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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-199588

AUGUST 26, 1980

The Honorable Joseph M. McDade
Committee on Small Business
House of Representatives



113420

Dear Mr. McDade:

Subject: [Rotation Policy for SBA District Directors
(FPCD-80-71)]

In response to your request in November 1979 and subsequent discussions held with your staff in early 1980, we obtained information on certain aspects of the Small Business Administration's (SBA's) implementation of a rotation program for its district directors. In this respect, we have determined, to the extent possible, the costs that were involved in the first round of rotations, profile information on the 54 incumbent district directors, the rationale for the rotation policy, the criteria used for selecting directors for rotation, and the extent such a policy is used by other Federal agencies. We reviewed available documents that were related to the development and implementation of the policy, personnel files of the district directors, and interviewed headquarters officials involved in the policy development.

SBA has been criticized in recent years for questionable personnel practices and program abuses. In August 1974 the U.S. Civil Service Commission (now the Office of Personnel Management) issued a report to the SBA Administrator entitled, "Alleged Political Influence in Personnel Actions at the Small Business Administration." The Commission concluded that:

"Sponsorship by partisan political figures, political affiliations and political clearances were factors in the selection of four district directors in SBA; in the absence of a viable

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staffing plan for district director positions, SBA has permitted a personnel management vacuum to exist in which political interests are allowed to influence appointments to these key positions.

"A number of improper or illegal personnel actions have been taken by SBA as a result of efforts to provide preferential treatment to some candidates and employees; and in some cases, the personnel actions which resulted from the preferential treatment were based on considerations of political support."

The Commission recommended and the SBA Administrator agreed to:

- Develop and implement a merit plan for filling SBA district director position vacancies.
- Review and revise as necessary internal SBA policies on recruiting and staffing.
- Review and revise as necessary procedures for receiving, considering, handling, and disposing of applications for employment.
- Conduct a comprehensive study of SBA district director positions to assure that grade levels conform to position classifications standards.

In November 1975 we reported on the personnel management practices at SBA. 1/ The report noted that SBA had generally taken actions to correct irregularities identified by the Civil Service Commission. Also, we conducted an employee opinion survey that showed most employees considered SBA's personnel program to be good or fair. Specific allegations of improprieties were made by SBA employees, but we were unable to document that particular actions were improper.

SBA's implementation, in October 1979, of a periodic rotation policy for its district directors, was widely criticized and raised new charges of political intrusion in personnel management at SBA. SBA officials stated that the

1/"Personnel Management in the Small Business Administration" (FPCD-76-10, Nov. 28, 1975).

rotation policy was implemented as part of a series of management and organizational changes to improve the agency's efficiency and delivery of services to the small business community. These changes include reorganizing the central and regional offices and implementing a merit pay system and Senior Executive Service (SES) under the Civil Service Reform Act. In announcing the rotation policy, the SBA Administrator stated:

"Our intent is to enhance the career development of these key personnel through the expansion of their knowledge, skills, and experiences. We expect that this rotation policy will provide exposure to varying economic and geographic conditions; which in turn will help the district directors develop versatility and assure a greater uniformity and consistency in service to our clientele."

Federal agencies have full authority to promote, demote, and reassign employees for reasons that would promote the efficiency of the service. SBA's rotation policy does not violate any law or regulation and a number of Federal agencies also have rotation policies requiring periodic reassignment of certain employees. While SBA's rotation policy, itself, does not violate any law or regulation, we feel that the policy was not adequately developed and implemented. The SBA district directors were not formally consulted on the need for such a policy nor given an opportunity to provide input into its development. Also, alternative arrangements were not considered nor explored with directors who might refuse to accept a reassignment. In the interests of fairness, equity, and cost to the Government, we feel that, at a minimum, these steps should have been taken before implementing the policy.

At the time the rotation policy was implemented, 54 of the district directors were subject to the policy. Sixteen were scheduled for the initial rotations, however, only seven were eventually rotated. Six of the directors chose to retire rather than accept geographic relocation. Three district directors refused the reassignments and were offered and placed in other positions. Also, 20 other district directors were notified that they would be considered for rotation within the next 18 months. Although we could not obtain complete information on the costs associated with the rotations, SBA authorized \$117,596 for the relocation of the seven directors. SBA initially estimated that the

rotation program would cost approximately \$7,000 for each director. However, the average cost of the initial rotations is estimated at \$16,800 for each of the district directors.

The Office of Personnel Management (OPM) told us that no specific regulations or guidance are available with respect to rotations. However, OPM is now evaluating, with the General Services Administration and the Office of Management and Budget, Federal policies on geographic mobility in the civil service work force. OPM issued notice of this study in the Federal register on July 22, 1980. The study will address the issue of what the Federal Government's policy should be with respect to employee geographic mobility and relocation, and will include consideration of how much mobility is desirable, disincentives for Federal employees, and whether incentives are needed.

As you know, the Special Counsel of the Merit Systems Protection Board was also requested to conduct an investigation of SBA's rotations primarily to determine whether they were politically motivated and would constitute a prohibited personnel practice. This investigation was initiated at the request of your office and other members of the Congress and pursuant to individual complaints filed by SBA district directors affected by the rotation.

On the basis of its investigation, the Special Counsel concluded that violations of the Civil Service Reform Act and Federal regulations 1/ had occurred in selecting district directors for rotation. Specifically, the Special Counsel charged that the political affiliations and degree of political partisanship of the district directors were considered in their selection of directors to be rotated and that the rotation policy was an attempt to create vacancies by forcing retirements or resignations. As a result, the Special Counsel on July 9, 1980:

--Recommended that SBA cancel the directed reassignments and restore the affected district directors to their former positions with full reimbursement for moving and other expenses as permitted by law.

1/Sections 2302(b)(1)(E), (2), (6), (10), and (11) of title 5, United States Code, and section 4.2 of title 5, Code of Federal Regulations.

--Filed a formal complaint before the Merit Systems Protection Board against SBA's Associate Deputy Administrator for Support Services recommending that he be removed, fined \$1,000, and barred from Federal service for a period of 5 years.

Because this investigation was concurrent with our work, we did not conduct interviews with district or regional personnel so as not to interfere with or duplicate the Special Counsel's investigation. Certain information obtained by the Special Counsel and contained in its complaint against the Deputy Associate Administrator was not made available to us. SBA has been given until October 10th to consider and respond to the Special Counsel's investigative report and recommended corrective actions. If SBA disagrees and takes no corrective action, the Special Counsel may formally request the Merit Systems Protection Board to order SBA to implement its recommendations. Because of the ongoing administrative prosecution of this charge by the Special Counsel, we do not consider it appropriate to provide comments on this matter.

The enclosed information provides more details on the background and reasons for the rotation policy, the costs involved in the rotations that were made, and profiles on the 54 incumbent directors at the time the policy was implemented.

We hope this information will satisfy your needs.

Sincerely yours,



H. L. Krieger
Director

Enclosures - 3



REASONS AND BACKGROUND FOR ROTATION POLICY

SBA said they established the rotation policy for its district directors as part of a series of actions to improve the efficiency of its operations and management of program services. In 1979, the SBA central office was reorganized and involved a large number of personnel changes--17 of 26 top managers were replaced or reassigned to other positions. The regional office structure was also reorganized to place more responsibility and accountability at the regional management level. According to SBA's Associate Deputy Administrator for Support Services, these and other management changes have improved the morale of agency employees.

Although SBA initially told us that no studies or policy proposals were prepared, we obtained documents which set out the policy and discuss the pros and cons of implementing it. A formal rotation policy for district directors was considered in 1978 but was not implemented. We could not determine why the policy was not adopted at that time. The policy was considered mainly to eliminate conflicts of interest and to prevent fraud.

The rotation policy was reconsidered and adopted in 1979 as SBA introduced a number of other organizational and management changes--reorganization of the central and regional offices and implementation of a merit pay system and Senior Executive Service under the Civil Service Reform Act.

In formulating the rotation policy, SBA explored the advantages and disadvantages of implementing periodic rotation of district directors and considered the legal basis and authority for its application. The stated reasons for adopting a periodic rotation policy were to:

- Enhance the career development of district directors through expansion of their knowledge, skills, and experiences. (According to an SBA official, this does not necessarily refer to enhancement of promotion potential, but provides an opportunity to use or develop skills and knowledge which may not be needed or available in a particular district office. This would benefit SBA and improve the consistency and uniformity in services.)
- Provide district directors with more indepth exposure to varying economic and geographic conditions.

- Provide greater uniformity and consistency in services.
- Develop fresh outlooks and versatility of managers.
- Reduce favoritism toward clientele and lessen potential fraudulent activities.

According to SBA officials, another objective was to create a district director corps that would equal the SES concept. This would enable SBA to reassign directors to better accomplish the agency's mission. SBA believes that the benefit of having district directors who are knowledgeable of local economic and business conditions is offset by having a mobile pool of well-qualified directors who can rotate to offices where particular skills and expertise are needed.

The disadvantages cited in the policy documents included the costs associated with a periodic rotation program, the loss of experienced and effective directors who may choose to retire or leave the agency rather than rotate, and possible adverse effects on employee morale. According to SBA estimates, the rotations would involve an annual cost of about \$150,000. This does not include the costs that may be involved in hiring new district directors to replace those that may retire or leave rather than accept reassignment.

In formulating the rotation policy, SBA management did not seek opinions or comments from the district directors nor were alternatives considered that would accomplish the stated objectives of the rotation policy. The policy was discussed with district directors only after it was adopted and announced.

In a September 20, 1979, memorandum, regional administrators were notified of the implementation of the rotation policy for district directors. Copies of the memorandum were to be given to each district director to serve as formal notice of the rotation policy. The regional administrators were instructed to review each district directors' strengths and weaknesses, length of service in their position, and the management and organizational requirements of the district offices. On the basis of these reviews, administrators were to develop recommendations as to which district directors should be rotated. A subsequent special notice listed the criteria for making the rotational recommendations. These were

- length of service (6 years) in a district office,
- career development,
- possibility of making a greater contribution elsewhere,
- need for a different management style in a district office, and
- potential for providing a district director and office with varied perspectives.

The regional administrators' recommendations with respect to each district director and subsequent action by SBA are included in enclosure II.

SBA officials, including the Associate Deputy Administrator for Support Services, said that because of the past history of SBA, they expected the policy to be criticized as politically motivated. However, they stated that the policy was based solely on management concerns and is consistent with other organizational changes made to improve SBA's organizational and operational efficiency. In announcing the rotation policy, the SBA Administrator said:

"Our intent is to enhance the career development of these key personnel through the expansion of their knowledge, skills, and experiences. We expect that this rotation policy will provide exposure to varying economic and geographic conditions; which in turn will help the district directors develop versatility and assure a greater uniformity and consistency in service to our clientele."

An advisory committee was established by the Administrator to review the regional administrators' recommendations and to recommend final action on the rotation selections. This committee consisted of the Associate Deputy Administrator for Support Services, the Associate Deputy Administrator for Programs, and the Assistant Administrator for Personnel Management.

The committee's recommendations disagreed with the regional administrators' with respect to nine district directors. The administrator accepted all of the committee's recommendations. One district director was recommended for retention in his location because of his stated plans for

retirement. The regional administrator also stated that the director was performing extremely well and it would not be cost effective to rotate him. The advisory committee, however, recommended that the district director be rotated. The committee stated that the director's managerial competence can best be used, even on a short-term basis, at another district office requiring the direction and leadership he can provide. This district director, appointed in April 1970, subsequently elected to retire rather than accept the relocation.

Another district director was recommended for retention by the regional administrator but was notified that he would be considered for rotation in June 1980. He was subsequently rotated in May 1980. (See enc. II for more detailed information on the justifications.)

SBA states that the policy implementation and rotation selections were based on management considerations. SBA policy studies prepared to provide guidance on the legal and management implications of a rotation policy, state that, "Transfer, like other Government action affecting an employee's status, may not be based on an arbitrary decision to achieve a predetermined result." According to the Special Counsel's complaint, an internal SBA memorandum, dated September 5, 1979, indicated that 11 of the directors considered for rotation would possibly resign or retire rather than rotate. The memorandum was quoted as further stating that with respect to these directors,

"It is obviously necessary to transfer first those district directors who will not move, creating many more vacancies in the initial strategy * * *. Our analysis shows that we may create 10 to 20 vacancies by this rotation, * * *."

With respect to filling the anticipated vacancies, the Deputy Administrator for Support Services is quoted by the Special Counsel as stating:

"We will need to establish a close, cooperative relationship with the White House personnel regarding vacancies we wish to fill from the outside."

(A copy of the complaint filed by the Special Counsel on July 9, 1980, is included as enc. III.) The Special Counsel also sent its investigative report with recommendations for corrective action to the SBA Administrator. The Special

Counsel's recommendations include canceling the district directors' reassignments, and restoring their former positions with full reimbursement for moving and other expenses as permitted by law.

In comments to us, the Associate Deputy Administrator and officials of SBA denied the Special Counsel's findings and were preparing responses to the Merit Systems Protection Board and the Special Counsel respectively. They feel they can present evidence that will show SBA acted properly and believed that the charges will ultimately be rejected by the Board. SBA was given additional time to consider and respond to the Special Counsel's investigative report and recommended corrective action. The Associate Deputy Administrator for Support Services has the right to a reasonable time to answer the charges orally and in writing, to present evidence, to be represented by an attorney or other representative, and a hearing before the Merit Systems Protection Board or an administrative law judge. A decision by the Board is final and no other administrative appeal is available. A judicial review of a Board decision can be obtained in a U.S. Court of Appeals.

ESTIMATED COSTS OF ROTATION POLICY

When a Federal employee is transferred from one official duty station to another, travel and transportation expenses and other applicable allowances are payable by the Government. 1/

Most of the seven district directors relocated had not submitted complete vouchers, therefore, accurate costs data was not available. However, SBA has authorized \$117,596 for movement of the seven district directors and their families. The average amount authorized was \$16,800.

1/Expenses and allowances include: Per diem en route for employees and family; transportation costs for employee and family; miscellaneous expense allowance; house hunting trip (per diem and transportation for employee and spouse) or reimbursement for up to 30 days' subsistence for employee and family while occupying temporary quarters; real estate expenses for selling old home or cost of settling unexpired lease; certain expenses on purchase of new home; transportation of mobile home for use as residence; transportation of household goods; and temporary storage of household goods.

In addition to those district directors rotated in October and November 1979, SBA selected eight individuals to fill district director vacancies, some of which occurred as a direct result of the rotation policy. The costs associated with filling these vacancies was \$106,817.

Other intangible costs associated with these relocations are the loss of qualified and in many cases, highly regarded directors who chose either to retire or accept a lower position rather than relocate. In this respect, SBA also incurred additional cost in recruiting, hiring, and training new district directors to fill the vacated positions. SBA initially estimated that the rotations would cost approximately \$7,000 for each director. However, the average approved cost of the initial rotations was approximately \$16,800. Future rotations may also involve costs associated with involuntary separations.

ROTATION PRACTICES OF OTHER FEDERAL AGENCIES

According to OPM, no specific regulations or guidance is available on rotation of employees.

Under civil service regulations, Federal agencies have authority to promote, demote, or reassign employees. Rotations, as other types of personnel actions, must be for good cause and in the interests of the service. Employees affected by such actions have specific protections and rights of appeal if they believe a management action is arbitrary, capricious, discriminatory, or otherwise violates personnel laws and regulations.

In this respect, a recent decision by the Merit Systems Protection Board 1/ involving a removal for cause following a refusal to accept a geographic reassignment, the Board ruled that the agency must prove by a preponderance of the evidence that the removal will promote the efficiency of the service. According to the decision, this necessarily includes a demonstration that the agency's decision to reassign the employee was a bona fide determination based on legitimate management considerations in the interests of the service.

We contacted 14 agencies to determine their policies with respect to employee rotations. Most of them did not

1/Jack E. Ketterer v. U.S. Department of Agriculture, Federal Crop Insurance Corporation (July 2, 1980).

have a formal rotation policy like SBA's and handled rotations based on needs of the agency as they occurred. Three agencies required periodic rotations--Department of the Interior's Bureau of Land Management, the U.S. Customs Service, and the Federal Aviation Administration.

The Department of the Interior's Bureau of Land Management requires rotations of its State directors. These positions are now in SES but were previously subject to the rotation policy. The policy, like SBA's, applies to directors who have served more than 6 years in a particular position and location. Also, exceptions to the length of service criterion may be made by the Bureau Director when in the agencies' best interest.

The U.S. Customs Service rotation policy applies to SES positions and to other employees where it is necessary to avoid an appearance of conflict of interest. Reassignments may be made whenever it is in the best interests of the Customs Service or as applicable after a period of 5 years. The policy is intended to provide the Customs Service with a mobile management force with expertise in various aspects and provide its employees with diversified experiences.

The Federal Aviation Administration's rotation policy applies only to employees serving in remote locations or overseas positions. The length of service for rotation in a position of this nature is 6 years. Approximately 400 employees are affected by the reassignment policy.

DISTRICT DIRECTORS SELECTED FOR ROTATION

District director	Age (note a)	Federal service (note b)	Years of SBA service (note a)	Date of appointment as district director	Years in present district office (note a)	Immediate previous employment	Rotation		Final action
							From	To	
1	44	17	14	Mar. 1974	5	SBA	Washington	Central office staff position	Transferred to non-district director job
2	50	14	9	Nov. 1973	6	SBA	Houston	St. Louis	Rotated
3	60	8	4	Nov. 1975	4	Banking	Denver	Kansas City	Rotated
4	50	5	5	Sept. 1974	5	Private industry-Manufacturing Co.	St. Louis	Salt Lake City	Transferred to non-district director job
5	58	28	21	Nov. 1973	6	SBA	Kansas City	Lubbock	Retired
6	56	39	21	May 1972	7	SBA	Jackson	Charlotte	Retired
7	59	19	14	May 1973	6	SBA	Baltimore	To be determined	Transferred to non-district director job
8	48	22	9	May 1970	9	SBA	Sioux Falls	To be determined	Rotated to Denver
9	53	14	9	Apr. 1970	9	Self employed-Small business	Charlotte	Des Moines	Retired
10	59	15	10	June 1971	8	SBA	Lubbock	Fargo	Rotated
11	54	12	6	Apr. 1973	6	Private industry-Environmental Co. Vice president	Albuquerque	Casper	Retired
12	38	8	8	Apr. 1971	8	Attorney-Private practice	Columbus	Helena	Rotated
13	62	7	7	Sept. 1972	7	Private industry-Corp. controller	Des Moines	Lower Rio Grande	Rotated
14	64	19	10	Jan. 1970	10	Private industry-Insurance Ex.	Fargo	Albuquerque	Rotated
15	60	10	8	Sept. 1971	8	Self employed-Real Estate	Helena	Hartford	Retired
16	56	27	23	Apr. 1970	9	SBA	Lower Rio Grande	Houston	Retired

Note: This schedule provides profile information on the 16 district directors who were selected for the initial rotations beginning in October 1979.

a/As of Sept. 20, 1979.

b/May include military time.

ENCLOSURE II

ENCLOSURE II

REGIONAL ADMINISTRATOR'S RECOMMENDATIONSDistrict directorReason for rotating

- 1 The regional administrator stated that the director has done an excellent job, however, the district office needed a more disciplined management style.
- 2 Changing the management style could greatly improve the district office performance.
- 3 Because of several labor-management relations problems within the office, the regional administrator believed that the district director could be more effective in another district office.
- 4 The regional administrator believed this district director's disciplined and formal management style was best suited for another district office.
- 5 The regional administrator stated that the district director's usually long tenure has reduced his perspective and effectiveness. Even with the district director's pending retirement, the regional administrator felt his talents could best be used in another district office.
- 6 The regional administrator stated that the district director has been fairly successful but his management abilities could be improved by reassignment.
- 7 In the judgment of the regional administrator, the district office needed a different style of management and the district director could best be used in a smaller district.
- 8 The regional administrator believed this district director's excellent management capabilities could be used more fully in another district office.

District directorReason for rotating

- 9 The regional administrator stated that the district director does not have the type of management style that is needed to effectively deal with the environment within the district office.
- 10 The regional administrator believed a change in managerial style was needed because the district director's style had caused a number of unnecessary personnel difficulties.
- 11 The regional administrator stated that the district director did not provide the type of leadership needed.
- 12 The regional administrator believed both the district director and the district needed a change to provide renewed interest, motivation, and direction.
- 13 The regional administrator felt this district director's talents would be more useful in a smaller district.
- 14 The regional administrator stated that the district director's management style had not always been fully effective for the district office, he believed that both the district and SBA would benefit from a change.
- 15 The regional administrator believed a change to the district and the district director would improve the management of SBA.
- 16 The regional administrator did not recommend a rotation because the district director intended to retire. a/

a/The SBA Advisory Committee disagreed with the regional administrator's recommendation and recommended to the administrator that this district director be rotated. The district director subsequently retired rather than rotate.

DISTRICT DIRECTORS RECOMMENDED FOR ROTATION IN 18 MONTHS

<u>District director</u>	<u>Age (note a)</u>	<u>Federal service (note b)</u>	<u>Years of SBA service (note a)</u>	<u>Date of appointment as district director</u>	<u>Years in present district office (note a)</u>	<u>Immediate previous employment</u>
17	45	22	14	Mar. 1975	4	SBA
18	48	23	20	Feb. 1975	4	SBA
19	59	24	22	July 1970	9	SBA
20	60	11	8	Aug. 1971	8	State government
21	59	13	9	May 1970	9	State government
22	44	9	9	Sept. 1970	9	State government
23	61	11	6	Mar. 1973	6	State government
24	58	14	14	Sept. 1965	14	State government
25	59	17	17	Apr. 1974	5	SBA
26	63	15	15	Apr. 1964	15	Private industry- Sales
27	54	6	15	Nov. 1974	5	Banking
28	60	12	8	Sept. 1971	8	Private industry- Small business
29	54	28	22	Mar. 1975	4	SBA
30	66	21	17	Aug. 1964	15	SBA
31	43	6	6	July 1973	6	Private industry- Small business
32	61	25	21	Oct. 1971	8	SBA
33	46	21	17	May 1968	11	SBA
34	48	14	10	Sept. 1970	9	SBA
35	61	36	20	Dec. 1974	5	SBA
36	62	16	6	July 1973	6	Private industry- Service Co.

Note: This information pertains to the 20 district directors who were notified that they would be considered for rotation in 18 months.

a/As of Sept. 20, 1979.

b/May include military time.

REGIONAL ADMINISTRATOR'S RECOMMENDATIONS

<u>District director</u>	<u>Reason for retaining</u>
17	The district director is very effective in his present position.
18	The district director has done an excellent job and should remain in his present position.
19	The district director is the best qualified person to run the district office at the present time.
20	SBA can best use the district director in his present position.
21	The district director is extremely effective in his present position.
22	The district director should be retained for the stability of the region.
23	The district director is very effective in his present position and his temporary assignment as district director of another office provided him with exposure to different economic and geographic conditions.
24	The district director should be retained because he is presently restructuring the office and making much needed personnel changes.
25	Since the district director intended to retire within 2 years he should not be rotated.
26	The regional administrator stated that because the director was the only permanent director in the region, he should be retained to preserve stability.
27	Because of concerns on the director's management capabilities, the regional administrator did not believe a rotation would benefit the director or SBA.

<u>District director</u>	<u>Reason for retaining</u>
28	The district director should be retained because of his excellent relations within the community.
29	This particular district director was needed to improve SBA's image because of a previous scandal. The director was also within 2 years of retirement.
30	The district director had satisfied the intent of the policy because of his past assignments as acting district director of another district.
31	The district director is very effective and his temporary assignments as district director of another office had provided him with exposure to different economic and geographic conditions.
32	The district director could be used best in his present position.
33	The district director should not be rotated because he is extremely effective in his present position.
34	This district director's excellent program knowledge was best used in his present position. <u>a/</u>
35	The district director is a strong manager with high program performance and he is doing a good job in his present position.
36	The district director is very effective in his present position and his past temporary assignment as district director of another office provided him with exposure to different economic and geographic conditions.

a/An SBA Advisory Committee recommended to the administrator that this district director be considered for rotation in June 1980--he was subsequently rotated in May 1980.

DISTRICT DIRECTORS NOT RECOMMENDED FOR ROTATION

<u>District director</u>	<u>Age (note a)</u>	<u>Federal service (note b)</u>	<u>Years of SBA service (note a)</u>	<u>Date of appointment as district director</u>	<u>Years in present district office (note a)</u>	<u>Immediate previous employment</u>
37	68	13	8	July 1976	3	SBA
38	52	20	18	July 1977	2	SBA
39	56	15	12	Oct. 1973	6	SBA
40	43	21	11	Apr. 1978	1	SBA
41	55	19	12	May 1975	4	SBA
42	47	15	13	Aug. 1979	-	SBA
43	55	14	14	June 1979	-	SBA
44	54	31	20	Apr. 1978	1	SBA
45	56	17	14	Nov. 1978	1	SBA
46	44	19	12	Aug. 1975	4	SBA
47	37	7	7	Oct. 1974	5	SBA
48	56	6	1	Aug. 1978	1	SBA
49	61	24	18	Dec. 1978	1	SBA
50	50	17	17	July 1977	2	SBA
51	55	21	19	Oct. 1974	5	SBA
52	49	16	5	Sept. 1976	3	Federal Government other agency
53	65	15	15	Nov. 1978	1	SBA
<u>c/</u> 54	69	27	23	July 1956	23	Local government

Note: This schedule provides information on the remaining SBA district directors. The majority of whom have less than 6 years as district director.

a/As of Sept. 10, 1979.

b/May include military time.

c/Individual expressed intention of retiring and was not considered for rotation.

REGIONAL ADMINISTRATOR'S RECOMMENDATIONS

<u>District director</u>	<u>Reason for retaining</u>
37	The regional administrator did not make a recommendation.
38	The director was best qualified to manage the district office.
39	No recommendation--pending transfer to a nondistrict director position.
40	The district director had been in the position for only a short time.
41	The district director did not meet the length of service criterion.
42	The district director is a good leader and understands the job, SBA, and the clientele.
43	The district director was recently appointed and he was making his greatest contribution to SBA in his present position.
44	The district director did not meet the length of service criterion.
45	The district director did not meet the length of service criterion. <u>a/</u>
46	The district director is a good leader and understands the job, SBA, and the clientele.
47	No recommendation--pending conflict of interest investigation. <u>b/</u>
48	The director has served as director for 1 year.
49	The district director did not meet the length of service criterion.
50	The district director did not meet the length of service criterion.

District directorReason for retaining

- 51 Not subject to the rotation policy pending prior reassignment.
- 52 The district director is a good leader and understands the job, SBA, and the clientele.
- 53 The district director did not meet the length of service criterion. c/
- 54 The district director was on extended sick leave and intended to retire in December 1979. d/

a/Reassigned to another district office in April 1980.

b/Fired as a result of SBA investigation.

c/Reassigned to nondistrict director position in April 1980.

d/Retired effective December 31, 1979.

BEFORE THE MERIT SYSTEMS PROTECTION BOARD

In the Matter of:)
 UNITED STATES of AMERICA)
 v.)
 PAUL D. SULLIVAN)

OFFICE OF THE SECRETARY

MSPB

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COMPLAINT

Introduction

The Acting Special Counsel, pursuant to the provisions of 5 U.S.C. section 1206 (g)(1), and for the reasons set forth herein, hereby files this Complaint with the Merit Systems Protection Board against Paul D. Sullivan, Associate Deputy Administrator for Support Services, Small Business Administration, Washington, D.C., on the bases that the actions of Paul D. Sullivan in implementing the rotation policy for District Directors of the Small Business Administration (SBA) and in recommending geographical reassignments with respect to certain District Directors were in violation of sections 2302(b)(1)(E), (2), (6), (10), and (11) of title 5, United States Code, and of section 4.2 of title 5, Code of Federal Regulations, in that the political affiliation of such District Directors as well as other political factors were considered in making these recommendations and implementing such policy.

Jurisdiction

Section 1206(a) of title 5, United States Code, and 5 CFR 1251.1 authorize the Special Counsel to investigate any allegation of a prohibited personnel practice to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

Section 1206(g) of title 5, United States Code, and 5 CFR sections 1254.1 and 1201.123 provide that if the Special Counsel determines that disciplinary action should be taken against any employee after an investigation under 5 U.S.C. 1206, the Special Counsel shall prepare a written complaint against the employee containing such determination, together with a statement of supporting facts, and present such material to the employee and the Merit Systems Protection Board in accordance with 5 U.S.C. 1207.

Section 1207 of title 5, United States Code, and 5 CFR sections 1254.5, 1201.123, 1201.125, and 1201.126(c) establish procedures for hearings and decisions on complaints filed by the Special Counsel, set forth penalties which may be imposed by the Merit Systems Protection Board, and provide for judicial review of a final order of the Board imposing disciplinary action under 5 U.S.C. 1207.

Sections 2302 (b)(1)(E), (2), (6), (10), and (11) of title 5, United States Code, provide that an employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not:

discriminate with respect thereto on the basis of political affiliation; consider any oral or written recommendation or statement concerning the employee unless such recommendation relates to the person's ability to perform the job or suitability for the position; grant a preference or advantage not authorized by law, rule or regulation; discriminate on the basis of conduct not related to job performance; or take or fail to take such personnel action in violation of a law, rule, or regulation which implements or directly concerns the merit system principles at 5 U.S.C. 2301.

Sections 2301 (b)(2) and (6) of title 5, United States Code, which are among the merit system principles referred to above, provide that employees should receive fair and equitable treatment without regard to political affiliation and with proper regard for their constitutional rights, and should be retained, corrected, or separated on the basis of their performance.

Civil Service Rule 4.2 (5 CFR 4.2) prohibits any inquiry with respect to the political affiliation of an employee, requires that disclosures of information respecting political affiliation shall be ignored, and states that no discrimination shall be exercised, threatened, or promised because of political affiliation.

Chapter 75 of title 5, United States Code, and 5 CFR Part 752 set forth employee rights with respect to adverse actions, including removal from Federal employment.

FACTS

1. At all times mentioned herein Paul D. Sullivan has been employed and is presently employed as Associate Deputy Administrator for Support Services, Small Business Administration, Washington, D.C.

2. At all times mentioned herein, William H. Mauk, Jr., has been employed as Deputy Administrator, and A. Vernon Weaver, Jr., has been employed as Administrator, Small Business Administration, Washington, D.C.

3. At all times mentioned herein, the Small Business Administration had 63 District Director positions. These positions were and are in the competitive service.

4. In the Spring and Summer of 1979 the Administrator and Deputy Administrator of the Small Business Administration began to seriously consider the formulation and implementation of a rotation system with respect to District Directors whereby certain of the District Directors would be geographically reassigned to other districts. Paul D. Sullivan was assigned the responsibility of coordinating and implementing the project.

5. In approximately June and July, 1979, Paul D. Sullivan was provided with memoranda from the Policy Development Staff, Office of Personnel, Small Business Administration, pertaining to the Rotation Policy for District Directors. The memoranda provided, in pertinent part, the following guidance:

... the courts have held that a reassignment which was made to induce a resignation of an employee considered 'undesirable' is arbitrary and capricious. In such cases, an employee will be returned to his former job with back pay, if appropriate.

* * * *

Transfer, like other Government action affecting an employee's status, may not be based on an arbitrary decision to achieve predetermined result.

* * * *

A discretionary decision by an Administrative official authorized to make the decision should not be overturned by the courts unless that decision was arbitrary and capricious...the action may not be camouflaged as a discretionary decision.

* * * *

Small Business Administration has an unfortunate history and reputation (though not in the past several years) of using directed reassignments both as a punitive measure and as a means of getting rid of an undesirable, sometimes 'politically undesirable', employee. In many cases, such a directed reassignment has induced a resignation or a 'voluntary' change to lower grade.

Mr. Sullivan acknowledged receipt of these memoranda in an affidavit submitted to the Office of the Special Counsel during its investigation.

6. In June and July of 1979, Paul D. Sullivan visited each of the Regional Administrators of SBA. He discussed with them the concept of rotating District Directors as well as which Directors within their region should be rotated, and why. Sullivan took notes of these conversations. In his affidavit he states that he no longer has these notes.

7. In late August or early September, 1979, Paul D. Sullivan held a meeting with Mary Margaret Walker and Lawrence Hemphill, his special assistants, and Karla Jean Schnurr, his confidential assistant. The purpose of the meeting was to assign responsibilities for the development of a memorandum to the Administrator which would implement the policy for District Director rotation. Both Schnurr and Hemphill took notes of the meeting. Hemphill states that he no longer has his notes. The transcription of Schnurr's notes discloses that, in targeting District Directors for rotation, Sullivan provided his staff with the names of specific Directors targeted for rotation together with information on the nature and degree of those Directors' political affiliations. The notes reveal that political affiliations as well as other partisan political considerations were factors in Sullivan's targeting of specific Directors for rotation and his strategy for implementing the rotation policy. Schnurr's notes state:

Strategy: I. Of the 63 district directors, its our intention to move "X" amount. It is politically imperative to have 3 categories of district directors in order to successfully protect ourselves against political abuse of the CS system.
 R-want and we want
 R-don't and we want
 R-don't and we do not
 D-want and we want

- 1) R-Republicans who we do not move
 - 2) Democrats that we do move
 - 3) R that we want to move and we do move and upgrade
- It is necessary to move and mix these 3 categories

8. Hemphill drafted a September 5, 1979, memorandum, subsequently edited by Walker, which profiled the 19 District Directors targeted for rotation. In lieu of designating people by party affiliation in the September 5th memorandum, as shown in the minutes of the meeting preceding the drafting of the memorandum (e.g. "Frank Ray (very partisan active (R)"), the following terms were used to describe 15 of the 16 targeted Directors with Republican affiliations: "less than cooperative", "particularly uncooperative", "less than fully cooperative," "no political problems", and "(not) uncooperative". The 16th Republican Director, who had twice had open heart surgery, was characterized as "an excellent candidate for disability retirement." These terms were not applied to either of the two Democrats slated for transfer. The memorandum noted that one Democrat was being relocated because "the Administration desires a change" and that the second was being rotated at his own request. The memorandum indicates that 11 of the 19 would fight a move and that 9 of the 19 would possibly either resign or retire rather than rotate. In the memorandum Sullivan also states, as part of the strategy: "It is obviously necessary to transfer first those district directors who will not move, creating many more vacancies in the initial strategy....Our analysis shows that we may create 10 to 20 vacancies by this rotation,..." It is clear from the memorandum itself that the

Regional Administrators would not, in fact, make the decision as to which District Directors would be targeted for rotation. Rather, the memorandum states: "Regional Administrators will receive a letter informing them of the rotations. They will then make 'decisions' for transfers between regions..." As to filling the resulting vacancies, Sullivan stated: "We will need to establish a close, cooperative relationship with White House personnel regarding vacancies we wish to fill from the outside."

9. During the Summer of 1979, according to the affidavits of Weaver and Sullivan, the latter was contacted by Phillip J. Wise, Jr., Appointments Secretary to the President. According to Sullivan, Wise asked him to find a job for Russell Davis, a former mayor of Jackson, Mississippi.

Weaver's affidavit states:

Q: So the gist of Sullivan's comment to you was that Wise would like to see Russell Davis in The Jackson District Directorship?

A: I'm not sure of those words.

Q: But words to that effect?

A: Yes.

Sullivan stated in his affidavit that Davis "was running all over Jackson, Mississippi telling everybody he wants to be the District Director, and he's going to get the job,..." Sullivan went on to say that he told Wise that Davis "was causing us a great amount of embarrassment...." Ardis Jones, the District Director in Jackson, and a Democrat, was targeted for rotation in the September 5th memorandum, ordered reassigned, and subsequently retired, because "the Administration desires a change."

10. Paul D. Sullivan, Administrator Weaver, and Deputy Administrator Mauk, each stated in his affidavit that the September 5th memorandum was the only written document forwarded to Weaver for approval which set forth the basic foundation upon which the rotation policy was implemented and that it targeted by name specific District Directors for rotation. The memorandum, which was addressed to Weaver and Mauk, was signed by Paul D. Sullivan.

11. Following the Administrator's acceptance of the strategy outlined in the September 5th memorandum, on September 20, 1979, Weaver sent a memorandum to his Regional Administrators outlining the rotation policy, the stated purpose of which was "to enhance the career development of these personnel through the expansion of their knowledge, skills, and experiences." The memorandum asked the Administrators to inform him by October 8th as to their recommendations for rotation. Sullivan sent a special notice to the Regional Administrators on September 26th to expand the guidance of the September 20th memorandum. In that notice he listed the criteria the Administrators should use in reviewing the Directors for potential rotation: length of service, career development, possibility of making a greater contribution elsewhere, need of a district office for a different management style, and potential for providing District Directors and district offices with varied perspectives. The "decisions" and recommendations of the Regional Administrators were then received and considered by a committee composed of Sullivan, Harold A. Theiste, Associate Deputy Administrator for Programs, and Joe Maas, Assistant Administrator for Personnel Management. The role of the Committee was to review and pass on the sufficiency of the justifications given by the Regional Administrators for their recommendations and "decisions" vis-a-vis the officially stated selection-for-rotation criteria and to forward recommendation memoranda on a case by case basis to the Administrator for final approval.

12. Of the 19 District Directors originally targeted for rotation in the September 5th memorandum, 14 were ordered rotated in October, 1979. Seven did rotate; the others either retired or accepted other employment.

CONCLUSION


The facts set forth above clearly demonstrate that Paul D. Sullivan was responsible for the intrusion of partisan political considerations into the personnel decision-making process at the Small Business Administration with respect to the implementation of a rotation policy for District Directors of the agency.

Paul D. Sullivan considered the political affiliations and degree of political partisanship of the District Directors in arriving at his recommendations as to which Directors should be rotated, thereby violating 5 CFR 4.2, 5 U.S.C. 2302(b)(1)(E), and (10). Such consideration also violates 5 U.S.C. 2302(b)(11) in that 5 CFR 4.2, a civil service rule, directly concerns or implements merit system principles set forth in 5 U.S.C. sections 2301(b)(2) and (6).

Paul D. Sullivan also considered a recommendation not related to the ability of District Director Ardis Jones to perform his job with respect to reassigning Jones in order to create a vacancy for which Russell Davis could compete, thereby violating 5 U.S.C. sections 2302(b)(6) and (10).

WHEREFORE the Acting Special Counsel, in accordance with 5 U.S.C. section 1206(g), has determined that disciplinary action should be taken against Paul D. Sullivan and, further, that such disciplinary action should include removal from his Federal employment, debarment from Federal employment for a period of 5 years, and assessment of a civil penalty of \$1,000. Therefore the Acting Special Counsel requests the Board to order such discipline.

Respectfully submitted,



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Attorneys

July 8, 1980
Date

CERTIFICATE OF SERVICE

I hereby certify that on this date copies of the foregoing Complaint were sent by messenger to:

Paul D. Sullivan
Associate Deputy Administrator for
Support Services
Small Business Administration
Washington, D.C. 20416

7/9/80
Date

Cheryl Dolan
Cheryl Dolan