United States General Accounting Office

GAO

Report to Congressional Requesters

May 1994

PERSONNEL PRACTICES

Presidential Transition Conversions and Appointments: Changes Needed

GAO/GGD-94-66

GAO

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

General Government Division

B-251320

May 31, 1994

The Honorable David H. Pryor
Chairman, Subcommittee on Federal
Services, Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate

The Honorable William Clay
Chairman, Committee on
Post Office and Civil Service
House of Representatives

In response to your request, we examined the propriety of career appointments in the competitive service and the Senior Executive Service during the 1992 presidential transition. The career appointments included former political appointees at federal departments and agencies and employees at the White House and in Congress. We also reviewed allegations that we received from federal workers and others about potential career appointments of political appointees, agency reorganizations, and rule changes. Allegations involving other matters were referred to appropriate agency inspectors general. This report contains matters for congressional consideration and recommendations to the Director, Office of Personnel Management, to clarify use of the Ramspeck Act appointment authority and to strengthen oversight of career appointments.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the 33 departments and agencies that were asked to report information on noncareer appointees receiving career appointments and to other interested parties. We will also make copies available to others upon request.

Please contact me at (202) 512-2928 if you have any questions concerning the report. Major contributors to this report are listed in appendix VII.

Nancy R. Kingsbury

Nancy R. Kingsbury
Director
Federal Human Resource Management
Issues

Executive Summary

Purpose

During a presidential transition or a large turnover of Members of Congress, political appointees at federal departments and agencies and employees at the White House and in Congress sometimes apply for and receive career appointments in the competitive or Senior Executive Service (SES). Such appointments are sensitive. The political nature of the individuals' past assignments creates concern about whether the individuals had an unfair advantage in the merit system selection process, even the appearance of which could compromise the integrity of the civil service system.

Because of those concerns, the House Committee on Post Office and Civil Service and the Senate Governmental Affairs Subcommittee on Federal Services, Post Office, and Civil Service asked GAO to monitor and examine the propriety of such appointments. They also asked GAO to review allegations received from federal workers and others involving potentially improper career appointments of political appointees, agency reorganizations, and rule changes.

Background

Political appointees who are qualified can apply and compete for career positions. Transitions from political appointee to career status are called "conversions" and must conform to the merit system principles contained in the Civil Service Reform Act of 1978, as amended, as well as to Office of Personnel Management (OPM) regulations. Merit system principles require, among other things, that selection and advancement be determined solely on the basis of merit and that all employees and applicants for employment receive fair and equitable treatment.

Under certain circumstances, employees who serve in the Office of the President or Vice President, or on the White House staff are permitted by the Code of Federal Regulations to apply for noncompetitive appointments to career positions. Similarly, certain congressional and judicial branch employees are authorized by the Ramspeck Act of 1940, 5 U.S.C. 3304(c), to apply for noncompetitive appointments. Among other things, the employees must have been separated from this employment with Congress involuntarily, such as when a Member is defeated for reelection, and must be appointed to a career position within 1 year of separation. Employees appointed under both authorities must meet applicable qualification requirements for the career positions that they are appointed to.

OPM has oversight responsibilities for the career appointments of former presidential, noncareer SES, and Schedule C political appointees and the

noncompetitive appointments of former White House and legislative and judicial branch employees. OPM monitors the appropriateness of conversions as part of its general procedures in processing agency requests for it to examine the qualifications of candidates for career appointments. OPM does not, however, routinely monitor noncompetitive appointments of former White House, congressional, and judicial branch employees.

Results in Brief

From January 1, 1992, through March 31, 1993, 25 of the 33 federal departments and agencies that GAO surveyed reported 121 conversions and noncompetitive appointments. Eight departments and agencies reported no conversions or noncompetitive appointments.

GAO examined each of these 121 conversions and noncompetitive appointments and found that they all met basic procedural requirements. However, nine cases involved circumstances that suggested the appointees to career positions might have received advantages or preferences in their appointments. Six of those cases involved conversions of employees who had reinstatement rights due to prior career status or who were being appointed to the excepted service. Such appointments are currently exempted from OPM's preappointment review. GAO believes OPM can improve its oversight by expanding its preappointment review coverage to include individuals currently exempted.

The remaining three cases involved noncompetitive appointments under the Ramspeck Act. Currently, noncompetitive appointments based on White House or congressional service are not subject to any routine preappointment review, and Congress may wish to direct OPM to broaden its review process to include such appointments.

An additional eight cases involved individuals who were appointed noncompetitively under the Ramspeck Act in situations that do not further the purposes of the act. These involved situations where the employees returned to congressional service for brief periods of time, thereby gaining eligibility for a career appointment under the Ramspeck Act. GAO believes that this practice, although permitted by the act, does not involve the type of situation the act was designed to address. Therefore, Congress may wish to amend the act and provide additional guidance on its use.

In two of the eight cases an agency had established career positions for the individuals before they left their noncareer positions and returned to

congressional service. OPM concluded that this was an improper use of the Ramspeck Act authority and ordered their removal.

Also, OPM has a policy of suspending the processing of career SES appointments (with exceptions for emergency situations) when an agency head has announced his or her departure, the purpose of which is to ensure that a successor has the greatest possible flexibility in executive resource decisions. During the 1992 presidential transition, OPM followed this policy and suspended SES processing at five agencies where the agency heads had resigned or specifically announced their resignations. However, OPM did not suspend SES processing at other agencies because neither the White House nor the transition team requested such a suspension. GAO believes that to preserve the greatest possible flexibility for new agency heads following a presidential transition, OPM should routinely suspend processing all career SES appointments during such transition periods.

GAO also reviewed 293 allegations that involved potential conversions and noncompetitive appointments of former political appointees, agency reorganizations, and rule changes at 35 departments and agencies. For 76 allegations, GAO found that the alleged events had occurred. However, this does not imply that the events were improper.

Of the remaining 217 allegations, GAO found that the alleged events had not occurred in 163 instances. An additional 54 allegations covered a variety of practices, including the suspected improper expenditure of funds. GAO referred these to the appropriate agency inspectors general for their review, except for one that did not contain enough information to justify a referral and one that should have been pursued administratively by the affected individual.

Principal Findings

Of the 121 conversions and noncompetitive appointments reported by departments and agencies, 62 were conversions of former political appointees, 50 were noncompetitive Ramspeck Act appointments, and 9 were noncompetitive White House service appointments.

Propriety of Conversions

Agencies' adherence to merit system principles is difficult to assess because the merit system, like any system, can be manipulated. Processes and procedures may be followed, and the appearance of propriety may be achieved. Ultimately, whether open and fair competition actually occurs or

whether a candidate has been preselected for appointment or given some other advantage depends upon the intent and motivation of the agency officials involved—factors that cannot be controlled by regulation or readily discerned from file reviews or discussions with agency officials.

Records in official personnel files and merit staffing files indicated that agencies followed merit staffing procedures for all 62 conversions. However, the circumstances of six conversions suggested that the appointees might have received advantages or preferences that enhanced their prospects for the appointments.

For example, the Department of the Interior converted a Schedule C GS-12 employee to a competitive position under circumstances that suggested the new position may have been tailored for the individual. The organizational location and reporting relationship of the competitive position were the same as those of the Schedule C position. While serving as a Schedule C, the employee appeared to have been doing many of the duties of the competitive position. Further, the competitive position had been downgraded from a GS-14 to a GS-12 grade level, the same level as the Schedule C position.

This conversion was not reviewed by OPM because the Schedule C employee had obtained competitive status earlier in her career with the government and thus was eligible to be reinstated in the competitive service. In GAO's view, the issues raised in this case and others demonstrate the need for OPM review of conversions that are currently exempted. (Ch. 2)

Propriety of Ramspeck Act and White House Service Appointments

The 50 appointments based on the Ramspeck Act and all of the appointments based on White House service adhered to applicable procedural requirements. However, three Ramspeck Act appointments raised concerns about whether the employees may have received advantages or preferences in their appointments. Because noncompetitive appointments based on congressional service are not subject to any routine, independent oversight, Congress may wish to direct OPM to broaden its review process to include such appointments.

In addition, eight of the Ramspeck Act appointments involved circumstances that raised concerns that the act was being applied in situations it was not designed to address. The purpose of the act is to assist employees who rendered long and faithful service to Members of

Congress in transferring to the competitive service should they be involuntarily separated without prejudice from their congressional positions. In these eight Ramspeck Act appointments, the individuals' eligibility for such appointments had expired because 1 year had elapsed since their last congressional employment. The individuals took short-term assignments in Congress, in some cases with Members who were known not to be returning, and immediately began the administrative process to obtain noncompetitive career appointments through the Ramspeck Act.

Neither the language of the act nor OPM's advice specifically precludes eligibility under these circumstances. However, GAO questions whether the benefits conferred by the act should be available to individuals who return to Congress for short periods after a break in service of more than a year. GAO also questions whether a separation should be construed as involuntary when an employee accepts employment with a Member of Congress knowing that the Member has not been reelected or has announced retirement. GAO believes the act should be amended to preclude eligibility for Ramspeck Act appointments in these situations.

Seven of these same eight Ramspeck Act appointments were the subject of a January 1993 special OPM review. It determined that in two of the cases the appointing agency had improperly used the Ramspeck Act to appoint the individuals to positions specifically created for them before they returned to congressional service. At OPM's direction, the agency terminated these two career appointments. (Ch. 2)

Opportunities to Strengthen Oversight

OPM is responsible for overseeing agency conversions. During the period covered by GAO's review, OPM canceled 11 conversions that it believed inappropriate and took steps to improve its conversion review process. However, the six conversions that GAO identified as raising concerns had not been reviewed by OPM because the individuals had reinstatement rights based on prior federal service or, in one case, were appointed to a position excepted from the competitive service. OPM's review does not include these types of cases.

OPM has a general policy to suspend processing career SES appointments upon the actual or announced departure of an agency head. During the 1992 presidential transition, OPM followed this policy and suspended SES processing at five agencies where the agency heads had resigned or specifically announced their resignation. However, OPM did not suspend

SES processing at other agencies because neither the White House nor the transition team requested such a suspension.

Controls over Ramspeck Act and White House service appointments can also be tightened. OPM provides agencies with guidance and other assistance on noncompetitive appointments of former congressional and White House employees, but it does not routinely monitor and review such appointments. (Ch. 3)

Allegations Involving Personnel Practices During the Transition

GAO received, both directly and through the Senate Subcommittee on Federal Services, Post Office, and Civil Service; the House Committee on Post Office and Civil Service; and other sources, a total of 293 allegations involving potential conversions and other actions at 35 departments and agencies. GAO followed up on each allegation to determine if the alleged event occurred.

GAO found that for 76 allegations, the alleged event, i.e., conversion, reorganization, or rule change, had occurred. Twenty-five involved events that occurred outside of the time frame covered by GAO's work and were not reviewed. Of the remaining 51 allegations, 24 involved conversions and other appointments. GAO reviewed each and found that 19 appeared proper and 5 were among the 17 personnel actions described above. The remaining allegations involved 26 reorganizations and 1 rule change. GAO found that most of these matters had been planned and/or initiated before the November presidential election. None of them appeared to have been related to either the election or the transition.

GAO found that 163 allegations were unsubstantiated. An additional 54 allegations covered a variety of practices, including possible improper expenditures of funds. GAO referred 52 allegations to the appropriate agency inspectors general for their review. GAO found that of the remaining 2 allegations, 1 did not contain enough information to justify a referral, and the other involved a matter that should have been pursued administratively by the affected individual. (Ch. 4)

Matters for Congressional Consideration

Because GAO identified some Ramspeck Act appointments made under conditions that do not further the purposes of the act, GAO suggests that Congress consider amending the act to more clearly specify the circumstances under which the use of this appointment authority may not be appropriate.

To provide greater oversight of Ramspeck Act and White House service appointments, Congress may also want to consider directing OPM to include such appointments in its current conversion review process.

Recommendations to the Director of OPM

To strengthen its oversight of conversions of political appointees to career appointments, GAO recommends that the Director of OPM expand preappointment review coverage to include individuals currently exempted on the basis of prior career service or excepted service appointments.

To preserve the flexibility of new agency heads in making executive resource decisions, GAO also recommends that during future presidential transitions, the director generally suspend all SES appointment processing.

Agency Comments and Our Evaluation

OPM's written comments are presented and evaluated in chapter 3. OPM agreed that amending the Ramspeck Act is an alternative worth consideration by Congress.

OPM did not fully agree with GAO's recommendation that OPM review excepted appointments and noncompetitive reinstatements of political appointees to career positions. While it agreed that such a review may be an appropriate deterrent to improper actions, OPM pointed out that minimal public notice and competition are required. In addition to its deterrent value, GAO believes that an OPM review is merited to determine if appointees have received unfair advantages or preferences.

OPM also pointed out that the recommendation to suspend the SES appointment process during presidential transitions would apply to SES appointments of career employees as well as noncareer employees. GAO recognizes this and believes OPM generally should suspend all such appointments to afford new agency heads flexibility in making executive resource decisions.

Contents

Tables

Abbreviations

DOE	Department of Energy
DOI	Department of the Interior
FmHA	Farmers Home Administration
GSA	General Services Administration
MSPB	Merit Systems Protection Board
OPM	Office of Personnel Management
OSC	Office of Special Counsel
OWES	Office of Washington Examining Services
QRB	Qualifications Review Board
SBA	Small Business Administration
SES	Senior Executive Service

Introduction

During a presidential transition or a large turnover of Members of Congress, political appointees who have served at federal departments and agencies, and employees who have served at the White House and in the legislative and judicial branches sometimes apply for and receive career appointments in the competitive service. Such appointments are sensitive. The political nature of the individuals' assignments creates concern about whether the individuals had an unfair advantage in the merit system selection process, even the appearance of which could compromise the integrity of the civil service system. Because of those concerns, the House Committee on Post Office and Civil Service and the Senate Governmental Affairs Subcommittee on Federal Services, Post Office, and Civil Service asked us to monitor and examine the propriety of such appointments.

Types of Career Appointments

Generally, federal employees who serve under (1) presidential, (2) noncareer Senior Executive Service (SES), or (3) Schedule C appointments are considered to be political appointees. They are appointed by an administration to support and advocate the president's goals and policies. Presidential appointees are selected by the president generally to fill high-level executive positions. Many of those appointments require confirmation by the Senate. 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 positions excepted from the competitive service, 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 agency officials.

Political appointees who are qualified are permitted to apply and compete for career appointments to positions in the competitive service and SES. Appointments that are approved are called "conversions" and must conform to the merit system principles contained in the Civil Service Reform Act of 1978, as amended, as well as to Office of Personnel Management (OPM) regulations. Merit system principles, among other things, require that (1) selection and advancement be determined solely on the basis of merit, after fair and open competition; and (2) all employees and applicants for employment receive fair and equitable treatment in all aspects of personnel management, free from prohibited discrimination.

Other employees, those who serve in the Office of the President or Vice President, on the White House staff, and in the legislative and judicial branches are permitted to apply noncompetitively for career appointments to positions in the competitive service. Section 315.602 of Title 5, Code of Federal Regulations, authorizes appointments on the basis of White House service for employees who have served at least 2 years, who are appointed without a break in service, and who meet applicable qualification requirements for the career positions. Appointments based on service in the legislative and judicial branches are authorized by the Ramspeck Act of 1940, 5 U.S.C. 3304(c), and are for employees who have served at least 3 years as a congressional employee or 4 years as a secretary or law clerk in the judicial branch, who are separated involuntarily and without prejudice, who are appointed within 1 year from the date of separation, and who meet applicable qualification requirements for the career position.

OPM Oversight Responsibilities

OPM has oversight responsibilities for the career appointments (conversions) of former presidential, noncareer SES, and Schedule C political appointees and the noncompetitive appointments of former White House and legislative and judicial branch employees. However, it does not routinely conduct preappointment reviews of these noncompetitive appointments.

OPM's process for reviewing conversions is spelled out in Federal Personnel Manual Letter 273-4, (Feb. 21, 1992),[1] which emphasizes agencies' responsibility to ensure that all (1) appointments, including conversions, are based on merit; (2) personnel actions are based on legitimate management needs; and (3) records pertaining to personnel actions clearly show that the actions are proper and legitimate. The letter reminds agencies that once a Schedule C position has been established, the Schedule C elements (i.e., its confidential or policy-determining characteristics) may not be unilaterally removed from the position for the sole purpose of converting the position, along with its incumbent, to the competitive service. The letter also informs agencies that OPM would monitor the appropriateness of conversions as part of its general procedures for processing agency requests to examine candidates' qualifications for competitive service positions at grades GS-9 through GS-15. OPM would also monitor the appropriateness of conversions when agencies ask OPM to convene a Qualifications Review Board (QRB) to

[1]It is OPM's practice when an election year approaches to issue guidance to remind agencies to review all personnel actions carefully to be sure they meet all civil service laws, rules, and regulations and are free of any impropriety.

certify the executive or managerial qualifications of noncareer employees selected for initial career SES appointments.

Under some circumstances, agencies do not need to go through OPM's review process when they wish to make career appointments. This occurs when (1) OPM has granted agencies direct hire authority for positions in the competitive service or (2) individuals, including Schedule C and noncareer SES employees, are eligible for reinstatement in the competitive service because they acquired competitive status before being appointed to the Schedule C or SES positions. However, under those circumstances, agencies are still responsible for adhering to merit system principles.

The agencies also are responsible for ensuring the appropriateness of appointments made on the basis of the Ramspeck Act and White House service. The agencies' responsibilities include determining that the appointee is qualified for the career position, that the respective eligibility criteria are met, and that the appointee is not discriminated for or against on the basis of political affiliation.

Objectives, Scope, and Methodology

At the request of the Chairman of the House Committee on Post Office and Civil Service and the Chairman of the Senate Subcommittee on Federal Services, Post Office, and Civil Service, Committee on Governmental Affairs, we identified and reviewed conversions of political appointees and noncompetitive appointments of White House, legislative branch, and judicial branch employees to career positions in the competitive service. We also reviewed allegations involving conversions, reorganizations, and rule changes. Our objectives were to determine whether (1) the conversions and noncompetitive appointments were proper and complied with all applicable laws, rules, and regulations; and (2) the events underlying the allegations occurred.

We reviewed conversions and noncompetitive appointments at 33 agencies (listed in app. I). We selected the 23 agencies listed in our report with the most noncareer SES and Schedule C appointees as of December 31, 1991.[2] These 23 agencies accounted for 86 percent of all Schedule C and noncareer SES employees. We added 10 agencies to our list of 23 because they were of particular interest to the requesters.

[2]Political Appointees: Number of Noncareer SES and Schedule C Employees in Federal Agencies (GAO/GGD-92-101FS, June 8, 1992).

We designed a data collection instrument requesting the 33 agencies to report information on conversions and noncompetitive appointments (see app. II). As agreed with the requesters, we asked agencies to report information on the number of noncareer appointees who received career appointments at the GS/GM-11 level and above. Agencies were asked to provide information on each noncareer appointee who received career, career-conditional, and Schedule A[3] appointments during the period January 1, 1992, through March 31, 1993. This time frame provided coverage of conversions and noncompetitive appointments that took place both before and after the presidential transition period.

Nineteen agencies reported that 62 conversions of former presidential appointees, Schedule C employees, and noncareer SES employees took place during that period. We evaluated the propriety of the conversions by reviewing (1) federal civil service laws, rules, and regulations and OPM guidance on merit staffing requirements pertaining to the principle of fair and open competition; (2) documentation in agency files to ensure merit staffing procedures were followed; (3) documentation in the merit staffing and official personnel files to determine if employees might have received an unfair advantage or preference during their noncareer appointments or the recruiting process that improved their prospects for career appointments; and (4) when necessary or when available, OPM conversion case review and certification request files.

In assessing whether merit staffing requirements were adhered to, we tried to determine whether

- the vacant positions had been publicized,
- the appointees were within the area of consideration from which applications would be accepted,
- the appointees' applications for federal employment (SF 171) were signed before the closing date of the vacancy announcement,
- certificates of eligibles were requested from OPM when appropriate, and
- QRB determinations were requested from OPM when SES positions were being filled by initial career appointments.

In assessing whether unfair advantages or preferences might have been granted appointees, we concentrated on examining whether the evidence indicated that agency officials had

[3]A Schedule A is a position at the GS-15 level or below in the excepted service that is not of a confidential or policymaking nature and for which it is not practicable to hold any examination.

- acted to fill a bona fide vacancy or acted solely to transfer 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, i.e., its policy-determining or confidential relationship characteristics;
- acted to fill a bona fide vacancy or acted solely to change the type of appointment of an incumbent in an SES position from noncareer to career;
- tailored the SES or competitive service position's duties to the appointee's qualifications;
- used inappropriate selective placement and/or quality-ranking factors to unduly restrict competition; or
- detailed an appointee to the competitive service or SES position to gain qualifying specialized experience or program knowledge.

When necessary, we had discussions with agency officials to clarify and resolve issues that surfaced as a result of our records review. Of the 62 conversions that were reported, we identified 6 that involved circumstances suggesting that the appointees might have received advantages or preferences that enhanced their prospects for the appointments. We discussed these cases in detail with appropriate agency officials, and these officials agreed with the facts of these cases as presented in this report.

We interviewed officials in OPM's Office of Washington Examining Services (OWES), Washington Area Service Center, and Office of SES Operations, Human Resources Development Group. This was done to determine if OPM had processed any of the Schedule C and noncareer SES conversion cases that agencies reported to us and, conversely, to determine if agencies reported to us the cases that were processed by OPM. Although all noncareer SES conversion cases had been reported, one agency did not report a Schedule C conversion case.[4] An agency official said that he was not sure why this case was not reported but thought it might have been because the individual came from another agency; therefore, the official did not believe the conversion was supposed to be reported to us. We also reviewed reports on the number of conversion cases processed and canceled by OPM from January 1, 1992, through March 31, 1993.

Seventeen agencies reported a total of 50 noncompetitive appointments of former congressional employees to career positions under the authority of the Ramspeck Act. In addition, five agencies reported nine noncompetitive appointments of former White House employees. We evaluated the

[4]This case is included in our total of 62 conversion cases.

propriety of career appointments made under the Ramspeck Act and White House service authorities by reviewing (1) federal civil service laws, rules, and regulations and OPM guidance for making such appointments and (2) documentation in agency personnel files to ensure that the requirements for making appointments under these authorities were met. As a result of our records review, we had discussions with agency and OPM officials to clarify and resolve certain issues that emerged. Of the 50 noncompetitive appointments that were reported under the authority of the Ramspeck Act, we identified 11 that either raised questions as to whether the employees received undue preference in their appointments or involved situations that did not further the purposes of the act. We discussed these 11 appointments in detail with appropriate agency officials, and these officials agreed with the facts of these cases as presented in this report.

We received 293 allegations that involved 35 agencies from the Senate Subcommittee on Federal Services, Post Office, and Civil Service; the House Committee on Post Office and Civil Service; and other sources. To determine if the events underlying the allegations had occurred, we interviewed agency officials (usually the agency personnel director). Since the fact that the events occurred did not imply that they were improper, we asked agency officials to provide supporting documentation for events that had occurred. If the officials were unaware of the events or did not know if they had occurred, we asked them to find out and report their findings to us.

Of the 293 allegations, we identified 54 that, in our opinion, (1) raised questions about the propriety of a personnel action other than a conversion, reorganization, or rule change or (2) involved other types of events and, therefore, were outside the scope of this review. We referred 52 of these allegations to the appropriate agency inspectors general for their review. The other two allegations were not referred because they did not contain sufficient information to justify a referral or dealt with a matter that should have been pursued administratively by the affected individual.

Of the 293 allegations, 24 involved conversions and noncompetitive appointments that occurred during the period covered by our review. We verified that the agencies reported these 24 cases as conversions to us and these cases were covered in our review.

We did our work at the agencies' headquarters in the Washington, D.C., metropolitan area between November 1992 and October 1993 in accordance with generally accepted government auditing standards.

OPM provided written comments on a draft of this report. These comments are presented and evaluated in chapter 3 and are reprinted in appendix VI.

The Propriety of Conversions and Noncompetitive Appointments

From January 1, 1992, through March 31, 1993, 25 agencies reported 121 appointments to career-conditional, career, and Schedule A positions. Eight other agencies reported no such appointments during this period. The appointments involved conversions of political appointees, and noncompetitive appointments of congressional and White House employees as shown in table 2.1.

Table 2.1: Number of Career Appointments by Type Made From January 1, 1992, Through March 31, 1993

Former type of appointment	Number of career appointments
Political	62
Congressional	50
White House	9
Total appointments	**121**

Note: Appendix III lists the 121 career appointments by agency.

Source: GAO's analysis of data reported by agencies.

Although these 121 career appointments are sensitive, they represent less than 1 percent of all career appointments made by these same agencies. According to OPM, these agencies made a total of 18,837 career appointments during the period January 1, 1992, through March 31, 1993.

We examined each of these 121 conversions and noncompetitive appointments and found that they all met basic procedural requirements. However, nine cases involved circumstances that suggested that the appointees to career positions might have received advantages or preferences in their appointments. Six of the nine cases involved conversions of employees who had reinstatement rights because of prior career status or who were being appointed to the excepted service. The remaining three cases involved noncompetitive appointments under the Ramspeck Act, which raised questions as to whether the employees received unfair preferences in their appointments.

Further, an additional eight cases involved individuals who were appointed noncompetitively under the Ramspeck Act in situations that did not further the purposes of the act.

Propriety of Conversions

Agencies' adherence to merit system principles is difficult to assess because the merit system, like any system, can be manipulated. Processes and procedures may be followed, and the appearance of propriety may be

achieved. Ultimately, the question of whether open and fair competition actually occurs or whether a candidate has been preselected for appointment or given some other advantage depends upon the intent and motivation of the agency officials involved—factors that cannot be controlled by regulations or readily discerned from reviews of files or discussions with agency officials.

Records in official personnel files and merit staffing files indicated that agencies followed merit staffing procedures for all 62 conversions of political appointees. Six conversions, however, involved circumstances suggesting that the appointees might have received advantages or preferences that enhanced their prospects for the appointments. The advantages or preferences that might have been received by these appointees included (1) defining or tailoring the duties and requirements of the competitive position to the Schedule C employee's qualifications and (2) transferring the Schedule C position's duties and the incumbent from the excepted to the competitive service (conversion-in-place). Providing such advantages or preferences could adversely affect the integrity of the merit selection system.

To illustrate our concerns, we summarize two cases below and one case in chapter 3. Details of the other three cases are in appendix IV.

In one case, the Department of the Interior's (DOI) Bureau of Mines filled a new competitive service position with a Schedule C employee under circumstances that suggested that the employee might have received an advantage or preference. Until the employee's December 27, 1992, appointment as a GS-12 congressional liaison specialist in the competitive service, the employee occupied a Schedule C GS-12 position as a special assistant to the Director of the Bureau of Mines. As explained below, the facts suggest that the competitive position to which the employee was converted might have been tailored for the individual, which would have violated the merit system principle dealing with recruitment and selection.[1] The organizational location and reporting relationship of the competitive service position were the same as those of the Schedule C position. While serving as a Schedule C appointee, the employee had been doing many of the duties of the competitive service position. In addition, the existing competitive service position had been downgraded from a GS-14 to a GS-12 grade level, the same level the Schedule C employee held.

[1]5 U.S.C. 2301(b)(1) (1988).

Initially, the employee was appointed on April 3, 1989, to a noncompetitive special assistant position on a 30-day temporary appointment. Six days later, the employee was converted to a 120-day Schedule C position. On August 9, 1989, this appointment was extended for another 120 days. On October 20, 1989, the Bureau asked DOI to officially request OPM approval for a permanent Schedule C position for the employee. The letter from DOI to OPM said

"As Special Assistant to the Director, the incumbent will be responsible for serving as a personal advisor and troubleshooter on issues of a confidential or sensitive nature which have potential to impact Bureau programs, policies, or operations or other entities outside the Bureau. . . . This position is appropriately excepted under Schedule C because of the confidential nature of the duties, the supervisory relationship and the organizational level. . . . The supervisory certification of the position description has been signed by the Director, Bureau of Mines."

OPM approved the request and the employee was appointed to the Schedule C special assistant position on December 6, 1989. The employee worked in this position until her career appointment in 1992.

On September 16, 1992, the Director of the Bureau of Mines asked DOI to establish the competitive service position and recruit for it. In the memorandum, the director stated, in part

"The proposed position is a reclassification of the position of Congressional Liaison Specialist, GS-301-14. The former incumbent retired August 8, 1992. This reclassification more appropriately reflects the current functions of the Congressional Liaison Office."

DOI approved the director's request on September 22, 1992. The position was subsequently advertised DOI-wide through the Bureau's merit staffing program. The announcement opened on October 9 and closed on November 2, 1992. Three individuals applied for the position. On November 12, the Schedule C employee's name was certified to the Director of the Bureau of Mines as the only candidate found to be "best qualified" for the position.

The employee indicated on her application for the competitive service position that she performed the following duties and responsibilities for 3-1/2 years in the Schedule C position as the special assistant to the director:

- assisting in the preparation of responses to requests from Congress for comments on proposed legislation;
- completing all information and requests within established time frames;
- undertaking special projects, especially for the Chief of the Office of Congressional Liaison;
- maintaining congressional information tracking capabilities;
- preparing information tables, computer graphics, and other briefing materials;
- assisting in the coordination and final preparation of issue papers;
- maintaining electronic information communications with the assistant secretary;
- maintaining the entire automated and communications system for the Congressional Liaison Office; and
- providing administrative support to the director in his capacity as the designated federal official for one of the secretary's advisory committees.

The employee also included a performance appraisal as part of her application package. That appraisal, dated November 15, 1991, was prepared by the Chief of the Office of Congressional Liaison as the rating official. The employee was rated on four elements: legislative support services, office administrative assistance, technical responsibilities, and special projects. Also, the employee was rated on a number of associated tasks. Many tasks included in the appraisal were also reported in the employee's application for the competitive service position as examples of duties that she performed for 3-1/2 years in the Congressional Liaison Office.

Three of the four elements and their associated tasks were very similar to the duties in the competitive service position description. For example, the position description and the employee's appraisal and application all contained similar duties: (1) ensuring that all information requests and correspondence were responded to within established time frames, (2) researching a variety of issues to aid in the evaluation of prospective and ongoing legislative programs, and (3) reporting on the impact of pending legislation on Bureau programs. The only element not included was a special projects element, which entailed routine administrative support to the National Strategic Materials and Minerals Program Advisory Committee of which the Director of the Bureau of Mines was a member.

Because the duties shown on the application for employment and the tasks upon which the employee was rated were consistent with the September 24, 1992, position description for the competitive service

congressional liaison specialist position, it appears that the establishment of the position may not have been, as management indicated, a redescription of a vacated GS-14 position to reflect the current functions of the office. Rather, it appears the duties and responsibilities of the competitive service position may have been tailored to the qualifications of the Schedule C employee who was already performing many of these same competitive service tasks.

Because the Schedule C employee had obtained competitive status earlier in her career with the government, she was eligible to be reinstated in the competitive service. Consequently, the merits of this conversion were not reviewed by OPM under its conversion review process. OPM's conversion review process does not require the identification and review of conversions before appointments are made when such conversions are made by career reinstatement.

In a second case, the Department of Energy (DOE) established and filled a Schedule A excepted service trial attorney position in the Office of the General Counsel under circumstances that suggested that the employee might have received an advantage or preference. The case involved a Schedule C position that might have been used inappropriately and might have been a conversion-in-place, which would violate the merit system principle dealing with recruitment and selection.[2] This conversion had been questioned twice within DOE because of its perceived inappropriateness and potential political sensitivity. Ultimately, DOE officials approved the conversion because, among other things, they were satisfied that the conversion was not being made for any political purpose.

DOE permitted the employee to function as a full-time trial attorney although the Schedule C position, which OPM had approved, described him as a staff assistant to the General Counsel. On two occasions after the employee's initial Schedule C appointment, the employee was promoted to a higher grade when DOE certified to OPM that higher graded Schedule C staff assistant positions were needed to accomplish the Office of the General Counsel's mission.

A DOE official, a career employee, requested that the employee's Schedule C appointment be changed to a Schedule A appointment and certified to the Director of Personnel that the request was made, not for any political purpose, but to ensure that the department retained a valued employee. According to the official, he wanted to ensure that an integral member of

[2]5 U.S.C. 2301(b)(1) (1988).

his staff would not be subject to the uncertainties of a Schedule C appointment.

Until the employee's January 10, 1993, conversion to a Schedule A excepted service position, GS-14 trial attorney, he occupied a position as a Schedule C GS-14 staff assistant to the General Counsel. The employee had been promoted to this position in July 1991. From April 1990 to July 1991, the employee occupied a Schedule C GS-13 position and from July 1989 to April 1990, a Schedule C GS-12 position. Each Schedule C position had similar duties and required a confidential relationship with the General Counsel.

During February 1992, the Office of the General Counsel asked the Office of Personnel to convert the employee from the Schedule C position to a Schedule A GS-14 trial attorney position. In April 1992, the Office of Personnel returned the request without action and advised that this was a politically sensitive case and that the Special Assistant to the Secretary and others had disapproved the requested action.

During the week following the November 1992 presidential election, DOE's Acting General Counsel met with the Director of Personnel to discuss the possibility of converting the employee from the Schedule C position to a Schedule A GS-14 trial attorney position. The Office of Personnel reviewed the request and recommended that DOE not approve the proposed conversion. Among other things, it concluded that

- since the employee's initial appointment, Office of the General Counsel officials had placed him on performance plans and evaluated him on standards that reflected trial attorney duties rather than staff assistant duties;
- none of the Schedule C positions to which the employee had been assigned contained trial attorney duties;
- DOE had requested OPM approval to establish and amend the staff assistant positions to reflect higher graded duties and to continue the positions' Schedule C status based on staff assistant duties;
- it could be argued that there was no new position because the employee was allowed to perform and be appraised on trial attorney duties, even though such duties were not contained in the employee's position of record; and
- documenting the employee's trial attorney experience and converting him could make it appear that DOE knowingly permitted the employee to

perform duties outside the scope of the position for which he was hired and which were recertified to OPM each time he was promoted.

On January 6, 1993, DOE personnel officials and the Deputy General Counsel for Litigation met to discuss those issues. On January 8, 1993, the Office of Personnel approved the conversion. It cited several reasons, including the following:

- The position description had been reviewed and appropriately classified.
- The employee's application for federal employment showed appropriate superior qualifications.
- Regardless of the fact that DOE allowed the employee to perform duties outside the scope of his position of record, crediting him with this experience is permissible.
- The two officials who requested the action were career SES members, and they gave assurances that the request was made to retain a valued employee rather than for any political purpose.
- Any individual must be afforded the right to be considered for a position for which the individual qualifies. Denying this right to the employee simply because he was a current political appointee could be deemed inappropriate.

DOE's action in establishing and filling a Schedule A excepted service trial attorney position in the Office of the General Counsel with a Schedule C employee suggests that the employee might have received an advantage or preference. The facts suggest that the need for the Schedule A position may have been generated by the use of the Schedule C employee as a trial attorney over a period of about 3-1/2 years and the effect the possible termination of his political appointment by the new administration would have on DOE's litigation workload. The Schedule A position apparently was established to improve the employee's prospects for continued employment with DOE. Because the employee was actually performing the duties of the new position, it appears that he may have received an unauthorized preference in qualifying for the new position.

OPM's conversion review process does not require the identification and review of conversions before appointments are made when conversions are made by appointment to Schedule A excepted service positions. Consequently, OPM did not review the merits of this conversion.

Propriety of Noncompetitive Appointments

The 50 appointments made on the basis of the Ramspeck Act and the 9 appointments made on the basis of White House service adhered to applicable procedural requirements. However, three Ramspeck Act appointments raised concerns about whether the employees may have received advantages or preferences in their appointments. In addition, eight of the Ramspeck Act appointments involved circumstances that raised concerns that the act was being used in situations it was not designed to address.

Ramspeck Act Appointments

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

- The employee must have worked for Congress for 3 years (the service need not be continuous).
- The employee must be separated involuntarily and without prejudice. (The employee's record must be good, and the final separation must be due to circumstances beyond the employee's control.)
- The employee must meet the basic qualifications for the position.
- The employee must transfer within 1 year of separation from the legislative branch. (There is no minimum time for the length of the last congressional appointment.)

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

We identified and reviewed 50 Ramspeck Act appointments made between January 1, 1992, and March 31, 1993. Although all adhered to applicable procedural requirements, 11 involved circumstances that raised concerns. Our review disclosed that eight appointments were made under

circumstances that did not further the purposes of the act. In these cases, we found that individuals returned to congressional positions for short periods apparently to renew their Ramspeck Act eligibility because the 1-year period had elapsed since their last legislative branch employment (see pp. 27-30). Our review also disclosed one case in which an individual received a promotion under the Ramspeck Act authority while already serving in a career position to which she had been appointed under the Ramspeck Act authority (see pp. 30-32). Also, our review disclosed two additional cases in which the circumstances suggested that the individuals may have received preferences in their appointments (see pp. 32-34).

Reestablishing Ramspeck Act Eligibility by Returning to Congress for Short Periods

One of the conditions an employee must meet to become eligible for a Ramspeck Act appointment is to have been separated from congressional employment involuntarily and without cause, not for reasons such as improper conduct or poor performance. Eight of the Ramspeck Act appointments we reviewed involved circumstances that raised the question of whether appointments in those situations further the purposes of the act. In these instances, the individuals' eligibility for a Ramspeck Act appointment had expired because 1 year had elapsed since their last congressional employment. However, the individuals reestablished their eligibility by taking short-term assignments in Congress, in some instances knowing that the assignment was limited, and almost immediately began the administrative process to obtain a career appointment through the Ramspeck Act. We question whether such assignments should continue to be considered as establishing eligibility under the act.

Table 2.2 provides information on the eight Ramspeck Act appointments, including (1) the length of the employees' most recent congressional employment before they received Ramspeck Act appointments, (2) the number of days in that congressional employment before employees applied for appointments, and (3) the reasons given for the involuntary separations.

Table 2.2: Number of Days Former Congressional Employees Spent Reestablishing Ramspeck Act Eligibility

Case	Location of career appointment	Total days employed by Congress	Days employed before submitting Ramspeck application	Reason given for involuntary separation
1	Interior	5	4	Congressman retired
2	Interior	5	2	Completion of temporary appointment
3	Small Business Administration	7	11[a]	Office reorganization
4	Interior	8	2	Congressman defeated
5	Interior	12	15[a]	Congressman retired
6	Interior	15	4	Budget constraints
7	Interior	20	13	Budget constraints
8	Interior	61	23	Office reorganization

[a]Individual submitted Ramspeck application after leaving congressional employment.

Source: GAO's analysis of Ramspeck Act appointments.

We summarized two of these eight cases below to illustrate our concerns. Details of the other six cases are in appendix V.

In case 1 in table 2.2, the individual worked in a congressional position from February 1979 to January 1985, first as a legislative correspondent and then as a personal secretary. She left congressional employment and worked in a number of positions in and out of government during the next 5 years. In November 1989, the individual was appointed to a position as the special assistant to the Assistant Secretary, Land and Minerals Management, DOI. In December 1991, she was appointed to a position as the special assistant to the Secretary, Department of Veterans Affairs. The individual remained in this position until October 1992.

On October 26, 1992, the individual returned to Congress as a staff assistant to a Member of Congress who had planned to retire. On October 28, she prepared an SF 171 and on October 29, prepared a Ramspeck application that certified that she would be separated involuntarily because her employer was not returning to Congress. On October 30, she terminated her employment.

The circumstances surrounding this case suggest that the individual returned to Congress solely to renew her Ramspeck eligibility, and it appears that a career position had been established for her before she reported to Congress. On October 15, 1992, 11 days before the individual returned to Congress, DOI's Assistant Secretary for Policy, Management, and Budget signed a request to noncompetitively appoint the individual to a career GS-14 position, staff assistant to the Secretary, at a salary of $70,987. The effective date of the appointment was November 9, 1992. On January 14, 1993, DOI reassigned the individual to a new GM-14 deputy director position in the Office of the Secretary at a salary of $73,619.

We believe this case illustrates that DOI approved a position for the individual before she returned to a congressional assignment. That assignment was for a 5-day period with an employer who was known not to be returning to Congress before the assignment was accepted. In our view, the only reason for the assignment was to reestablish Ramspeck eligibility that had expired in January 1986. As a result of these actions, the individual was able to noncompetitively obtain a career position.

In case 6 in table 2.2, the circumstances also indicate that the individual renewed his eligibility for a Ramspeck Act appointment by returning to congressional employment for a 15-day period.

The individual had been a legislative assistant to a Member of Congress from September 1980 to January 1985, when he became a technical consultant for a congressional committee. The individual left Congress in July 1985 and was reemployed there in May 1989 by the same committee until February 1991, when he left to work in the private sector. However, the individual was reemployed in Congress on August 17, 1992, again with the same committee. Three days later, the individual obtained the certification from the committee establishing Ramspeck eligibility and the application for a noncompetitive appointment. He also submitted an SF 171 for the noncompetitive appointment to DOI on the same day. The congressional position with the committee was terminated on August 31, 1992, because of lack of funds.

On August 20, 1992, the same day that the individual submitted his application, DOI's Office of the Secretary proposed the need for a full-time staff member in the Budget Office to meet its growing responsibilities. The responsibilities included building new lines of communication for daily interaction with different divisions in the Office of Management and Budget, congressional appropriations committee staff, and other

departmental staffs. The position of budget analyst was established the next day.

The request for personnel action for noncompetitive career appointment of the individual under the Ramspeck Act was also initiated on August 21, 1992. DOI approved the request to appoint the individual to the position of budget analyst on August 26. The appointment became effective on September 1.

The circumstances surrounding this appointment raise the question of whether the individual took the congressional assignment for the purpose of renewing his eligibility for a Ramspeck Act appointment, particularly because he sought a certification of involuntary separation and applied for employment at DOI only 3 days after beginning his congressional employment. Further, it would be reasonable to expect that the employee would have asked or been told at the time of employment whether budget constraints might force the committee to terminate his employment.

Use of the Ramspeck Act to Promote an Individual From a GM-13 to a GM-15 Position

The General Services Administration (GSA) used the Ramspeck Act to noncompetitively appoint an individual to a GM-13 career position, and shortly thereafter it used the Ramspeck Act authority again to noncompetitively promote her from the career GM-13 position to a GM-15 career position. GSA officials justified this action by stating that an individual does not lose Ramspeck eligibility after receiving a career appointment under the act and that the act can be used again for a second career appointment, as long as the appointment takes place within 1 year after involuntary separation from Congress. The Ramspeck Act as written does not preclude its application to an employee already in a career service position. However, such an action raises concerns that the act is being used in situations it was not designed to address. In addition to using Ramspeck Act authority for the intended purpose of helping a congressional employee find employment, GSA used the provision to noncompetitively promote an individual two grade levels after only 2-1/2 months of career service. Such an action would not be allowed under civil service regulations and can give the appearance that the individual received an unfair advantage over other career employees at the expense of merit system principles.

The individual worked as an administrative assistant for a Member of Congress who was defeated in the general election on November 3, 1992. On November 13, the Member of Congress signed the assistant's application for noncompetitive examination under 5 U.S.C. 3304(c) (a

Ramspeck application) stating that she had worked the required number of years and would be involuntarily separated effective January 4, 1993. The individual completed the Ramspeck application and, on January 19, 1993, the corresponding application for federal employment (SF 171).

On January 22, 1993, GSA used the Ramspeck Act to appoint her noncompetitively to a GM-13 special assistant position in the Office of the Administrator at a annual salary of $54,308. The special assistant position had been approved on September 25, 1992, to replace a lower graded special assistant position that was about to be vacated. According to the Director of the Office of Personnel, the acting administrator orally approved the appointment, and the Associate Administrator for Administration swore her into office before the Office of Personnel had prepared the paperwork documenting the appointment. The director noted, however, that the Office of Personnel had advised the associate administrator before the appointment that she was qualified. GSA did not document the basis for its qualification review.

Almost 2-1/2 months after the individual's career appointment, GSA used the Ramspeck Act a second time to promote her noncompetitively to another career position two grades above the first career position. This was a GM-15 congressional affairs officer position in the Office of Congressional and Intergovernmental Affairs at a annual salary of $66,609. The position was approved by the Associate Administrator for Congressional and Intergovernmental Affairs on April 1, 1993; the appointment was approved on April 2, and she was appointed to the position on April 4.

The associate administrator said that when he arrived at GSA on February 22, 1993, 1 month after the individual's first career appointment, he was asked if he could use her because she did not have any work to do. The associate administrator said that the Office of Congressional and Intergovernmental Affairs was disorganized and in a state of disruption and had a limited process in place for dealing with Congress. He said that someone who would be able to interact with Congress was needed immediately in the position in question because GSA was in the process of getting its appointees confirmed, which involved a lot of interaction with Congress. The associate administrator added that the individual's experience with Congress qualified her for the position.

The Director of the Office of Personnel said that his office reviewed the individual's qualifications and concluded that she was qualified for the

position. As with the first appointment, GSA did not document the basis for its qualification review. The director said that the individual was not required to submit an updated SF 171 because she had been at GSA for only a short time, and they were aware of her experience during that brief period. The director added that the Office of Personnel did not advertise the position because the individual was Ramspeck eligible. The director said that the Office of Personnel contacted OPM, which concurred that the Ramspeck Act appointment authority could be used a second time to appoint her to a second career position. An OPM staffing specialist confirmed this, stating that the Ramspeck Act appointment authority could be used as many times as necessary during the 1-year period after involuntary separation from the legislative branch.

As GSA and OPM officials stated, the Ramspeck Act appointment authority can be used an unlimited number of times during the 1-year period after involuntary separation, and the act as written does not preclude its application to an employee already in a career service position. Although the second appointment was not prohibited by the Ramspeck Act, guidance in the Federal Personnel Manual indicates that as soon as an individual receives a Ramspeck Act appointment he or she automatically acquires competitive status as a career employee. It appears incongruous to use the Ramspeck Act authority to promote without competition a career employee to a position that he or she would not be otherwise eligible for under civil service regulations.

Other Ramspeck Act Appointments That Give the Appearance of Preferential Treatment

We identified two additional Ramspeck Act cases in which the circumstances surrounding the appointments suggest the individuals might have been given preferential treatment. Although the appointments adhered to applicable Ramspeck Act procedural requirements, an appearance of preferential treatment can adversely affect the integrity of the selection process. We briefly summarize one of the cases here. The other case is summarized in appendix V.

The Farmers Home Administration (FmHA) of the Department of Agriculture advertised a GS/GM-12/13 supervisory correspondence specialist position on December 9, 1991, with a closing application date of January 7, 1992. The area of consideration from which applications would be accepted was "ALL SOURCES." Twenty-three people applied, and on January 9, FmHA determined that four were "best qualified." Of the four, two were at the GM-13 level and two were at the GS-12 level. However, although all four of these individuals were referred to the selecting official for consideration, none were selected for the position.

On January 28, 1992, 21 days after the announcement's closing date, the individual prepared a Ramspeck application and submitted it to FmHA. The application stated that she would be involuntarily separated from her congressional employment for budgetary reasons effective February 1, 1992. On January 30, 1992, the individual faxed draft revisions to her SF 171 to the personnel management specialist responsible for conducting the recruitment action and noted that she would discuss the revisions with him the next day. The specialist had recommended that her SF 171 be revised to emphasize managerial experience gained during her legislative branch employment.

Around February 3, 1992, the individual sent FmHA an amended SF 171 that incorporated the draft changes. Further, unlike those who had applied for the position under the vacancy announcement, the individual apparently was not required to submit a recent performance appraisal as part of her application package. The vacancy announcement informed applicants that failure to provide all required documentation would eliminate the applicants from consideration for the position.

On February 12, 1992, the FmHA Assistant Administrator for Human Resources asked for the Director of Personnel's approval to appoint the individual noncompetitively to the subject position at the GM-13 level, stating that the "extremely qualified" individual became available after the announcement closed, thereby eliminating the four "best qualified" individuals from further consideration for the position. On March 2, the personnel management specialist determined, based on a qualifications analysis, that the individual was qualified for appointment at the GS-12 level. On March 6, the assistant administrator amended his original request and requested that the individual be appointed to the position at the GS-12 grade level, adding that FmHA was attempting to assist the individual's congressional office in finding outplacement for the individual. The main difference between the position's grade levels is that at the GS-12 level the incumbent would receive closer supervision than at the GM-13 level, and the level of responsibility was lower at the GS-12 level than at the GM-13 level. The individual, who was still employed in her congressional position as of April 9, 1992, was appointed to the position at the GS-12, step 5 level, with a salary of $44,041, on April 26, 1992.

In our opinion, this Ramspeck Act appointment demonstrates how the circumstances surrounding such appointments can give the impression of preferential treatment. Although FmHA has management discretion to fill a vacant position from any appropriate source, including the noncompetitive

appointment of an individual under provisions of the Ramspeck Act, what is problematic is whether the agency did more than exercise position-filling discretion. Granting an employee or an applicant for employment an unauthorized preference or advantage for the purpose of improving an individual's prospects for employment or injuring others is a prohibited personnel practice. In filling this position, FmHA (1) considered the application of the appointee even though it was submitted about 3 weeks after the date the agency announced it would stop accepting applications; (2) reviewed the appointee's initial application and suggested areas that could be improved; (3) reviewed the changes to the application in draft form before the appointee submitted a revised application; (4) did not require the appointee to submit a performance appraisal as required by the vacancy announcement; and (5) decided to fill the position at the GS-12 level only after the appointee had been determined not qualified for appointment at the GM-13 level, instead of filling the position at the GM-13 level that the agency originally felt was preferable and when qualified candidates for that level were available.

Thus, the circumstances surrounding this appointment call into question whether the agency had given full consideration to the other applicants that it had determined to have been qualified for the position and whether the agency acted to place a certain person in a specific position in order to help outplace a former congressional staff member.

White House Service Appointments

The Code of Federal Regulations[3] authorizes an agency to noncompetitively appoint an individual who has served at least 2 years in the immediate offices of the President or Vice President or on the White House staff. The appointment must be effected without a break in service of 1 full workday. As with other appointments, the individual must meet the qualification requirements for the career position.

We identified nine White House appointments made in five agencies. We did not note any features in the nine cases that would raise questions about the appropriateness of these appointments.

[3]5 C.F.R. 315.602 (1993).

Opportunities to Improve Oversight and Control Over Conversions and Ramspeck Act and White House Appointments

OPM is responsible for providing oversight of agency conversions of former political appointees. During the period covered by our review, it canceled 11 conversions that it believed inappropriate and took steps to improve the conversion review process. We believe OPM can further improve its oversight by (1) expanding its preappointment review coverage to include appointments of individuals currently exempted from OPM review and (2) suspending the processing of career SES appointments during future presidential transition periods when it is known that agency heads will be leaving office.

Oversight of Ramspeck Act and White House service appointments also needs to be improved. Currently, Ramspeck Act and White House appointments are not subject to any routine preappointment review. Congress may wish to direct OPM to broaden its conversion review process to include such appointments. Further, because our review identified some Ramspeck Act appointments made under conditions that did not appear to further the purposes of the act, Congress may wish to amend the act to provide needed clarity.

OPM's Controls Over Conversions Can Be Improved

During the period covered by our review, OPM canceled 11 conversions that it believed did not meet merit system standards. We also noted that OPM had implemented two recommendations from our prior report on conversions to expand its oversight coverage.[1] However, OPM disagreed with another of our recommendations aimed at expanding OPM review coverage to include conversions of appointees eligible for reinstatement in the competitive service on the basis of prior career service. Such individuals are currently exempt from OPM's preappointment coverage. Because five of the six conversions where we found the appearance of an advantage or preference involved individuals with reinstatement rights, we believe OPM should reconsider and implement this recommendation. Further, the sixth case involved an individual who was appointed to a Schedule A attorney position. Schedule A appointments are also exempt from OPM review; therefore, we believe OPM should expand its conversion review coverage to also include these.

OPM's Review Resulted in Cancellations

OPM's OWES and its other regional examining offices are responsible for processing requests from agencies to issue certificates of eligibles to fill competitive service positions. As part of this process, OPM reviews the

[1]Personnel Practices: Propriety of Career Appointments Granted Former Political Appointees (GAO/GGD-92-51, Feb. 12, 1992).

propriety of conversions to ensure adherence to merit system principles and requirements. In addition, OPM's Office of Executive and Management Policy reviews the appropriateness of initial career SES appointments, including conversions of political appointees, as part of its review and certification of the executive and managerial qualifications of SES appointments. During the 15 months covered by our review, OPM canceled or otherwise terminated 11 such conversions.

Nine of the 11 canceled conversions resulted from OWES' review. In three instances, OPM determined that (1) the proposed action was a conversion-in-place, (2) the individual had obtained the necessary experience noncompetitively, or (3) the agency had tailored the competitive service position to the individual's qualifications. OWES canceled another three conversions because the area of consideration for potential applicants was restrictive and did not ensure adequate competition. Two other instances involved individuals who were on an agency's certificate of eligibles for a competitive position that closely mirrored a position for which OPM had previously granted the agency excepted appointing authority. According to OPM, the excepted appointing authority had been based on the justification that the position's requirements were unique and hard to fill competitively. Hence, OPM did not believe it could support the contention that positions that were so unique one day that they required excepted appointing authority and the next day belonged in the competitive service. Finally, OWES found that in one proposed conversion the individual was not qualified for the position, and that the selective factors for the position were too restrictive.

OPM's Office of Executive and Management Policy also canceled two referred conversions to career SES appointments because they appeared to be conversions-in-place.

OPM's Review Coverage Should Be Expanded

In our 1992 report on conversions of political appointees to career positions, we recommended that OPM (1) ensure that each region establish procedures to be used by its examining offices to identify and review conversions within their jurisdictions, (2) expand its review process to include the preappointment review of conversions at agencies to which OPM had delegated examining authority, and (3) revise its review process to include conversions in which the employee selected is eligible for reinstatement in the competitive service on the basis of prior career service. OPM implemented the first two recommendations but disagreed with the third.

OPM said that individuals who acquire competitive status before their Schedule C or noncareer SES appointments should be able to exercise their reinstatement eligibility in the same manner as other individuals and that care needs to be taken not to adopt policies that would discriminate against individuals solely because of their prior appointments. OPM also said that it has long prohibited conversions-in-place to change an employee's appointment to a career appointment in the same position.

Our current review again identified conversions that raised questions about employees receiving advantages or preferences. In these situations, the employees had reinstatement eligibility, and consequently the agencies hiring them did not have to go through OPM's preappointment review process. In fact, five of the six cases that raised questions were not subject to OPM review because of this exemption. Two cases are summarized in chapter 2 of this report. We summarize a third case here. (The remaining three cases are summarized in app. IV.)

In a third case, on February 6, 1989, a former congressional employee received a noncompetitive career appointment at DOI as a GS-15 special assistant to the Undersecretary of the Interior. She served in this career position for 6 weeks.

In March 1989, she left her career position and received a noncareer SES appointment as Deputy Assistant Secretary for Fish and Wildlife and Parks. She served in this position until October 1989 when she was detailed to a noncareer SES appointment as Director, Office of Program Analysis in the Office of the Assistant Secretary for Policy, Budget, and Administration. This detail ended on May 23, 1990.

On May 24, 1990, she was detailed to work in the Executive Office of the President where she remained until August 1, 1991. The employee then returned to her former noncareer appointment as Director, Office of Program Analysis in the Office of the Assistant Secretary for Policy, Management, and Budget. She received a promotion in January 1992. In August 1992, her position title changed to Special Assistant to the Secretary and Director, Office of Program Analysis.

On December 22, 1992, DOI's Commissioner of the Bureau of Reclamation sent a memorandum to the assistant secretary requesting that the individual receive a noncompetitive career appointment as the Director, Organization and Management Analysis Office with the Bureau of Reclamation office in Denver. The position had become vacant in

November when the incumbent was promoted to the SES. The request was approved by the assistant secretary on the same day. On January 4, 1993, the individual received a reinstatement career appointment to a GS-15 position. The basis for her reinstatement eligibility was her initial career appointment in February 1989, a position she filled for 6 weeks before receiving her noncareer SES appointment.

We discussed this conversion with an official from DOI's personnel office. The official said that because this was a reinstatement, the Bureau of Reclamation was not required to and did not use merit staffing procedures to identify candidates for the vacant position. The official also acknowledged that the conversion was influenced by senior departmental executives. Because of these concerns, personnel officials refused to sign the personnel action paperwork; consequently, the Bureau of Reclamation Commissioner signed these documents. The official agreed that the conversion looked questionable but said there was nothing illegal about it.

OPM did not review this case and four similar cases because they involved individuals who had acquired competitive status prior to their noncareer SES appointments. As a result of having acquired competitive status, the individual was eligible to be reinstated noncompetitively to a career GS-15 position, the same grade she held for 6 weeks in 1989. Because of the concerns raised by this case and the four others involving employees with reinstatement eligibility, we believe, as we did in 1992, that OPM should review conversions of Schedule C and noncareer SES employees who are eligible for reinstatement in the competitive service. We recognize that OPM disagrees with us on this issue and is concerned about any policies that would discriminate against individuals on the basis of their prior appointments. In our view, OPM's preappointment review would be directed at agencies, rather than individuals, to ensure that merit system principles are adhered to. As such, we do not believe these types of reviews would be discriminatory.

OPM Should Suspend Processing QRB Cases During a Presidential Transition

OPM's general policy is to suspend processing career SES appointments (with exceptions for emergency situations) upon the actual or announced departure of an agency head, in order to afford that official's successor the greatest possible flexibility in making executive resource decisions. Following the 1992 presidential election, OPM continued to process career SES appointments except in five agencies where the agency heads had resigned or announced plans to do so. We believe that in order to preserve the greatest possible flexibility for agency heads appointed following a

presidential transition, OPM should routinely suspend the processing of all career SES appointments during such transition periods.

OPM's Policy to Suspend SES Appointment Processing

OPM's Office of Executive and Management Policy is responsible for establishing QRBs to certify the managerial qualifications of all initial career SES appointments. Its procedures and policies for doing so are described in Federal Personnel Manual Supplement 920-1, entitled "Operations Handbook for the Senior Executive Service," Section 4d (7), subchapter 5, which contains the following guidance:

"(7) Departure of agency head. If an agency head leaves, OPM normally suspends the processing of QRB cases until a successor is appointed; and OPM may return pending cases to the agency. This action is taken as a courtesy to the new agency head in order to afford that individual the greatest flexibility in making executive resource decisions. Nevertheless, if an agency has a case that it considers urgent, the agency may request OPM to forward it to a QRB. OPM will consider such factors as whether the new agency head would have personal interest in the submission, the organizational level of the position, the degree to which the candidate would be involved in policy matters, and how long it appears it will be before the new agency head is appointed. (OPM may take similar action before the departure of an agency head when the agency head had announced his or her departure or when a new agency head has been nominated by the President.)"

OPM officials said that they followed this policy and put a moratorium on SES appointment processing in place during 1992 for five agencies where the agency head had left or announced plans to depart. The five agencies were the Agency for International Development, the Department of the Navy, OPM, the Department of State, and the Department of Veterans Affairs. OPM officials also said that its general prohibition against the conversion of noncareer employees to career SES appointments in the employees' current position also continued during the period.

From November 10 through December 29, 1992, OPM continued to process SES appointments at other agencies. It held eight QRB sessions and approved 56 SES appointments. OPM later suspended QRB sessions, effective January 19 through February 8, 1993, upon an inquiry from the Chairman of the Senate Governmental Affairs Subcommittee on Federal Services, Post Office, and Civil Service. In commenting on a draft of this report, OPM said that even without the suspension of QRBs there were no conversions of noncareer employees to career SES appointments during the presidential transition period.

The OPM officials said that general suspensions of SES appointment processing have not traditionally occurred. The first transition after the SES was established was after the 1980 election. On November 12, 1980, the White House sent a memo to all agency heads saying they should personally review all SES appointments but did not order a suspension. After the new administration took office, a general freeze was put in place. In a similar fashion, the OPM officials pointed out that a suspension was not requested in the subsequent transition from President Reagan to President Bush.

The OPM officials also said that after the 1992 election neither the White House nor the Clinton transition team requested freezing SES appointments and therefore OPM did not order a suspension. They said the only signal received from the White House was "business as usual."

It appears to us that, rather than waiting to be told to suspend SES appointment processing, a better practice would be to routinely suspend all such appointments during presidential transitions. Such a policy would afford agency heads appointed following a presidential transition flexibility in making executive resource decisions.

Tighter Controls and Improved Oversight Can Be Provided to Ramspeck Act and White House Appointments

Like conversions of political appointees to career positions, Ramspeck Act and White House service appointments are sensitive, particularly because they are made through noncompetitive procedures. Unlike conversions, however, Ramspeck Act and White House appointments are not routinely monitored or reviewed by OPM. As a result, no one usually knows how many or under what conditions those appointments are made. To provide oversight, we believe Congress should consider directing OPM to include such appointments in its conversion review process. Further, because our review identified some Ramspeck Act appointments made under conditions that do not further the purposes of the act, we believe Congress should consider amending the act to provide needed clarity.

OPM Should Monitor and Review Ramspeck Act and White House Appointments

OPM currently provides agencies with guidance and other assistance on White House and Ramspeck Act appointments but does not routinely conduct preappointment reviews of such appointments. In addition to the concerns we raised about some of the Ramspeck Act cases we reviewed, we believe the results of a January 1993 special OPM review of Ramspeck Act cases at DOI illustrate the merits of routine monitoring and review. Although our review of White House service appointments did not identify

any situations where employees might have received an advantage or preference, it would seem reasonable for OPM to review these because they also involve noncompetitive appointments.

OPM's special review was initiated in December 1992, after it received a request from the Chairman of the Senate Governmental Affairs Subcommittee on Federal Services, Post Office, and Civil Service; an inquiry from us about one specific Ramspeck Act appointment; and allegations from DOI employees and other sources that the Ramspeck Act was being used improperly to provide career appointments for political appointees. OPM identified 14[2] Ramspeck Act appointments made by DOI between January 1, 1992, and January 11, 1993. It determined that four of them warranted detailed investigation. Upon investigation, OPM determined that in two of the cases, DOI had improperly used the Ramspeck Act to appoint the individuals to positions specifically created for them. On February 3, 1993, OPM directed DOI to terminate these two appointments. DOI complied. One of the terminated employees appealed DOI's action to the Merit Systems Protection Board (MSPB). MSPB denied her appeal on September 24, 1993, on the grounds that her separation from congressional employment was not involuntary because she had accepted an appointment for a limited duration and had been separated at the expiration of that term.

OPM's report did not include a conclusion on the remaining two Ramspeck Act appointments that OPM determined warranted detailed investigation. However, DOI officials are considering what action, if any, to take concerning these two appointments. (Our discussion of these two cases can be found in ch. 2, case 1 and in app. V, case 5.)

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

[2]These 14 Ramspeck Act appointments were included in our review.

Greater Clarity Needed on Ramspeck Act Eligibility

As discussed in chapter 2, we identified eight Ramspeck Act appointments that were given to individuals who renewed their Ramspeck Act eligibility by returning to congressional employment for brief periods. A ninth case, also discussed in chapter 2, involved an agency that granted a noncompetitive Ramspeck Act appointment to an individual at the GM-13 level and shortly thereafter cited the Ramspeck Act authority as justification for appointing her to another position at the GM-15 level. As currently written, nothing in the Ramspeck Act precludes such actions. However, we believe that these types of actions can give the appearance of unfair advantages and do not serve to further the purposes of the act. Consequently, we believe that Congress should consider amending the act to clarify which situations qualify for Ramspeck Act appointments.

The legislative history of the Ramspeck Act shows that it was intended to provide job security to long-term congressional employees faced with unemployment for reasons beyond their control. For instance, the Senate Report states that the act is to provide "assurance to these employees that they will have an opportunity to obtain employment in a field where they are experienced and qualified in the event their Member ceases to remain in Congress."

There is no indication that the act was intended to give job security to political appointees or other individuals who left congressional positions for a time and then returned for short periods to recoup the status of their prior years of service and obtain the involuntary separation needed to qualify under the act. However, the language of the act does not specify that the service required for eligibility must be continuous, and OPM has advised agencies that the service need not be continuous. In addition, there is no minimum time for the length of the last congressional appointment.

Further, neither the language of the act nor OPM's advice specifically bars a separation from being considered involuntary, even if an individual accepted a position knowing that it would be temporary, such as when a Member of Congress had not been reelected or had announced his or her retirement. The act does not define involuntary separation. OPM has advised agencies that involuntary separation without prejudice means that the employee's record must be good and that final separation must be due to circumstances beyond the employee's control, such as the death, defeat, or resignation of his or her employer or lack of work or funds. Although MSPB held in a recent case that an individual's separation from congressional employment at the expiration of a term appointment was

not involuntary, it is not entirely clear whether, under that decision, individuals accepting employment with defeated or retiring members would be considered to be involuntarily separated at the termination of that employment.

Because the Ramspeck Act was intended to assist employees who rendered long and faithful service to Congress and were separated for reasons beyond their control, we do not believe the act's purposes are served by applying it to political appointees or others who return to Congress for short periods after a break in congressional service of more than a year. Also, we do not believe a separation should be considered involuntary for the purposes of the act when an employee accepts employment with a Member of Congress knowing that the Member was not reelected or when they have otherwise announced that they will not be returning to Congress or when the term of the appointment would be limited for budgetary reasons. Finally, we believe that the act should not be used to appoint an individual to a career position and then, while the individual is serving in that position, used a second time to noncompetitively appoint and promote the person to another career position. However, since the language of the act and OPM's advice do not specifically preclude eligibility under these circumstances, these uses of the act are not illegal.

Conclusions

Conversions of political appointees from noncareer to career status present a dilemma. On one hand, it is reasonable to permit individuals who serve the government as political appointees to compete for or be reinstated to career status if they choose to continue their federal careers. On the other hand, the political nature of noncareer appointments creates the possibility of favoritism or 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 agencies' adherence to merit system principles. It has identified and cancelled some improper conversions, but we noted opportunities for further improvements. Among these would be the expansion of OPM's review process to include the preappointment review of conversions whenever the employee selected is eligible for reinstatement into the competitive service on the basis of prior career service. We have made this suggestion before and recognize that OPM disagreed with it because such a review might be construed as discriminating against individuals on the basis of their prior Schedule C or

noncareer SES appointments.[3] Because our current work again showed instances that indicated appointees with reinstatement eligibility might have received advantages or preferences in their appointments, we continue to believe our suggestion has merit. Rather than discriminating against individuals, we view OPM's review process as being directed at agencies to ensure that they adhere to and protect merit system principles.

Even with these improvements, however, inherent difficulties remain in overseeing conversions to ensure adherence to merit system principles. Ultimately, a hiring decision is subjective, and an agency official can follow procedures, conceal a prohibited motive, and plausibly defend his or her decision as a legitimate exercise of managerial discretion.

Appointments to career positions made on the basis of congressional or White House service are also sensitive, particularly because they are made noncompetitively. Since the circumstances surrounding some of the Ramspeck Act appointments we reviewed gave the appearance of preferential treatment, we believe that more oversight of these noncompetitive appointments is needed. In addition, because some Ramspeck Act appointments were made under conditions that did not further the purposes of the act, we believe the act needs to be amended to more clearly specify the circumstances under which use of this appointment authority may not be appropriate.

OPM has a policy to suspend the processing of career SES appointments (with exceptions for emergency situations) when an agency head has announced his or her departure. The purpose of this policy is to ensure that a successor has the greatest possible flexibility in executive resource decisions. During the 1992 presidential transition, OPM followed this policy and suspended SES processing at five agencies where the agency heads had resigned or specifically announced their resignations. However, OPM did not suspend SES processing at other agencies because neither the White House nor the transition team requested such a suspension. We believe that to preserve the greatest possible flexibility for new agency heads following a presidential transition, OPM should routinely suspend processing all career SES appointments during such transition periods.

Matters for Congressional Consideration

We suggest that Congress consider amending the Ramspeck Act to specifically preclude individuals from returning to Congress for short periods to renew their eligibility. Two approaches could accomplish this:

[3]GAO/GGD-92-51

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

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

Recommendations to the Director, OPM

To strengthen OPM's oversight of conversions of political appointees to career positions, we recommend, as we have in the past, that the Director of OPM expand OPM's preappointment review coverage to include individuals currently exempted on the basis of prior career service. We also recommend that the Director of OPM expand OPM's preappointment review coverage to include individuals currently exempted on the basis of excepted service appointments.

To preserve the flexibility of new agency heads appointed after presidential transitions, we recommend that the Director of OPM suspend all SES appointment processing during future transition periods. In line with OPM's current policy, agencies should be able to request SES appointment processing in special circumstances.

Agency Comments and Our Evaluation

OPM provided written comments on a draft of this report, which appear in appendix VI. OPM said it shared our concerns about inappropriate uses of noncompetitive appointment authorities. OPM said that our suggestions that Congress consider amending the Ramspeck Act to preclude (1) individuals from returning to Congress for short periods to renew their eligibility and (2) using the act as a noncompetitive appointment authority for individuals actively serving in career status positions provide useful alternatives for consideration.

OPM did not fully agree with our recommendation to expand its preappointment review coverage to include individuals currently exempted on the basis of prior career service and on the basis of the appointment being to the excepted service. OPM said that review of such appointments for compliance with legal principles and requirements may be an appropriate deterrent to improper actions. However, it pointed out that these appointments normally require minimal public notice and competition. OPM said that as long as such actions comply with legal requirements and agency policies, it did not believe it should impose additional requirements during a presidential transition.

We also agree that review of such appointments could serve as a deterrent to improper actions. We see no reason why the fact that such appointments normally require minimal public notice and competition should impede or preclude OPM's review. Agencies could provide OPM with much of the same documentation they provide for other conversions. For example, they could provide descriptions of both the career and noncareer positions, which could help OPM determine if the appointment was a conversion-in-place or tailored to fit many of the same duties the individual performed in the noncareer position. Since we identified instances where the circumstances surrounding such appointments suggested that the appointees might have received advantages or preferences that enhanced their prospects for career appointments, we believe an OPM review has merit. Such a review by OPM would help ensure that agencies comply with legal requirements and their own policies. Furthermore, since the potential for improper action also exists outside the presidential transition period, our recommendation for an OPM review was not limited to that time frame.

OPM also commented on our recommendation that, during future presidential transitions, it suspend SES appointment processing when it is known that most, if not all, agency heads will be leaving office. OPM pointed out that this would result in the suspension of cases involving career appointments of former competitive service employees as well as noncareer employees. We agree that this would occur and, as we point out in the report, believe it would afford new agency heads flexibility in making executive resource decisions. Agencies would continue to have the option of requesting that OPM process SES appointments that are considered urgent.

OPM added that even though it did not suspend SES appointment processing during the transition, it continued to prohibit the conversion of any

noncareer SES employee to a career SES appointment in the employee's current position. OPM also said that, in accord with its policy, it suspended SES appointment processing for those agencies where the agency head had left or announced an intention to leave. We agree and have clarified this on pages 38 through 40 of the report. OPM also provided technical suggestions that we have incorporated where appropriate.

Analysis of Allegations Involving Personnel Practices During the Transition

The sensitivity of conversions of political appointees to career positions, as well as other practices during the presidential transition period, was demonstrated by concerns raised by federal workers. We received through the Senate Subcommittee on Federal Services, Post Office, and Civil Service; the House Committee on Post Office and Civil Service; and directly from other sources a total of 293 allegations involving events such as conversions and other actions at 35 departments and agencies. We reviewed and followed up on each allegation to determine if the event had occurred, as well as the circumstances surrounding the alleged event. Table 4.1 summarizes the results of our review of the 293 allegations.

Table 4.1: Review of 293 Allegations in 35 Federal Departments and Agencies

Allegations	Number of allegations
Involved events that occurred	76
Involved events that did not occur	163
Referred to inspectors general	52
Not referred to inspectors general	2
Total	**293**

Source: GAO's analysis of reported allegations.

We categorized events as having occurred when agency officials or pertinent documentation verified that the events had occurred. This, however, did not imply that the events were improper. We categorized events as not occurring when (1) agency officials verified that the event had not occurred or (2) an agency postponed or canceled the event. We cannot quantify the impact our review had on the latter. However, it seems reasonable to assume that the fact we had been asked to examine an event may have prompted the agency to reconsider certain personnel practices. A third group of allegations covered a variety of events, including improper hiring practices. We referred those allegations to agency inspectors general for their review and action, except for those that did not contain enough information or should have been pursued administratively.

Events That Occurred

Our follow-up showed that for 76 allegations, the events occurred. The events involved 49 conversions to career positions, 26 reorganizations of agency units, and 1 rule change.

We reviewed 24 of the 49 conversions that fell within the scope of our review. Our review identified issues relating to five of these cases. These conversions, along with others, are included in the universe of 121 cases discussed in chapter 2.

We did not review the remaining 25 conversions because 21 were outside the period covered by our review, two were from agencies that were not covered in our review, and two were appointments not covered by our review.

The 26 reorganizations occurred in 12 agencies and departments. Some of the allegations centered on the belief that the reorganizations occurred or were planned to create positions for former political appointees. We discussed these reorganizations with agency officials and obtained documentation as appropriate. Among other things, we sought to determine whether (1) the reorganization had been planned or initiated before the presidential election and (2) positions would be created or eliminated by the reorganization. We found that 23 of the 26 reorganizations had been planned or initiated before the presidential election. Only 7 of the 26 reorganizations resulted in positions being created. We have summarized our findings on several of the reorganizations below:

- We received an allegation that DOE's Office of Fossil Energy was being reorganized to encumber vacant positions and create career positions for political appointees. We found that the reorganization had been approved in June 1992. No additional positions were requested as part of the reorganization. Three career SES employees were affected by the reorganization; each was reassigned to other duties. DOE personnel officials said no positions were created.
- We received an allegation that the Department of Health and Human Services' Office of Refugee Resettlement was reorganizing the delivery of cash and medical assistance services to refugees. We contacted the Deputy Associate Director for Management within the Office of Refugee Resettlement. According to this official and pertinent documentation, the reorganization was planned and reported to Congress in early 1992. The official also said that the restructuring would not create or eliminate any positions.
- We received an allegation about a major reorganization within the Federal Aviation Administration's Office of Chief Counsel. We found that this reorganization had been planned for about 2 years. The Office of Chief

Counsel had hired individuals only to fill positions vacated by attrition. There are no political appointees in the Office of Chief Counsel.

The rule change occurred at the Department of Agriculture. The allegation was that the Foreign Agricultural Service had issued a proposed regulation to amend its Concessional Sales Program. We found that the Foreign Agricultural Service had issued proposed regulations on November 12, 1992, and public comments were requested through January 14, 1993.

Events That Did Not Occur

Our follow-up work on 163 of the 293 allegations indicated that these events did not occur. Of those events, 150 involved conversions to career positions, 9 involved reorganizations, and 4 involved rule changes.

Table 4.2 summarizes our review of the 150 events concerning conversions. We found most often that the subject of the allegation had been separated from federal service or was not a political appointee, or that the agency had decided to delay filling the position.

Table 4.2: Review of Allegations Involving Conversions That Did Not Occur

Reasons allegations did not occur	Number of allegations
Individual was separated from federal service	42
Individual was a career employee	39
Agency delayed filling position	28
Agency had no plans to convert	11
Agency was not aware/no information available	11
Individual was not qualified or not selected	7
Individual did not apply for position	5
Individual was a Schedule A employee	2
Individual was rehired as a consultant	2
Individual was in a temporary position	1
Individual was not a political appointee	1
Position was canceled	1
Total	**150**

Source: GAO's analysis of reported allegations.

Of the remaining 13 events, 9 involved reorganizations. In six instances, we found that agencies were considering, but had not approved, a reorganization. In two instances, we found either that the agency had no plan for the reorganization or the plan had been disapproved. The

remaining instance involved the creation of two temporary positions that were subsequently eliminated.

Of the four events involving rule changes, we found that agencies had initiated but discontinued action in three instances. In the fourth instance, no agency action had been taken.

Allegations Referred to Inspectors General

An additional 54 allegations covered a variety of practices, including time and attendance abuses, improper contract awards, improper hiring practices, and improper expenditures of funds. Because these allegations covered a variety of activities, some of which may be illegal if the allegations are true, we decided to refer them to the appropriate agency inspectors general. Fifty-two of the allegations were referred to the inspectors general. Two of them were not referred because they did not contain enough information to refer or involved a matter that should have been pursued administratively by the affected individual. We did no further work on any of these allegations.

Thirty-Three Departments and Agencies Asked to Report Conversions and Noncompetitive Appointments

Departments and Agencies

1. Department of Agriculture
2. Department of Commerce
3. Department of Defense, Department of the Air Force
4. Department of Defense, Office of the Secretary
5. Department of Education
6. Department of Energy
7. Department of Health and Human Services
8. Department of Housing and Urban Development
9. Department of the Interior
10. Department of Justice
11. Department of Labor
12. Department of State
13. Department of Transportation
14. Department of the Treasury
15. Department of Veterans Affairs
16. Commodity Futures Trading Commission
17. Environmental Protection Agency
18. Executive Office of the President, Office of Management and Budget
19. Executive Office of the President, Office of National Drug Control Policy
20. Federal Emergency Management Agency
21. General Services Administration
22. Interstate Commerce Commission
23. Merit Systems Protection Board
24. National Aeronautics and Space Administration
25. National Foundation on the Arts and the Humanities, National Endowment for the Arts
26. National Labor Relations Board
27. Office of Personnel Management
28. Peace Corps
29. Securities and Exchange Commission
30. Small Business Administration
31. United States Information Agency
32. United States International Development Cooperation Agency, Agency for International Development
33. United States Tax Court

Data Collection Instrument Used to Report Information on Conversions and Noncompetitive Appointments

U.S. General Accounting Office

Information on Noncareer Appointees Receiving Career Appointments

The U.S. General Accounting Office (GAO) has been requested by the House Committee on Post Office and Civil Service and the Subcommittee on the Civil Service to collect information on the number of noncareer appointees who receive career appointments at the GS/GM-11 level and above. To obtain this data, we are requesting selected Executive Branch departments and agencies to report information on a monthly basis. This form should be completed and the requested documents should be submitted to GAO for EACH noncareer appointee who received a career, career- conditional, or Schedule A appointment within your department or agency during the period January 1, 1992, through March 31, 1993. For purposes of this review, report all appointments of former (1) Schedule C employees, (2) noncareer SES employees, (3) Presidential appointees, (4) employees in the Office of the President or Vice President or on the White House Staff (5 C.F.R. 315.602), and (5) former employees in the legislative branch (Ramspeck Act 5 U.S.C. 3304 (c)).

1. Appointing Department/Agency: _____

2. Name of former Schedule C, noncareer SES, Presidential appointee, White House staff, or legislative branch employee who received a career, career-conditional, or Schedule A appointment and type and date of appointment.

   Name: _____

   Type of Appointment *(Check one.)*

   ☐ Career ☐ Career-Conditional ☐ Schedule A

   Date of Appointment: _____ (Month) _____ (Day) 19____ (Year)

3. Position title of career, career-conditional, or Schedule A position; occupational job series/grade; organization; and supervisor.

   Position Title: _____

   Occupational Job Series/Grade: _____ (Job Series) _____ (Grade)

   Organization (Office, City, State): _____

   _____

   Supervisor (Name and Title): _____

   _____

4. Noncareer position title, occupational job series/grade, Department/Agency, and organization.

Position Title: _____

Occupational Job Series/Grade: _____ _____
Job Series Grade

Department/Agency: _____

Organization (Office, City, State): _____

5. Noncareer position type. *(Check one.)*

1. ☐ Schedule C
2. ☐ Noncareer SES
3. ☐ Presidential Appointee
4. ☐ White House Staff
5. ☐ Legislative Branch Employee

6. Name, position, and telephone number of agency official who can answer questions about this appointment.

Name: _____

Position: _____

Telephone Number: (____) _____

7. Copy of the forms SF-50 documenting the career and noncareer appointments.

We would like to receive this information as follows:

1. Please provide the requested information for all appointments made during the period January 1, 1992, through September 30, 1992. We would appreciate receiving the information covering this 9-month period by January 10, 1993.

2. For appointments made during the period October 1, 1992, through March 31, 1992, please submit the requested data on a monthly basis. The first submission, covering the month of October 1992, should be submitted as soon as possible after receipt of this instrument. Subsequently, submissions should be made by the 15th of the month following the month appointments were made. For example, reports of appointments made during November 1992 should be sent to us by December 15, 1992. A monthly written response should be made to GAO even if there are none of these type appointments, i.e., a negative report.

The submittals should be faxed to Mr. James J. Grace at (202) 275-4516. Alternatively, the information can be mailed to:

Mr. James J. Grace
U.S. General Accounting Office
General Government Division
Room 3150, 441 G Street, N.W.
Washington, D.C. 20548

Noncareer Appointees Converted to Career Positions as Reported by 33 Agencies, January 1, 1992, Through March 31, 1993

	Noncareer appointments					
	Political					
Department or agency	Presidential appointee	Noncareer SES	Schedule C	Congressional	White House service	Total
Department of Agriculture	0	1	7	4	1	**13**
Department of Commerce	0	2	3	1	0	**6**
Department of Defense, Department of the Air Force	0	0	0	0	0	**0**
Department of Defense, Office of the Secretary	2	1	4	0	0	**7**
Department of Education	0	1	1	1	0	**3**
Department of Energy	1	0	2	3	0	**6**
Department of Health and Human Services	0	0	0	4	0	**4**
Department of Housing and Urban Development	0	0	3	0	0	**3**
Department of the Interior	0	2	5	16	1	**24**
Department of Justice	0	1	6	1	0	**8**
Department of Labor	0	0	1	0	0	**1**
Department of State	1	1	3	1	1	**7**
Department of Transportation	0	0	1	2	3	**6**
Department of the Treasury	0	0	1	2	0	**3**
Department of Veterans Affairs	0	2	0	1	0	**3**
Commodity Futures Trading Commission	0	0	0	0	0	**0**
Environmental Protection Agency	1	1	3	3	0	**8**
Executive Office of the President, Office of Management and Budget	0	0	0	0	0	**0**
Executive Office of the President, Office of National Drug Control Policy	0	0	0	1	0	**1**
Federal Emergency Management Agency	0	0	0	0	0	**0**
General Services Administration	0	0	0	3	3	**6**
Interstate Commerce Commission	0	0	1	0	0	**1**
Merit Systems Protection Board	0	0	0	0	0	**0**

(continued)

	Noncareer appointments					
	Political					
Department or agency	Presidential appointee	Noncareer SES	Schedule C	Congressional	White House service	Total
National Aeronautics and Space Administration	0	0	1	0	0	**1**
National Foundation on the Arts and the Humanities[a]	0	0	1	0	0	**1**
National Labor Relations Board	0	1	0	0	0	**1**
Office of Personnel Management	0	0	0	1	0	**1**
Peace Corps	0	0	0	0	0	**0**
Securities and Exchange Commission	0	0	0	0	0	**0**
Small Business Administration	0	0	0	5	0	**5**
United States Information Agency	0	0	1	0	0	**1**
United States International Development Cooperation Agency[b]	0	0	0	1	0	**1**
United States Tax Court	0	0	0	0	0	**0**
Total	**5**	**13**	**44**	**50**	**9**	**121**

Note: Career positions include appointments to career-conditional, career, and Schedule A positions.

[a]Data for the National Endowment for the Arts.

[b]Data for the Agency for International Development.

Source: Agency data.

Propriety of Conversions

Our review of conversions of presidential, noncareer Senior Executive Service (SES), and Schedule C appointees to career positions, discussed in chapter 2 of this report, raised questions about six such conversions. These conversions involved circumstances suggesting that the appointees might have received advantages or preferences that enhanced their prospects for the appointments, and our discussions with agency officials did not convince us otherwise.

In each of these conversions, the employees had reinstatement eligibility or were being appointed to the excepted service. Consequently, the agencies did not have to go through the Office of Personnel Management's (OPM) preappointment review process (see page 35). In this report, we have illustrated our concerns with two of these cases in chapter 2 and with another case in chapter 3. The other three cases are summarized below.

In a fourth case, the actions of the Office of the Secretary of Defense in filling a competitive service position with a Schedule C employee suggested that an unfair preference might have been given to the employee.

The employee was a systems engineer for a computer consulting firm for more than 3 years. She was appointed to a temporary Schedule C GS-12 staff assistant position in March 1989. In October 1989, the employee was converted to a career-conditional GM-13 computer specialist position. The career position was located in the same organization as the Schedule C position, Financial Management Systems Integration, Office of the Deputy Director, Assistant Secretary of the Army.

On June 30, 1991, the employee was transferred to a new GM-13 computer systems analyst position in the Office of the Secretary of Defense, Director of Defense Information. The new position, requested on May 22, 1991, had been established on May 30.

On July 5, 1991, the director asked OPM to approve a new Schedule C GM-14 special assistant position for the employee, just 5 days after the employee had been assigned to the new GM-13 computer systems analyst career position. OPM approved the request on July 12, and the employee was converted to the Schedule C position on August 4, 1991. The career GM-13 computer systems analyst position was not refilled.

The employee continued serving in the special assistant position until October 1992. On October 22, 1992, a request for personnel action was

authorized to convert the employee back to the career service in a GM-13 computer systems analyst position almost identical to the one she had been assigned to 16 months earlier but had served in for only about 1 month. The only significant difference in the two position descriptions was that the new one contained an introductory paragraph that said the incumbent must possess insightful knowledge of the deputy director's viewpoints, as well as the director's, on the work covered by the position. According to a personnel specialist, this represented an update of the duties of the position.

The need for the 1991 creation of the computer systems analyst position, as well as the 1992 position update, appears doubtful. It would seem incongruous that if the 1991 position had been essential, it would have been filled for only about 1 month and then, after about 16 months, be updated and filled. The fact that the position was vacant for 16 months raises the question of whether the agency was filling a bona fide management need or merely using an updated position to convert the employee. OPM did not review the merits of this conversion because the employee had acquired competitive status prior to her Schedule C appointment.

In a fifth case, the Department of State's action in filling a new competitive service position with a Schedule C employee suggests that a conversion-in-place occurred. The Schedule C GS-12 staff assistant position and the career GS-12 staff assistant position were both in the Office of the Deputy Secretary of State and the incumbents of both positions reported to the same official. The duties and responsibilities of the career position were substantially similar to the duties and responsibilities of the Schedule C position. In addition, the new competitive service position description noted that it was replacing the excepted service position description.

The employee had been appointed to the excepted service Schedule C GS-12 staff assistant position on April 9, 1989. The new competitive service GS-12 position was dated June 11, 1992, and the individual was appointed to it on July 12. Comparing the excepted service position with the new competitive service position, we found that both positions were in the Office of the Deputy Secretary of State, the incumbents reported to the deputy secretary, and both positions had substantially similar duties. The competitive position included five of seven groupings of duties that had constituted the Schedule C position and several other groupings of duties of an administrative nature. The Schedule C position included a

requirement for a confidential relationship, but the competitive position did not.

The Department of State advertised the competitive position under its merit promotion plan and accepted applications from department employees from June 17 to July 1, 1992. The area of consideration was limited to Department of State employees. The Department of State determined that 10 of the 12 individuals who applied for the position were qualified and referred them to the selecting official, the Deputy Secretary of State, for consideration. As the selecting official, the deputy secretary chose the Schedule C employee who was already in the position reporting to the deputy secretary.

According to personnel officials we spoke with, the Department of State's general policy of filling certain staff assistant and related positions in the Office of the Secretary through Schedule C appointments had undergone modification. The general policy had been that such positions required a confidential relationship that would justify a Schedule C appointment. This was changed so that the official to whom the incumbent of such a position reported determined on a case-by-case basis the need for a confidential relationship. In this case, it was determined that a confidential relationship was not needed to perform the duties of the staff assistant position and action was initiated to create and fill the position by competitive appointment. This resulted in the creation of the competitive position and the selection of the employee. A personnel official said they had supported the earlier policy of designating all such positions as Schedule Cs and had pointed out to department officials that the change of policy and subsequent conversions of incumbents to the competitive service might raise questions of propriety. The official also recognized, however, that management has the discretion to make such a change of policy.

The new administration, however, has adopted the former policy that those types of positions generally require a confidential relationship with the official to whom the incumbent of the position reports and is filling them through Schedule C appointments. Accordingly, the competitive service GS-12 staff assistant position that the former Schedule C employee had occupied was reestablished as a Schedule C position. The employee had previously transferred to another position within the department.

Because the Schedule C employee had obtained competitive status earlier, she was eligible to be reinstated into the competitive service.

Consequently, the merits of this conversion were not reviewed by OPM under its conversion review process. OPM's conversion review does not provide for identifying and reviewing conversions before an appointment is made when conversions are done by career reinstatement.

In a sixth case, similar to the fifth case, State Department officials decided to replace a Schedule C position with a career position by eliminating the requirement for a confidential relationship. As such, it suggests that the action amounted to a conversion-in-place.

The Schedule C excepted service position was a GS-11 staff assistant in the Policy Planning Staff office, and the position in the competitive service was a GS-11 staff assistant in the same office. The reporting relationships of the Schedule C position and the competitive position were the same, and the responsibilities and duties were indistinguishable. In addition, the new competitive service position description noted that it was replacing the excepted service position description.

The employee had been appointed to the excepted service Schedule C GS-11 staff assistant position on June 16, 1991. The new competitive service GS-11 position was dated April 26, 1992, and the employee was appointed to it on June 28. Comparing the excepted service with the new competitive service position, we found that both positions were in the Policy Planning Staff office and the incumbents reported to the Director of the Policy Planning Staff. Although both positions had identical duties, the Schedule C position included a requirement for a confidential relationship, but the competitive position did not.

The Department of State advertised the competitive position under its merit promotion plan and accepted applications from department employees from May 6 to May 20, 1992. The area of consideration was limited to Department of State employees. The department determined that 9 of the 14 individuals who applied for the position were qualified and referred them to the selecting official, the Director of the Policy Planning Staff, for consideration. As the selecting official, the director chose the Schedule C GS-11 staff assistant employee who was already in the position reporting to the director.

As in the previous case, the official to whom the employee in the Schedule C position reported determined that a confidential relationship was not needed to perform the duties of the staff assistant position. Therefore, the official initiated action to create and fill the position by competitive

appointment, which resulted in the creation of the competitive position and the selection of the employee.

Because of the current administration's policy that these types of positions generally do require a confidential relationship, the same employee, who was in the competitive service as a GS-11 staff assistant, was reassigned to another position so that the staff assistant position could be filled by a Schedule C appointment.

Because the Schedule C employee had obtained competitive status earlier, the employee was eligible to be reinstated in the competitive service. Consequently, the merits of this conversion were not reviewed by OPM under its conversion review process.

Propriety of Ramspeck Act Appointments

We identified and reviewed 50 Ramspeck Act appointments that took place between January 1, 1992, and March 31, 1993. Although all adhered to applicable procedural requirements, 11 involved circumstances that raised concerns. Four of these appointments are discussed in chapter 2, and the remaining seven are summarized below. Six of these involved the issue of whether the circumstances of the individuals' congressional employment should continue to be considered as establishing eligibility under the act, and one involved the question of whether the individual might have received preferential treatment that enhanced her prospect for a career appointment.

Reestablishing Ramspeck Act Eligibility by Returning to Congress for Short Periods

In addition to the two Ramspeck Act cases summarized in chapter 2, six additional Ramspeck Act appointments raise questions as to whether the circumstances surrounding these appointments should continue to be considered as establishing eligibility under the act. The individuals' eligibility for Ramspeck Act appointments had expired because 1 year had elapsed since their last legislative branch employment. To renew their eligibility, the individuals took congressional assignments and almost immediately started the administrative process to obtain career appointments using the Ramspeck Act noncompetitive appointment authority (see table 2.2).

Case 1: This case is discussed in chapter 2 of the report.

Case 2: The individual reestablished her Ramspeck eligibility by returning to Congress after 9 years and 11 months and remaining in the position 5 days.

The individual's qualifying employment had been obtained in Congress from 1975 to 1982. After positions both in and out of government, she accepted a noncareer Schedule C position with the Department of the Interior (DOI) in October 1991. On November 6, 1992, after making inquiries about her Ramspeck Act eligibility and noncompetitive career appointment opportunities at DOI, the individual resigned from her noncareer position with DOI. On the same day, DOI approved the new career position to which the individual was subsequently appointed. She began work for a congressional committee on November 9, 1992, knowing that it was a 1-week special project. On November 10, she applied for and on November 12 was approved for a noncompetitive appointment to the new career position at DOI under the Ramspeck Act authority. The appointment became effective on November 16.

After the Committee Chairman who certified the individual's Ramspeck eligibility became aware of the facts of the appointment, he wrote to OPM on December 30, 1992, and repudiated his certification. He stated that the individual was hired to work for a subcommittee for 5 days and that he had not known the individual was coming from outside, mistakenly assuming the individual was already on the personal staff of a committee member. The Chairman stated that had he known that the individual was coming to the committee from DOI for a short-term position during which a Ramspeck application would be requested, he would never have approved the individual being hired by the committee.

OPM examined this case as part of its special review of transition appointments at DOI. As a result of its review, OPM concluded that the appointment was improper and directed DOI on February 3, 1993, to terminate it. OPM determined that the totality of the evidence showed that the Ramspeck Act was used improperly to appoint the individual to a position specifically set up for this purpose. It also concluded that the separation was not involuntary and not due to circumstances beyond the employee's control.

DOI terminated the appointment on April 2, after concluding that it was improper. The individual appealed her termination to the Merit Systems Protection Board (MSPB). MSPB denied her appeal on September 24, 1993, on the grounds that her separation from congressional employment was not involuntary because the appointment had been accepted for a specified number of days and she had been separated at the expiration of that term. Subsequently, the individual petitioned MSPB to review this decision. Although MSPB found that the petition did not meet the criteria for review, it reopened the case on its own motion. On March 15, 1994, MSPB reaffirmed its initial decision.

OPM also referred the case to the Office of Special Counsel (OSC) as a possible prohibited personnel practice. In a letter to OPM dated May 5, 1993, OSC stated that, based upon OPM's report, there apparently would be sufficient information to continue an independent investigation concerning potential violation of 5 U.S.C. 2302(b)(6). That provision prohibits granting any preference or advantage not authorized by law, rule, or regulation to an employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment.

However, because DOI terminated the appointment, and the individual's noncareer supervisor resigned after the presidential transition, OSC concluded that there were no further corrective or disciplinary actions it could pursue if its investigation found that a prohibited personnel practice had taken place. Accordingly, OSC ended its investigation.

Case 3: The individual reestablished his Ramspeck eligibility by returning to Congress after 3 years and 8 months and remaining in the position for 7 days.

The individual worked in Congress from 1978 to 1989 and in March 1989 accepted a temporary noncareer Schedule C position with the Department of Commerce and the following month was converted to a permanent noncareer Schedule C position. After that, he held several noncareer positions until May 29, 1992. At that time, Commerce involuntarily separated him from the noncareer position because there was no basis to continue excepting his position from the competitive service under Schedule C authority.

The individual returned to Congress on October 5, 1992, to a part-time position with the same Member of Congress he had worked for in 1989 and was separated from this position shortly thereafter on October 11, 1992, because of an office reorganization that abolished his position. On October 15, the Member of Congress certified that the individual had been involuntarily separated and, therefore, was eligible for a noncompetitive career appointment under the Ramspeck Act.

On November 1, the individual was noncompetitively appointed to a new position with the Small Business Administration (SBA). The position had been requested and approved on October 20, 1992. By October 30, the noncompetitive career appointment of the individual under the Ramspeck Act authority had been reviewed and approved by SBA.

Case 4: The individual reestablished his Ramspeck eligibility by returning to congressional employment after 4 years and remaining in a position for 8 days with a Congressman who had not been reelected.

The individual had worked in Congress from 1967 to 1989. He then held a noncareer SES appointment at DOI until he resigned on November 30, 1992. At the time of his resignation, he was earning $112,100 per year.

On December 1, 1992, the individual returned to a position on the staff of a Member of Congress; the position paid $1,200 per year, a substantial reduction from his DOI salary. The following day, the individual obtained the Member's certification that he would be involuntarily separated because the Member had not been reelected; therefore, the individual would be eligible for a noncompetitive career appointment under the Ramspeck Act.

On December 3, the individual applied for a new career position at DOL. DOI created the position on November 24 and, on the same day, requested, authorized, and approved a personnel action to appoint the individual noncompetitively under the Ramspeck Act to the new position. All this took place days before the individual had resigned from his noncareer position.

The Assistant Secretary for Policy, Management, and Budget approved the appointment on December 7, overruling a recommendation made by the Director of Personnel. The director recommended that the case be referred to the Office of the Solicitor for review and concurrence as to the legality of the appointment and its compliance with federal personnel merit principles. He was concerned that the appropriate documentation from a Member of Congress was executed 1 day after the individual began his most recent legislative service. He also pointed out that the Member of Congress had lost his most recent bid for reelection and, as a result, could not have offered the individual a continuing position. The assistant secretary, however, said that it was not the job or responsibility of the executive branch to second-guess the legislative branch on Ramspeck certification, and that Congress had qualified the individual for Ramspeck eligibility. The noncompetitive appointment to the career position became effective on December 9, 1992.

OPM examined this case as part of its special review of transition appointments at DOI. OPM concluded that the appointment was an improper exception to the normal competitive procedures required for entry into the competitive service and on February 3, 1993, directed DOI to terminate the appointment. OPM determined that the totality of the evidence showed that the Ramspeck Act was used improperly to appoint the individual to a position specifically set up for this purpose. DOI terminated the appointment of the individual effective March 25, after concluding that it was improper. The individual was given the opportunity but declined to appeal his termination to MSPB.

The case was referred to OSC to determine if the appointment constituted a prohibited personnel practice. On May 5, 1993, OSC stated that, on the basis of the OPM report, there apparently would be sufficient information to continue an independent investigation of a potential violation of 5 U.S.C. 2302(b)(6).

Because DOI terminated the appointment and the noncareer supervisor of the individual resigned after the presidential transition, OSC concluded that there were no further corrective or disciplinary actions it could pursue if its investigation found that a prohibited personnel practice had taken place. Accordingly, OSC ended its investigation.

Case 5: The individual reestablished her Ramspeck eligibility by returning to congressional employment after 5 years and 7 months and remaining in the position for 12 days.

The individual had worked in Congress from 1970 to 1987. She was given a temporary appointment at DOI on June 11, 1987, and on June 21, was converted to a permanent noncareer Schedule C position at the GM-14 level. On June 15, 1988, the position was upgraded to the GM-15 level, and the individual was promoted to the position on July 17.

The individual resigned from the noncareer position on December 5, 1992, and 2 days later joined the staff of a Member of Congress who was planning to retire. She obtained a Ramspeck certification on December 14, stating that she would be involuntarily separated because the Member was retiring. The individual terminated her employment on December 18, and applied to DOI for a noncompetitive career appointment under the Ramspeck Act on December 21. She received a career appointment on January 11, 1993, in the same office in DOI from which she had resigned. The position to which she was noncompetitively appointed had been created in July 1992, and it apparently had remained vacant since that time. The new career position had some of the same duties and responsibilities as the GM-15 noncareer position.

The Assistant Secretary for Policy, Management, and Budget approved the appointment on January 4, 1993, and again informed the Director of Personnel that he had not changed his position that Ramspeck certification was bestowed by Congress. The director, on December 29, 1992, had recommended that this case be referred to the Office of the Solicitor for review and concurrence as to the legality of the appointment and compliance with federal personnel merit principles. The director

informed the assistant secretary that the personnel office had reviewed the proposed action and was making the recommendation because of OPM's and our ongoing reviews of DOI's use of the Ramspeck Act appointment authority.

On March 25, 1993, the Director of Personnel informed OPM that he believed there was some evidence in OPM's investigation of transition appointments at DOI that the individual's separation from the congressional position was voluntary and not because of circumstances beyond her control. That would make her appointment invalid. The director also stated that the investigation alluded to the fact that the position was created for the individual. To resolve the director's concerns, the DOI Inspector General was asked on April 20, to conduct an investigation to determine if remedial action was necessary. As of March 1994, DOI was considering what action, if any, to take concerning this appointment.

Case 6: This case is discussed in chapter 2 of the report.

Case 7: The individual reestablished her Ramspeck eligibility by returning to Congress after 7 years and 3 months and remaining in the position for 20 days.

The individual worked for Congress from 1980 to 1985. She left congressional employment in 1985 and worked in various private-sector positions from October 1985 through August 1992.

On November 1, 1992, the individual returned to Congress and accepted a position with the same committee that had employed her before; however, on November 2, she applied to DOI for a noncompetitive appointment under the Ramspeck Act. On November 13, the individual obtained a Ramspeck Act certification based on the fact that she was to be involuntarily separated from her congressional employment on November 20 because of severe budget constraints.

On November 17, DOI approved the individual's noncompetitive appointment to a career position under authority of the Ramspeck Act. The appointment was effective on November 22, 1992.

Case 8: The individual reestablished his Ramspeck eligibility by returning to work for Congress after 2 years and 4 months and remaining in the position for 61 days.

With the exception of a 4-1/2-year period, the individual worked for Congress in various positions from 1976 to 1990. In March 1990, he left congressional employment and accepted a position in the private sector.

The individual returned to congressional employment on June 8, 1992, to the same position and with the same Member of Congress. On June 24, he applied for a career position at DOI. Further, on June 30, the individual obtained the Member of Congress' certification that he would be separated involuntarily because his position was to be eliminated in an office reorganization.

On July 8, DOI made a tentative offer of employment to the individual. On August 4, the Assistant Secretary for Policy, Management, and Budget approved the request to noncompetitively appoint the individual to a career position under the Ramspeck Act authority. On August 7, the personnel office processed the action. The individual left his congressional employment the same day, and the noncompetitive career appointment became effective on August 9, 1992.

Preferential Treatment

The circumstances surrounding two Ramspeck Act appointments suggest that individuals might have been given preferential treatment that may have enhanced their prospects for career service positions. One of the cases is summarized in chapter 2 and the other case is discussed here.

In this case, an individual was appointed noncompetitively to a career position at DOI under the Ramspeck Act authority. The circumstances surrounding this appointment raise questions as to whether the career position was created for the individual, and whether DOI made a determination that the individual was qualified for the position.

The individual had been employed in various congressional staff positions dating back to 1985, but left congressional employment on October 15, 1992. On October 22, her former congressional employer certified that she had been separated involuntarily because her position had been redesigned during an office reorganization. From October to November, the individual was a volunteer for the Clinton-Gore campaign.

On January 12, 1993, the individual submitted an application for federal employment (SF 171) for a GM-14 management analyst position that closed on January 5, 1993, but was not selected for that position. Subsequently, DOI redescribed a management analyst position for the

individual on January 15, 1993, and classified it at the GS-12 level on January 18. Both the GM-14 and GS-12 positions were located in the same office under the Assistant Secretary for Policy, Management and Budget. At the time, the individual had not formally applied for the GS-12 position but had prepared only an unsigned SF 171 for the GM-14 position. On January 20, 1993, before leaving office, DOI's Assistant Secretary for Policy, Management and Budget, the authorizing official for Ramspeck Act appointments, approved an undated and unsigned request to noncompetitively appoint the individual under the Ramspeck Act to the career GS-12 position. No mention was made of her qualifications for the position.

Following the assistant secretary's approval, DOI initiated a request for personnel action to noncompetitively appoint the individual to the career position under the authority of the Ramspeck Act. The personnel action was reviewed and approved by DOI officials between January 22 and January 29, and the individual was notified on January 29 that her appointment to the position would be effective February 1. The individual was also informed that when reporting for duty on February 1, she would have to complete the necessary papers for the appointment and sign her SF 171.

Because the individual never formally applied for the position until after she was notified of the appointment, it appears that DOI may have created the career position for her.

Comments From the Office of Personnel Management

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

OFFICE OF THE DIRECTOR

FEB 28 1994

Ms. Nancy Kingsbury
Director
Federal Human Resource
Management Issues
General Accounting Office
Washington, DC 20548

Dear Ms. Kingsbury:

Thank you for the opportunity to comment on the draft report on PERSONNEL PRACTICES: Presidential Transition Conversions and Appointments: Changes Needed.

I share your concerns about inappropriate uses of noncompetitive appointing authorities. As the report notes, OPM also reviewed two of the cited appointments and found them to be improper. After that review, OPM and congressional staff members discussed possible changes to the Ramspeck authority (5 U.S.C. 3304(c)) to reduce the potential for misuse. The recommendations in the draft report provide useful alternatives for consideration.

The report also recommends that OPM review all proposed appointments of recent political appointees to career positions in the competitive or excepted service during a Presidential transition. OPM review of excepted appointments and noncompetitive reinstatements for compliance with legal principles and requirements may be an appropriate deterrent to improper actions. I should point out, however, that those actions normally require minimal public notice and competition. As long as an action complies with legal requirements and with the hiring agency's own policies, I do not believe OPM should impose additional requirements during a Presidential transition.

The draft report also recommends that OPM automatically suspend processing most career Senior Executive Service (SES) appointments by Qualifications Review Boards (QRBs) during Presidential transitions. This recommendation would affect all QRB actions Governmentwide. Thus, it would result in the suspension of cases involving the career SES appointments of former competitive service employees as well as cases involving career SES appointments of former noncareer employees.

As the report indicates, OPM did not suspend QRB activities Governmentwide during the last Presidential transition because

neither the White House nor the Clinton transition team requested such action. However, the comments in the report about OPM continuing "business as usual" need to be placed in context.

The "business as usual" included carrying out existing OPM policy on transitions. Thus, OPM continued to suspend QRB activities for individual agencies during the transition where that agency head had left or announced an intention to leave. OPM also continued to prohibit the conversion of any noncareer SES employee to a career SES appointment in the employee's current position.

Even without the suspension of QRBs between the Presidential election in November 1992 and the inauguration in January 1993, there were no conversions of noncareer employees to career SES appointments during that period.

Now on pp. 13-14.

I also have a few editorial suggestions. The reference on page 14 of the report to OPM's monitoring of proposed conversions of noncareer SES employees should be revised to delete "SES." OPM reviews any proposed conversion of a noncareer SES or a Schedule C employee to a career SES appointment for compliance with merit staffing procedures before submitting the case to a QRB.

The draft report contains numerous references to career and noncareer SES **positions**. By statute, the SES has only General and Career Reserved positions. The report should be revised to refer to career and noncareer SES **appointments**.

Sincerely,

James B. King
Director

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