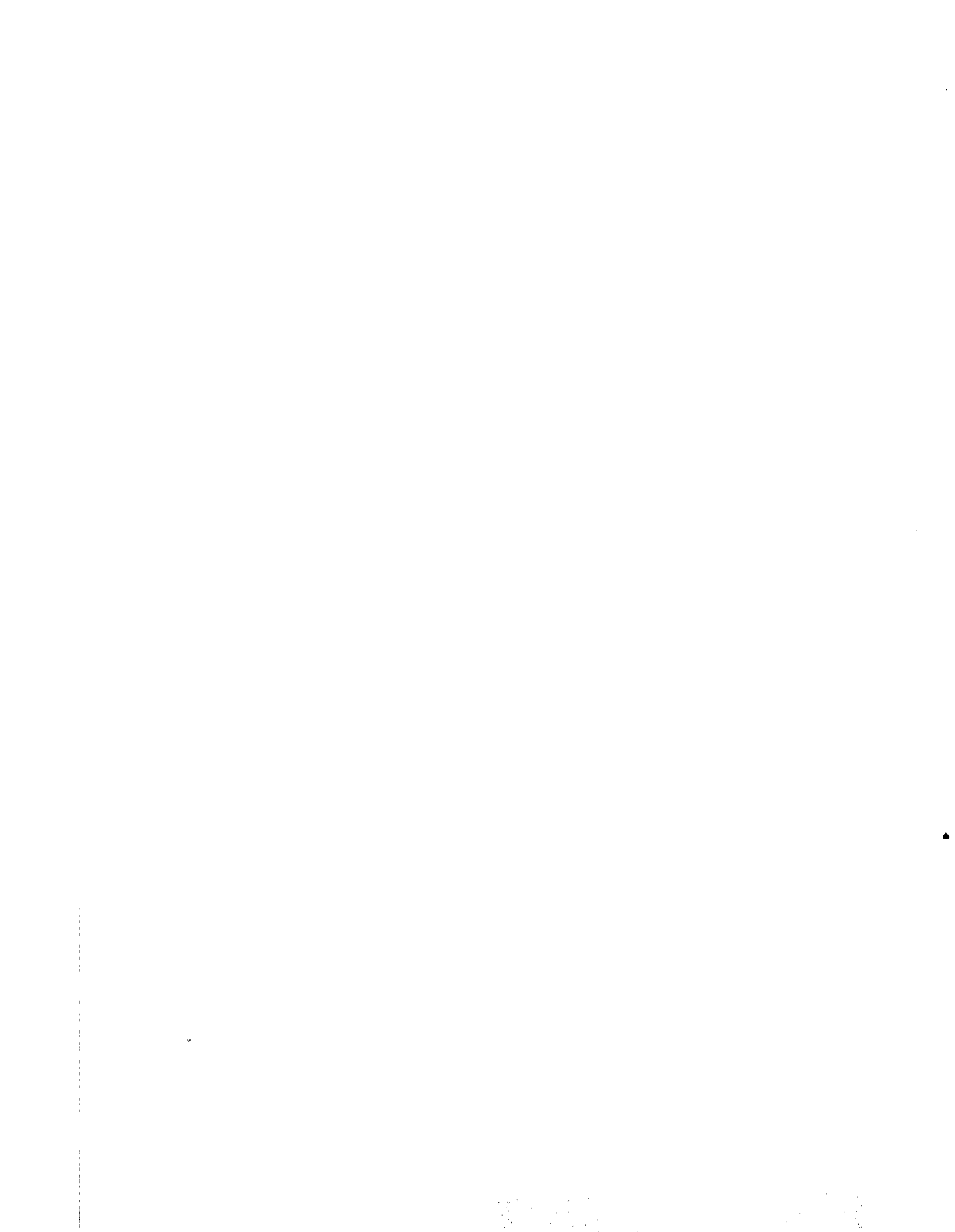
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