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



B-130503

OCT 8 1976

The Honorable John E. Moss  
House of Representatives

Dear Mr. Moss:

In your January 28, 1976, letter, you asked that we review certain practices associated with executive appointments to positions in the competitive service for the period 1969 through 1975. Your letter expressed interest in four general areas followed by nine specific questions related to those areas. In addition, you asked us to look at the operation of Charles Ryan, formerly of the Civil Service Commission, concerning his former activities with that agency. You also asked how agencies and Cabinet offices were treated as to Limited Executive Assignments, Noncareer Executive Assignments, and Career Executive Assignments.

We reviewed records and reports at the Civil Service Commission and discussed numerous appointments with its officials. We also reviewed the executive orders and Commission regulations relating to limited executive appointments and "Rare Bird" appointments to positions in the competitive service. To avoid duplicating the House Post Office and Civil Service Committee's investigation of merit system abuses and the Commission's self-inquiry into merit staffing, we did not address the operation of Charles Ryan or how agencies and Cabinet offices were treated during this period. The report, "A Self-Inquiry into Merit Staffing" <sup>1</sup>/ <sub>cited deviations from merit practices and identified organizational and procedural problems within the Commission. It also described instances of misuse of staffing authorities and procedures that facilitated granting preferential treatment to individuals, systemic shortcomings that were subject to misuse both by the Commission and agencies, and weaknesses in its enforcement policies and posture before 1973. We did not evaluate the Commission's report.</sub>

Executive Order 11315 provides that limited executive assignments may be authorized when an appointment is expected to be of limited duration or when there is an urgent and unusual staffing need. The Commission did not comply with either requirement in authorizing several agencies to use

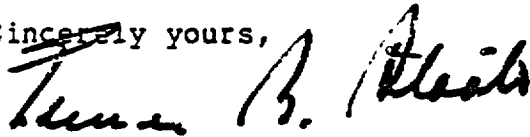
<sup>1</sup>/Merit Staffing Review Team, U.S. Civil Service Commission, May 1976.

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limited executive assignments. However, we found no evidence in official commission personnel records that political considerations were applied to limited executive assignments or that the Commission approved any improper "Rare Bird" appointments.

The enclosure includes responses to your general areas of interest and your specific questions, and is arranged so that the general area and related specific questions are grouped together followed by our answers. Also, as your office requested, formal comments by Commission officials on this report were not obtained. We did, however, informally discuss the reported facts with them and included their comments where appropriate.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas B. Heath".

Comptroller General  
of the United States

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REVIEW OF CERTAIN PRACTICES  
ASSOCIATED WITH EXECUTIVE APPOINTMENTS  
IN THE COMPETITIVE SERVICE

APPLICATION OF PROVISIONS OF EXECUTIVE ORDER  
11315 TO APPOINTMENTS TO POSITIONS IN  
THE COMPETITIVE SERVICE, PARTICULARLY USE OF  
LIMITED EXECUTIVE ASSIGNMENTS FOR  
PURPOSES OTHER THAN THAT SPECIFIED IN EXECUTIVE  
ORDER 11315 AND THE FEDERAL PERSONNEL MANUAL

- "Did the Civil Service Commissioners actually have authority under E.O. 1/ 11315 to authorize use of temporary (LEA) 2/ appointments for reasons cited?"
- "When was the Commissioner's decision actually rendered and who participated and documented the action?"
- "Should such an important decision have been published?"
- "If an October, 1969 decision of the Commissioners constituted the basis for use of (LEA) appointments to certain positions in the competitive service, on what authority were such appointments made prior to October, 1969?"
- "Further, if the decision was made in October, 1969, to authorize temporary (LEA) appointments pending a study; why was the Commission inconsistent by authorizing career appointments subsequent to October, 1969?"
- "Why did the Commission permit agencies to go to the added expense of following merit staffing requirements if it had been decided by the Commissioners in October 1969, that such positions would only be filled by temporary (LEA) appointments?"

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1/Executive Order.

2/Limited Executive Assignment.

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--"Was there actually an October, 1969, decision by the Commissioners to authorize temporary (LEA) appointments, pending a study; or was this actually a 1974 decision made retroactive to October 1969, to conceal apparent violations of civil service rules and merit principles?"

--"What was the involvement and position of the minority member in this potential open invitation to politicize regional positions?"

Executive Order 11315, dated November 17, 1966, provides in part that

"The Commission may authorize agencies to fill a position covered by this Rule by a Limited Executive Assignment when:

- "1. the position is expected to be of limited duration; or
- "2. the agency concerned establishes an unusual need for urgent staffing that can not adequately be met under the procedures required for career executive assignments."

The Civil Service Commission (CSC), in authorizing the Departments of Housing and Urban Development (HUD); Health, Education, and Welfare (HEW); and Labor; the Office of Equal Opportunity (OEO), and the Small Business Administration (SBA), to use LEA appointments to fill regional director positions, did not comply with either requirement in the executive order. CSC authorized the use of LEA in response both to the Secretary of HUD's request that regional director positions be noncompetitive and to the apparent preferences of the White House staff.

After completing a study in November 1974, CSC found LEAs inappropriate for continuing regional director-type positions. These positions are well established within agencies and are continuing functions in field offices. In general, these positions do not present an unusual need for urgent staffing.

The CSC study pointed out as with other continuing positions, it should be possible to anticipate vacancies and to

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complete some or all of the staffing needs before an incumbent leaves. In the case of unexpected vacancies, it should be possible to follow merit procedures without excessive time spent in obtaining a replacement. The requirements of these critical jobs are well known and the agency head should maintain an updated list of eligible candidates. A CSC official told us that no new conditions existed in 1969 that would satisfy an unusual need for the urgent staffing.

The Director, Bureau of Executive Manpower said that White House personnel wanted the CSC to convert regional director positions to a noncareer status. The new federalism philosophy, which the Nixon administration began advocating in 1969, was intended ultimately to involve regional directors in the formulation and advocacy of administration policy. This would qualify the positions for noncareer executive assignments.

CSC personnel were hesitant about releasing the director positions from the career service until it was clear that regional directors would be involved in formulating and advocating administration policy. Postponing the decision, by using LEAs, was considered an acceptable interim decision to which both CSC and the White House staff agreed. However, in retrospect, the Director said he believed a better solution would have been issuance of an executive order similar to Executive Order 11839, dated February 18, 1975, exempting certain regional director positions from the career service.

CSC made the decision to use LEAs for regional directors on December 1, 1969. All three Commissioners approved the decision. The decision was published in the December 1, 1969, Minutes of Proceedings of the U.S. Civil Service Commission. The minutes were not distributed routinely outside CSC, but copies are available in CSC's library. According to CSC officials, this is the standard procedure for publishing opinions, unless a decision is considered significant or controversial. CSC did not consider this decision either significant or controversial at the time it was made. CSC did notify those agencies specified in the minutes--HUD, HEW, OEO, Labor, and SBA--that all regional director positions would be filled through LEAs.

As noted above, Executive Order 11315 authorizing LEAs was effective November 17, 1966. Before the order was issued, CSC did not have special authority to appoint personnel to career supergrade positions without competition.

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We did not find any career appointments to regional director positions subsequent to October 1969, and CSC officials said they did not know of any. We did find instances in which career personnel accepted LEAs to these positions.

Agencies did, in some cases, follow merit staffing procedures to fill positions with LEAs. CSC provided lists of eligible candidates. The agencies considered personnel from within the agency, within the Government, and from outside the Government. Agencies submitted lists of candidates considered and evaluated to CSC for review. Thus, CSC was aware of agency efforts even though the agency incurred the expense and conducted the search. The Director, Bureau of Executive Manpower said that these merit procedures were not required for filling positions with LEAs, since candidates must only be minimally qualified to fill authorized LEA positions. This official also said that CSC would provide any assistance an agency requested and suggested that agencies might have applied merit procedures to compare qualifications of their candidate with qualifications of CSC-recommended candidates.

Commenting on the decision to use LEA appointments, the minority member of the Commission wrote:

"I hope we have the authority to stipulate that functions placed into noncareer and selected through use of EAS 1/ will stay noncareer for at least the rest of this century. This pingpong at each transition is hard on everyone concerned."

In reviewing the personnel files of the individuals approved for LEA appointments, we noted that the minority member approved all that were submitted to him. The only appointments he did not approve were those acted on while he was away on official business.

APPOINTMENTS AUTHORIZED BY THE  
CIVIL SERVICE COMMISSION (AT BOTH  
"SUPERGRADE" OR EXECUTIVE LEVEL) TO  
POSITIONS IN THE COMPETITIVE SERVICE  
UNDER CIVIL SERVICE RULE 3.2, THE  
SO-CALLED "RARE BIRD" AUTHORITY

Section 3.2 of Civil Service rule III, referring to appointments without competitive examination in rare cases, provides that

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1/Executive Assignment System.

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"Subject to receipt of satisfactory evidence of the qualifications of the person to be appointed, the Commission may authorize an appointment in the competitive service without competitive examination whenever it finds that the duties or compensation of the position are such, or that qualified persons are so rare, that, in the interest of good civil service administration, the position cannot be filled through open competitive examination. Any person heretofore or hereafter appointed under this section shall acquire a competitive status upon completion of at least 1 year of satisfactory service and compliance with such requirements as the Commission may prescribe. Detailed statements of the reasons for the noncompetitive appointments made under this section shall be published in the Commission's annual reports."

Between 1969 and 1975 the Commission approved 22 individuals for Rare Bird appointments. The following chart shows the number of appointments by year.

<u>Year</u>	<u>Number of appointments</u>
1969	3
1970	4
1971	6
1972	2
1973	3
1974	4
1975	0
	<u>22</u>

Of the 22 people, 4 were still employed by the Government in December 1975. One had converted to career service; one served in a noncareer executive assignment; and two served in limited executive assignment positions. The two individuals serving in limited executive assignment positions, although listed in the CSC's annual report, apparently had not accepted their Rare Bird appointments.

We found no evidence in official CSC personnel records or through conversations with CSC officials that any of the 22 individuals were improperly appointed.

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POLITICAL CLEARANCE BEING REQUIRED FOR  
APPOINTMENT TO POSITIONS IN THE  
COMPETITIVE SERVICE, PARTICULARLY WHERE  
THE CIVIL SERVICE COMMISSION AUTHORIZED  
LEA OR RARE BIRD APPOINTMENTS

"Was there open or tacit agreement between the CSC's Chairman and the White House and/or certain agency heads that political considerations could be applied where LEA appointments were authorized, even though the position remained in the competitive service and such considerations would have been in violation of civil service rules?"

We found no evidence in CSC official personnel records or through conversations with officials that there was open or tacit agreement between the CSC Chairman and the White House or certain agency heads that political considerations could be applied to LEA appointments.

SCOPE AND CIRCUMSTANCES INVOLVED IN  
REMOVAL OF SUPERGRADE OR EXECUTIVE LEVEL  
POSITIONS FROM THE COMPETITIVE SERVICE

Executive Order 11839, dated February 18, 1975, apparently is the only action taken since 1969 to remove executive positions from the career service. This order removed 60 regional director/administrator, or the Secretary's principal representative positions from the career service in the Departments of Health, Education, and Welfare; Housing and Urban Development; Transportation and Labor; the Small Business Administration; and the Environmental Protection Agency. Commission officials told us they were not aware of any Commission statutory action removing executive level positions from the competitive service.



**DOCUMENT RESUME**

00003 - [A0100075]

**Audit Coverage of Internal Financial Operations. B-160759;**  
FGMSD-76-84. October 8, 1976. 10 pp.

Report to Secretary, Department of Agriculture; by D. L. Scantlebury, Director, Financial and General Management Studies Division.

Issue Area: Internal Auditing Systems (200); Internal Auditing Systems: Sufficiency of Federal Auditors and Coverage (201).  
Contact: Financial and General Management Studies Div.  
Budget Function: Agriculture (350).  
Authority: Accounting and Auditing Act of 1950 (31 U.S.C. 66a).

The Accounting and Auditing Act of 1950 requires the head of each agency to establish and maintain systems of internal control, including appropriate internal audit, in order to provide effective control over and accountability for all funds, property, and other assets for which the agency is responsible. The internal audit operations of the Department of Agriculture were reviewed to determine the extent to which financial audits are made of the Department's revenues, expenditures, assets, and liabilities. The review concentrated on audits of internal financial areas performed by the Office of Audit during fiscal years 1973 through 1975, with emphasis on fiscal year 1975 coverage. Findings/Conclusions: The Office of Audit issued 8,289 audit reports this period including 2,576 in fiscal year 1975. Almost all of the reports include a review of some aspect of financial operations as well as compliance with laws and regulations, reviews of the economy and efficiency of operations, or results of programs. About 67% of the audit effort was expended on internal operations and the remainder on external grants and contracts. The 1975 audits covered the internal financial areas of cash, receivables, advances, property, liabilities, administrative control of funds, revenues, costs, and financial reports for programs representing over 99% of Agriculture's obligations. The current audit effort provides adequate internal financial audit coverage for most of the operations of the Department. (Author/SC)