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WASHINGTON, D.C. 20548

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FEDERAL PERSONNEL AND  
COMPENSATION DIVISION

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The Honorable Patricia Schroeder  
Chairwoman, Subcommittee on Civil Service  
Committee on Post Office and Civil Service  
House of Representatives

Dear Madam Chairwoman:

Subject: Effects of the Presidential Transition on  
the Senior Executive Service (FPCD-82-29)

On December 22, 1980, you asked us to review how the Senior Executive Service (SES) system worked during the Presidential transition. You wanted to know whether unacceptable politicization took place in the SES, how many career executives were transferred within their agencies and how many retired because of the transition, what method the new administration used to determine which SES slots should be filled with its own people, and what the Office of Personnel Management (OPM) did to monitor the process. Because of the statutory 120-day restriction on the reassignment of career SES members during the early part of a new administration, we delayed this review so that newly appointed agency heads would be on board several months before we began.

On July 28, 1981, we briefed your office on the preliminary results of our work. At that meeting we agreed to concentrate our efforts on

- (1) determining OPM and Merit Systems Protection Board (MSPB) legal authorities, objectives, and procedures for monitoring the SES during transition;

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- (2) assessing OPM monitoring actions, including a review of transition activities at selected agencies; and
- (3) recommending changes if appropriate.

The results of our review are summarized below and discussed in detail in the enclosure, as are the review objectives, scope, and methodology.

The Civil Service Reform Act had no provisions requiring OPM and MSPB to provide special oversight of the SES during a change in administrations. OPM did, however, perform routine oversight activities, conduct a telephone survey of reassignments and details, and is currently doing a study on the flexibility in assigning executives that the SES provides supervisors during a change in administrations. OPM officials informed us that the agency noted no problems with the reassignment or detail of career SES members. MSPB received three complaints related to the change in administrations, and in two of the actions the Special Counsel concluded that no prohibited personnel practices had occurred. In the third action the Special Counsel thought a detail was questionable, but it was cancelled and the complaint was withdrawn before a stay was issued. In March 1981, MSPB conducted a special survey of reassignments during the 120-day period in which careerists must not be reassigned involuntarily. The survey found no instances of forced resignations, retirements, reassignments, or details.

Based on our review of transition activities at OPM and six executive branch agencies, we believe that actions taken by OPM to monitor the SES during Presidential transition were adequate. The six agencies did not make any involuntary reassignments of careerists during the 120-day period following the appointment of their respective agency heads, and very few reassignments, either voluntary or involuntary, were made within 60 days thereafter. Furthermore, OPM staff indicated that agency officials were urged to insure that all voluntary reassignments occurring within the 120-day period were specifically documented.

The Reform Act requires a congressional review of the effectiveness of the SES in July 1984. We plan to continue evaluating the SES so that we can assist the Congress in its review.

As requested by your office we did not obtain agency comments on this report, and we plan no further distribution of this report until 5 days after its issue date. At that

time we will distribute it to congressional committees having interest and responsibilities in these areas, as well as to the Director, OPM.

Sincerely yours,

  
Clifford I. Gould  
Director

Enclosure

OBJECTIVES, SCOPE, AND METHODOLOGY

Our review was done at the request of the Chairwoman, Subcommittee on Civil Service, House Committee on Post Office and Civil Service. In discussions with the requestor's office, we agreed to (1) determine Office of Personnel Management (OPM) and Merit Systems Protection Board (MSPB) legal authorities, objectives and procedures for monitoring the Senior Executive Service (SES) during a change in administrations, (2) assess OPM's monitoring actions, including a review of transition activities at selected agencies, and (3) recommend changes, if appropriate. Our review covered reassignments made during the period of January 20, 1981, to September 30, 1981, and was performed in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

We reviewed the legal authorities of and actions taken by OPM and MSPB to determine the effects of the change from President Carter's to President Reagan's administration on the SES and discussed the reassignment of careerists with officials at the two agencies. We also looked at OPM's Government-wide data on the reassignment of SESers and at special surveys done by OPM and MSPB. During our review we obtained general information on 33 agencies separately surveyed by the subcommittee in February 1981. This survey was undertaken to obtain information on SES reassignments. These agencies represent more than 90 percent of all SES positions authorized. In addition, we examined in detail the reassignment of careerists at the Department of Energy, Department of Justice, Department of Interior, Department of Health and Human Services, Small Business Administration, and the Nuclear Regulatory Commission to determine whether legal and regulatory requirements were being followed. We selected these organizations because we felt they represented a good cross section of departments and agencies with both large and small numbers of SES positions. We focused on the reassignment of careerists during the legally prescribed 120-day restricted period and 60 days thereafter. We believed that a 60-day period would be sufficient to indicate any efforts to arbitrarily reassign large numbers of careerists at the close of the restricted period.

BACKGROUND

The Civil Service Reform Act (CSRA) of 1978, (Public Law 95-454) provided the most sweeping changes in the laws governing the Federal Civil Service in almost 100 years. Central

to the reform was the establishment of the SES. The SES is a comprehensive personnel system for executives previously classified as GS-16, 17, and 18 and Executive Levels IV and V (or their equivalents). In the SES, salary and status are individually determined and are not dependent on the position an individual occupies.

The SES was intended to

- provide better management of the number and distribution of Federal executives,
- give agency managers greater flexibility in assigning executives where most needed,
- insure that career people entering the SES meet the qualification criteria,
- make executives individually accountable for their performance,
- enable the removal of those executives whose performance is less than fully successful and who have not shown improvement,
- provide bonuses and cash awards based on performance, and
- offer increased advancement opportunities to career executives.

The act limits to 10,777 the total number of SES positions and non-SES General Schedule supergrade positions. The law further limits to 517 the number of scientific and professional executive positions that can be outside the SES and General Schedule supergrades.

Four types of appointments can occur under the SES. They are:

- Career--Selections are made according to the merit staffing process. OPM must approve candidates' managerial qualifications.
- Noncareer--Selections are not made according to the merit staffing process. OPM does not review candidates' managerial qualifications.

--Limited term--Nonrenewable appointment to a position whose duties expire within 3 years.

--Limited emergency--Nonrenewable appointment for up to 18 months to meet an urgent need.

The SES has only two types of positions--general and career reserved. "General positions" are the norm and executives with career, noncareer, or limited appointments may hold them. "Career reserved positions" are restricted to career employees to insure impartiality or the public's confidence in Government.

The flexibility to reassign SESers is important after a change in administrations to allow the new management to fill its needs. If the new managers desire to change the incumbents of key positions, they can reassign careerists to any position for which they are qualified. To lessen the likelihood of arbitrary action by political appointees, the law provides some safeguards. These safeguards include

--a requirement that noncareer appointments not exceed 10 percent of SES positions Government-wide and usually not exceed 25 percent in any agency.

--a requirement to earmark certain positions as "career reserved,"

--the establishment of a 120-day waiting period after the beginning of a new Presidential administration before a performance appraisal and rating may be made of a career appointee, and

--the establishment of a 120-day waiting period before new agency heads or immediate noncareer supervisors can reassign or transfer career executives involuntarily.

The last two provisions were intended to allow for a "get acquainted" period for the SESers and their new supervisors. The agencies we contacted used either the incumbency date of the agency head or his/her deputy as the start date for the 120-day restriction on involuntary reassignments. This was done with OPM approval and the provision that all reassignment actions be signed by the official whose incumbency date was used for the 120-day restriction.

UNACCEPTABLE POLITICIZATION  
DID NOT OCCUR IN THE SES

The transition between the Carter and Reagan administrations during late 1980 and early 1981 provided what many observers thought would be a major test of the provisions of the Reform Act. Among members of the Congress, civil servants, and other observers there was great concern that the change in administrations might result in the indiscriminate political reassignment of large numbers of career SESers. Our work indicated that the SES provisions of the Civil Service Reform Act were adhered to by the Reagan administration. As a result of our review, we believe the safeguards contained in the Reform Act provide adequate control over the SES during a change in Presidential administrations.

SES position authorization process  
helps control the number of noncareer  
appointments

The position authorization process provides a good mechanism for the control of noncareer positions in the SES. The Reform Act provides that at 2-year intervals each agency must examine its needs for SES positions and submit to OPM a written request for a specific number of SES positions for each of 2 succeeding fiscal years. OPM, in consultation with the Office of Management and Budget, reviews each agency's request and authorizes a total number of SES positions for each agency. In addition, an agency must submit an annual request for authority to fill a specific number of SES positions by noncareer appointments. OPM authorizations are made to insure that the number of noncareer appointees does not exceed 10 percent of the total number of SES positions authorized Government-wide or approximately 25 percent in any agency as required by the Reform Act.

SES noncareer appointments authorized  
for fiscal year 1982 are less than  
for fiscal year 1981

OPM's initial authorization of SES positions for fiscal year 1982 reduced the number of noncareer appointing authorities given the agencies. We compared the adjusted position allocations for fiscal year 1981, adjusted as of March 30, 1981, with the October 1, 1981, allocation for fiscal year 1982. As shown below, OPM reduced the number of noncareer positions authorized from 9.6 percent of total SES positions to 8.2 percent on a Government-wide basis. For the 33 agencies, this meant a reduction of 1.3 percent, from 9.1 percent to 7.8 percent.

Overall, the reduction in the number of noncareer positions authorized was about 18 percent for the 33 agencies (from 741 to 609) and for the Government as a whole (from 827 to 679).

	Fiscal Year 1981			Fiscal Year 1982		
	Total SES positions	Noncareer SES appointments authorized	Percent of positions authorized for noncareer appointments	Total SES positions	Noncareer SES appointments authorized	Percent of positions authorized for noncareer appointments
Government- wide	8,598	827	9.6	8,236	679	8.2
33 Selected Agencies	8,166	741	9.1	7,840	609	7.8

According to an OPM official, OPM's reason for authorizing a smaller number of noncareer appointment authorities is its view that agencies have not used some positions previously authorized and its consideration of the impact of budget cuts and agency reorganizations. The official indicated that the agencies may submit written requests for additional noncareer authorizations through an appeals process. If OPM is assured the agency is effectively using its assigned slots, upward adjustments may occur. However, the adjusted authorizations cannot exceed the statutory 10 and 25 percent limitations discussed above.

REASSIGNMENTS AND RETIREMENTS OF  
CAREER SES MEMBERS DURING TRANSITION  
MET REFORM ACT PROVISIONS

Our review of actions taken by several executive branch agencies and our discussions with OPM officials indicate that the agencies adhered to the provisions of the Reform Act in the reassignment of career SESers. Agency officials generally agreed that the provisions of the act were clear, and OPM officials believed the new managers made reassignments with care.

Reassignments are a major  
feature of the SES

A major objective of the SES is to allow managers greater freedom to move executives into positions where their skills can best be used. Since career appointees occupy the overwhelming majority of SES positions, the reassignment of careerists could be a major component of a new management team's effort to reorganize or redirect an agency.

Since the SES was established in July 1979, hundreds of SESers have been reassigned each year. In fact, OPM has established a brokering program to facilitate the movement of careerists among the various agencies.

Data on reassignment and retirement  
of career SES members

At the 6 agencies we visited, we found that no career SES members were involuntarily reassigned during their 120-day restricted periods. Very few reassignments, either voluntary, or involuntary, were made within the 60-day period following the restricted period. The following table shows the number of careerists reassigned during those two periods.

We were unable to identify career SES members who retired because of the change in administrations. We found that of the 285 careerists who retired in fiscal year 1981, 161 retired between January 1, 1981, and June 30, 1981. We could not readily determine the reasons for these retirements.

Career SES Members Reassigned At Selected Agencies

Agency	Date 120-day period ended	Number of careerists on board March 31, a/1981	Careerists voluntarily reassigned within 120-day period		d/Careerists reassigned 60-days following	
			Number	b/Percent	Number	b/Percent
Energy	05-22-1981	535	10	2	6	1
Interior	05-22-1981	215	3	1	5	2
Justice	05-22-1981	193	4	2	16	8
Small Business Administration	08-11-1981	30	0	0	8	27
Health & Human Services	05-20-1981	491	5	1	3	1
Nuclear Regulatory Commission	c/07-01-1981 10-30-1981	187	39	21	-	-

a/we used the number of careerists on board as of March 31, 1981, because that date is the approximate midpoint of the 120-day restricted period for the cabinet level agencies.

b/Percentage of careerists reassigned is based on the number of careerists on board as of March 31, 1981.

c/Two Commissioners were appointed during 1981. The first was appointed on March 1, the second on July 1. Therefore, the agency had two 120-day restrictions from March 1 until October 30.

d/There are no legal restrictions on involuntary reassignments after the 120-day period. Therefore, no information is readily available to show whether reassignments after this period were voluntary or involuntary.

Reassignments may occur  
for many reasons

Reassignments were made due to agency reorganizations, changes in program emphasis, or budget cuts. Despite the rather common perception that reassignments during a change in administration are made for improper reasons, we found that SESers considered many reassignments to be favorable actions. For example, an individual in the Department of Justice was reassigned from a position as Deputy Assistant Administrator, Office of Criminal Justice Programs, to the higher position of Assistant Administrator in the same office. Agency officials pointed out that many reassignment actions actually resulted in promotions to higher levels of responsibility. Furthermore, many individual SESers viewed the transition as an opportunity to move into different program areas and willingly volunteered to be reassigned.

REFORM ACT PROVIDES THE NEW  
ADMINISTRATION WITH FLEXIBILITY  
TO FILL SLOTS WITH ITS OWN PEOPLE

The Reform Act provides that political agency officials may fill noncareer slots as they desire and, after the 120-day restricted period, may reassign careerists to other positions for which the individuals qualify. Because of the flexibility provided the agencies, we did not address the particular methods used by the new managers to fill SES positions.

As discussed on pages 1-3, the Reform Act provides that certain SES positions be reserved for individuals with career status only. However, most SES positions are called "general positions" and may be filled by individuals with career, non-career, or limited appointments. Given the statutory limitations on noncareer appointees, most positions must be filled by careerists whose managerial qualifications are approved by Qualifications Review Boards at OPM. The Reform Act provides that noncareer appointees shall meet the qualifications for the position as determined by the agency making the appointment. The selection is not made under merit staffing procedures and OPM does not review the appointee's qualifications.

OPM'S OVERSIGHT ACTIVITIES DURING  
TRANSITION

The Reform Act charged OPM with the responsibility of administering the entire SES program but made no specific provisions for monitoring during Presidential transitions.

Under its regulatory authority, OPM is required by law to manage the allocation of SES positions to agencies, establish criteria for career-reserved positions, approve SES performance appraisal systems, and evaluate the effectiveness of the SES.

Although this was the first transition in which the SES could be observed, OPM officials stated that the SES system was designed so that most transition situations could be accomplished through the use of normal oversight processes. Hence, the officials concluded that there would be minimal need for special policy guidance related to transition. OPM did, however, routinely monitor SES activities and provide guidance which reiterated various portions of the law, including the 120-day moratorium on involuntary reassignments and performance appraisals.

Specifically, some of the mechanisms utilized by OPM to monitor the SES during the change in administrations included:

- (1) The review of Executive Personnel Transaction Forms (OPM Form 1390) by the SES Agency Officer Branch of the Executive Personnel and Management Development Group (EPMD). Agency officers serve as the central points of contact for OPM relations with the agencies for all SES activities, programs, and policies. Reassignments are reported on OPM Form 1390 for entry into the Executive Personnel and Management Development Information System. OPM Forms 1390 are reviewed for possible inconsistency of information and to insure that no notification of reassignment was made for a position that was no longer in existence. After reviewing these incoming transaction forms, the agency officers indicated they found no improper reassignments or details within or after the 120-day restricted period.
- (2) In March 1981, EPMD conducted a special telephone survey of a group of agencies having about 90 percent of all SES members. The agencies were asked to report all reassignments and details occurring between January 20, 1981, and the end of March 1981. The survey found that 75 career SES members were reassigned and 134 detailed during that period. OPM officials thought this represented a small fraction of total career SES membership and found no instances of forced reassignments.

- (3) On-site evaluations of agency executive personnel management systems were conducted by OPM's SES Agency Officer Branch as part of OPM's usual oversight work. In addition to their routine on-site activities (interviews with individual SESers and review of records for merit staffing, performance appraisal, and position management considerations), personnel management specialists completed a special checklist for the review of reassignments and details that occurred during the 120-day period. Agency officers informed us that no problems with respect to the reassignment, transfer, or detail of SESers were noted during these reviews.

The SES agency officers said they believe the routinely scheduled agency visits and day-to-day interface with agency personnel provided sufficient oversight of SES activities during the change in administrations. However, site visits were suspended from December 1980 until April 1981. According to SES agency officers, the reasons for postponement were (1) Presidential transition key executives were not in place during the latter part of 1980 and therefore were not available for interview, and (2) agency officer branches had to devote time to the biennial SES position authorization process, in addition to other transition activities. Overall, onsite evaluations were done at 21 agencies (mostly small agencies and components of large ones) during fiscal year 1981.

- (4) The Agency Relations Group (ARG) acts as an agency liaison with the executive agencies by maintaining an informal system to keep close contact with agency personnel staff. The ARG monitored agencies in an attempt to identify and collect information on career SES reassignments that were directed by the agency heads and effective after expiration of the 120-day restriction on involuntary reassignments. The information, obtained by telephone calls and drop-in visits to agency personnel officers, was collected to provide information on the number of actions taken by the agencies. ARG was especially concerned that a large number of reassignments would occur immediately after the end of the 120-day restricted period. Through the end of August 1981, the ARG had identified 44 careerists in 9 agencies who had received

notifications of reassignments that were effective after expiration of the 120-day period. No improper reassignments were identified by the ARG.

An ARG official informed us that after 60 to 90 days past the end of the agencies' respective 120-day restricted periods, the ARG would make no further attempt to collect this data. He suggested that most questionable reassignments would probably occur within 60 to 90 days after expiration of the 120-day period. The official said that after 60 or 90 days, the agencies would have returned to normal operations and the possibility of indiscriminate reassignments would be decreased.

#### OPM special study of the SES during the change in administration

OPM's CSRA (Civil Service Reform Act) Evaluation Management Division is conducting an SES special study on "Management Flexibility During a Change in Administration." This study will examine the extent to which the structural changes created by the SES (1) provide new agency heads with the flexibility needed to assume effective control over executive personnel and to establish policy direction for the agency during a change in administration and (2) provide adequate protection for career appointees.

The report will be based primarily on data from the EPMD management information system, and is to be completed in February 1982. The report may also include an examination and comparison of the first and second SES position authorization processes. Completion of all aspects of the study may be subject to budgetary restraints at OPM.

#### ROLE OF THE MSPB DURING TRANSITION

MSPB has no statutory requirement to provide special oversight during a change in administrations. The Office of Special Counsel in MSPB has authority to review allegations of prohibited personnel practices and conduct investigations. There are no special provisions for allegations arising during a change in administrations. However, MSPB's Office of Merit Systems Review and Studies (MSRS) conducts special studies of the merit system.

MSPB has received three complaints from SES members filed for reasons relating to the change in administrations. One complaint was filed on the basis of a downgrade from the SES to GS-15. The Special Counsel found that no prohibited personnel practice had occurred and took no action.

After the election, another individual filed a complaint that a prohibited personnel practice was committed in detailing him to another position. While investigating the allegation, the Special Counsel stopped the agency from detailing the employee. However, the Special Counsel concluded that there were no reasonable grounds to believe the decision to detail the individual was the result of a prohibited personnel practice.

The third complaint was filed as a result of a detail that occurred during the 120-day period. The Office of the Special Counsel had found the detail to be questionable and was in the process of issuing a stay against the agency, but the detail was cancelled and the complaint was withdrawn. No further action was taken by the Special Counsel. Upon returning to her positions the individual notified the Special Counsel that the level of responsibility for the position had been substantially decreased in reprisal for her making the allegations to the Special Counsel. The Special Counsel's investigation indicated that the changes in duties and responsibilities were the result of the agency's reorganization and were made to implement the new administration's policies. The Special Counsel added that the functions of the position remained consistent with the individual's SES level. After concluding that none of the agency's actions appeared to involve reprisal for the individual's disclosure of information, the Special Counsel took no further action.

During the second and third weeks of March 1981, MSRS conducted a survey of 100 career SES members to determine abuses of the 120-day restricted period. The survey found no evidence that careerists were pressured to vacate their positions through resignation, retirement, reassignment, or involuntary details. MSRS planned to conduct another survey near the end of 1981 or early 1982. This would have involved a survey of several hundred careerists to determine if the agencies complied with provisions of the law intended to protect careerists. Results of this survey were to be published in the spring of 1982. We were informed in early January 1982, however, that because of budget restraints and because no significant problems during transition had been indicated, a separate study would not be done on this issue. Rather, the question of compliance would be addressed in MSPB's "Report on the Significant Actions of the Office of Personnel Management During 1981." This report will be published in June 1982.