

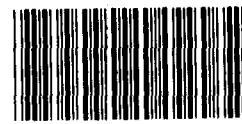
GAO

Report to the Chairman, Subcommittee  
on Federal Services, Post Office and  
Civil Service, Committee on  
Governmental Affairs, U.S. Senate

July 1991

# FEDERAL WORKFORCE

## Inappropriate Use of Experts and Consultants at Selected Civilian Agencies



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**General Government Division**

B-242975

July 17, 1991

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

Dear Mr. Chairman:

This report responds to your request that we review the government's use of experts and consultants. Your request letter recognized that agencies need to appropriately obtain the views of outside experts and consultants but also expressed the concern that agencies have given little scrutiny to this subject.

The services of outside experts and consultants can be obtained through appointments of individuals to the civil service as special government employees, under procurement contracts, or through advisory committees. As agreed, this report addresses only expert and consultant appointments. We examined whether (1) agencies complied with federal requirements for making expert and consultant appointments and (2) agencies and the Office of Personnel Management (OPM) adequately monitored the appointments to ensure compliance with applicable requirements.

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**Background**

Under 5 U.S.C. 3109, agencies may appoint experts and consultants as needed for temporary or intermittent work when authorized by an appropriation or other statute. The purpose of the authority is to give agencies flexibility in obtaining specialized opinions and advice unavailable in the agency or other agencies. Expert and consultant appointments are not subject to the usual civil service laws and regulations that require competitive examination, job classification, and the General Schedule (GS) pay grades.<sup>1</sup> However, the appointments are subject to their own statutory limitations and governed by OPM and Office of Management and Budget (OMB) instructions.

Under section 3109 agencies cannot appoint experts and consultants to do work that is continuous, full time, and the responsibility of regular government employees. Comptroller General decisions state that it is

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<sup>1</sup>The appointments are made to positions in the excepted service. Examples of other positions in the excepted service are attorneys and those of a policy-making, confidential nature.

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illegal for experts and consultants to function as regular government employees who carry out responsibilities imposed by law upon agencies. The law also prohibits use of experts and consultants in Senior Executive Service (SES) positions, which involve managerial duties and determining policy.

As part of its mission to protect the integrity of the civil service, OPM is responsible for setting governmentwide policy for the appointment of experts and consultants to excepted positions and for monitoring the use of these appointments. Although OPM has not issued regulations on the use of experts and consultants, it has issued instructions and guidance in Chapter 304 of the Federal Personnel Manual (FPM) to assist agencies in making the appointments (see app. I). Additional guidance on the use of experts and consultants is contained in OMB Circular A-120.

OPM states that the improper appointment of experts and consultants is illegal, wasteful, and destructive to the morale of career employees. Examples of improper use of experts and consultants cited in the FPM include (1) giving temporary or intermittent employment solely in anticipation of a career appointment, (2) appointing experts and consultants to jobs that can be done as well by regular employees, (3) appointing experts and consultants to full-time, continuous jobs, and (4) avoiding competitive employment procedures. OMB's policy guidance is similar but, in addition, prohibits the use of experts and consultants to bypass or undermine personnel ceilings and to do work of a policy-determining or managerial nature.

The number of expert and consultant appointments remained fairly constant from 1986 through 1989 (see app. II). In 1989 agencies made 3,492 expert and consultant appointments, which represented about 0.8 percent of nonpostal federal government appointments and 0.1 percent of the nonpostal federal workforce. Payroll costs for expert and consultant appointments totaled \$39.4 million in fiscal year 1989.

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## Results in Brief

We determined that 69 of the 106 expert and consultant appointments we randomly selected and examined were made for appropriate reasons, such as to obtain specialized skills or advice for short time periods. Our review covered nine civilian agency installations that made extensive use of the expert and consultant appointing authority.<sup>2</sup> However, 37

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<sup>2</sup>An agency installation is a government site that consists of 100 or more employees and a manager that has substantial personnel management authority.

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appointments were inappropriate primarily because they were made to positions that involved full-time or continuous duties that are the responsibility of career employees. Further, some experts and consultants did not appear to have the required qualifications for the positions to which they were appointed. The results from examining the 106 appointments were representative of 2,882 expert and consultant appointments made by the nine installations. We estimate that about 843 appointments of the 2,882 appointments were inappropriate.

To make our assessments on the propriety of the appointments, we supplemented the information available in the appointees' Official Personnel Folder (OPF) with oral and written information provided by program and personnel officials and the appointees. Many of the explanations given for making the appointments were incomplete. Agency officials explained that they appointed individuals as experts or consultants when delays occurred in hiring them to other government positions or when the agency needed immediate staffing. Many personnel officials said they did not know that such use was against FPM and OMB guidance. The misuse was partly due to agency officials' misinterpretation of FPM guidance regarding the duties experts can perform. The officials incorrectly thought experts could be used to carry out operating functions, or full-time, continuous work.

We recognize, as we reported in August 1990, that the federal government's hiring system is complex and slow and that more flexibility is needed.<sup>3</sup> There are alternative appointments such as the temporary-limited and the special needs appointments that agencies are authorized to use to bring in special temporary help to supplement the work of permanent civil service employees. However, agency officials seemed unfamiliar with the appropriate uses of alternative appointments.

We also found that agency installations often did not follow internal control procedures established by OPM for ensuring the proper use of experts and consultants. Agencies approved inappropriate appointments, and many appointments—both appropriate and inappropriate—lacked adequate documentation in the OPFs describing the appointees' duties and qualifications. The OPFs also had inadequate, missing, or late certifications signed by management officials stating that all the requirements had been met. Agency officials attributed the reviewing deficiencies to several factors, including agency personnel management

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<sup>3</sup>Federal Recruiting and Hiring: Making Government Jobs Attractive to Prospective Employees (GAO/GGD-90-105, Aug. 22, 1990).

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officials' incomplete understanding of OPM instructions, pressure from program officials to fill vacancies, and incomplete forms submitted by the appointees.

We believe that the problems found with expert and consultant appointments went undetected because of limited agency and OPM oversight. From 1986 to the completion of our review, only two of the nine installations had reviewed expert and consultant appointments as part of personnel management evaluations. In 1989 OPM revised its oversight approach to include governmentwide reviews of appointed experts and consultants. OPM reviews addressed agencies' compliance with procedural and documentation requirements but did not determine whether the work the experts and consultants were assigned to do was appropriate or whether the appointees were qualified. We believe OPM should expand the scope of its reviews to address these issues. We also believe agencies should review the appointments in internal personnel management evaluations. This report makes recommendations to Congress and OPM for improving the use and oversight of expert and consultant appointments.

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## Approach

We reviewed 138 appointments randomly selected from a universe of 3,666 appointments processed at 9 civilian installations. We selected these installations because they accounted for 76 percent of the appointments made in the civilian sector during a 30-month period ending June 30, 1988. The results we obtained from reviewing the 138 appointments are representative of the 3,666 expert and consultant appointments the installations made during the 30-month period.<sup>4</sup> The sampling error was designed to be within plus or minus 10 percent at a 95-percent confidence level. (See app. III.)

We examined OPF documentation concerning the appointees' duties, qualifications, pay rate, and length of appointment. We did not review time cards to verify the number of days the appointees worked nor did we review payroll data to determine the actual pay rates. When documentation in the OPFs was vague or incomplete, we relied on agency officials and the appointees to provide, clarify, and/or corroborate

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<sup>4</sup>As discussed in appendix III, because there were 32 advisory committee members incorrectly processed as experts and consultants, we examined the propriety of the remaining 106 cases. The results obtained from examining the 106 appointments are representative of 2,882 appointments, the number of experts and consultants in the universe after excluding the advisory committee members. We considered all 138 cases in determining compliance with FPM internal control procedures.

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information. We used personnel specialists to determine agencies' compliance with federal requirements for making appropriate appointments.

We did our work in Washington, D.C., between January 1989 and June 1990, in accordance with generally accepted government auditing standards. Appendix III lists the nine agency installations visited and provides details on our objectives, scope, and methodology.

OPM comments on a draft of this report are included in appendix IV. Although we did not request written comments from the nine agency installations reviewed, we discussed our findings with officials of these agencies and considered their comments in preparing this report.

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## Appropriateness of the Appointments

The criteria for determining the appropriateness of expert and consultant appointments are contained in 5 U.S.C. 3109, FPM Chapter 304, OMB Circular A-120, and Comptroller General decisions. The criteria in 5 U.S.C. 3109 require that appointments be made for temporary or intermittent needs. This statute does not cover full-time employment in positions that have been determined to be in the competitive service and subject to classification laws and the general pay schedule. The FPM explicitly states that experts and consultants cannot be used to do full-time, continuous work or a job that can be done by regular government employees. The manual also states that experts and consultants cannot be used in anticipation of career appointments. OMB guidance makes it clear that work of a policy-determining or managerial nature is the direct responsibility of regular government employees and cannot be assigned to experts and consultants.

Briefly stated, the FPM defines an expert as a person with qualifications, skills, and knowledge above those of the ordinary person in the field. It defines a consultant as someone who provides views or opinions on problems but does not supervise or carry out operating functions.<sup>5</sup>

Accordingly, we considered the appointments to be appropriate when (1) the work of the position was temporary or intermittent as opposed to continuous and full time; (2) the position did not involve policy, managerial, or operating duties—that is, work that career, SES, or political employees do; and (3) the persons employed as experts and consultants were qualified to do the work of the position.

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<sup>5</sup>The FPM definitions of expert and consultant are cited in appendix I.

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Information was not always available in the employees' OPFS to evaluate the conditions surrounding the appointments. However, by supplementing the file data with written and oral information provided by personnel and program managers and some appointees, we determined that of the 106 appointments we examined, 69 were made for appropriate purposes such as to temporarily obtain expertise or advice not available within the agency. However, 37 appointments were inappropriate. By projecting this number to the 2,882 expert and consultant appointments made in the 9 installations in our review, we estimate that about 843 appointments were inappropriate.<sup>6</sup>

An example of an appropriate appointment was a consultant hired to evaluate test methods used by a company to substantiate a product's germ-reduction advertising claims. Personnel documents indicated that the agency needed a microbiologist to examine information the company submitted regarding the product's cleaning and safety properties. The consultant worked for 5 days doing technical research and evaluation that, according to agency officials, no one else in the agency could do. The appointee's qualifications were directly related to the duties of the consultant position. He had an M.S. in Public Health and a Ph.D in Environmental Health, was a professor of environmental health, directed the Department of Environmental Health and Safety in the university where he taught, participated in a variety of training and research projects, and had published numerous articles on microbial contamination.

The 37 appointments determined to be inappropriate violated one or more of the requirements set forth in OPM and OMB guidance.<sup>7</sup> The principal reasons the appointments were deemed inappropriate were that (1) they were made to positions that involved work that is full time, continuous, and the responsibility of regular employees (35 cases); and (2) the agencies did not demonstrate that the appointees had the qualifications required for the expert or consultant positions (15 cases). (See table 1.) The appointees that did not meet the qualification requirements were primarily experts. According to the FPM, expert appointees must have a high degree of attainment in the field in which they are being hired, possess knowledge clearly superior to other competent persons in the particular field, and usually be regarded as authorities in their area of expertise.

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<sup>6</sup>Our results were weighted to account for the number of appointments at each installation.

<sup>7</sup>Although an appointment may be inappropriate for more than one reason, we counted each case once in determining the 37 inappropriate appointments.



**Table 1: GAO Assessment of Inappropriate Expert and Consultant Appointments**

<b>Basis for inappropriateness</b>	<b>Number of Cases<sup>a</sup></b>
Assigned work that is full time and continuous.	35
<b>Reasons</b>	
Waiting for OPM certification for a career-conditional appointment	10
Waiting for White House approval for Schedule C appointment <sup>b</sup>	2
Waiting for Senate confirmation for presidential appointment	1
Short of staff	13
Agencies could not explain the reasons underlying the appointment	9
Did not meet the FPM qualification requirements for expert or consultant	15
<b>Reasons</b>	
Experience did not directly relate to the consultant position	2
Skills and knowledge were not to the degree required of experts in the particular field	13

<sup>a</sup>A case can be inappropriate for more than one reason.

<sup>b</sup>Schedule C are those positions of a confidential or policy-determining nature.

We discussed the results of our findings with agency officials. Many of the explanations they gave for making the appointments were incomplete. Officials from four agency installations promised to provide additional information but did not do so. At two installations, officials said that the persons responsible for requesting and approving some of the appointments were no longer with the agency, and they did not have the details on individual cases. But, the personnel officials that did try to explain said they did not know that the purpose for which the agency used the experts and consultants was inconsistent with OPM or OMB guidance. The officials added that they had not been told by agency or OPM officials that what they were doing was wrong. (A discussion of agency and OPM oversight of the expert and consultant appointments begins on page 14.)

With respect to the 13 experts and consultants appointed in anticipation of other government jobs, agency officials explained that they hired the experts and consultants when delays occurred in completing the administrative procedures to appoint the employees to other government positions. The delays involved obtaining OPM certification to appoint persons to career positions, White House approval on candidates for Schedule C appointments, and Senate confirmation for presidential appointments. Agency officials claimed that OPM can take from 1 to 6 months to certify

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a candidate for employment. However, FPM guidance explicitly states that it is improper to use the expert and consultant appointing authority to give temporary employment in anticipation of a career position. While the FPM does not specifically state that it is improper to use the authority to avoid delays in hiring Schedule C and other political appointees, the problem with these appointments was that the incumbents did full-time, continuous work. Moreover, Schedule C positions and those of individuals pending Senate confirmation usually involve policy advice and decision-making duties, which OMB specifically prohibits for experts and consultants.

An example of an inappropriate consultant appointment was a person hired to work on the economic implications of compliance investigations dealing with natural gas, crude oil production, and oil refining cases. According to the program manager and the supervisor, the consultant did economic research and analysis, helped the agency in a study on banking deregulation, and did work that the regular economist staff are expected to do. Personnel documents and agency officials indicated that the appointee was being processed for a career economist position before his consultant appointment began. Agency officials said that OPM took too long to certify the incumbent for the economist position. The appointee's supervisor said the agency needed staff immediately because it had a shortage of economists because of a high work load. The appointee was converted to the economist position 2 months after his consultant appointment.

An example of an inappropriate expert appointment involved a person appointed to serve as assistant to a division director. Personnel documents used to approve the expert appointment stated that the appointee was hired to develop and supervise kidney disease data collection activities, develop clinical reports, and assist in nephrology cases. According to the appointee, as an expert she was responsible for developing, implementing, and administering multimillion dollar clinical research projects. The appointee's supervisor acknowledged that the expert performed the duties of a full-time permanent position. He said that the appointee was hired to fill a vacant permanent position because they were short of staff. The agency needed to fill three permanent positions, and the expert did work to help lessen the work load in all three areas.

For the 13 appointments made because of agencies' staffing shortages, agency officials said they needed to bring the individuals on board

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quickly in order to carry out important agency functions.<sup>8</sup> Many of the 13 appointees hired to handle staffing shortages were former government employees. Altogether we found 24 inappropriate appointments of former government employees.<sup>9</sup> This amount represents almost two-thirds of the total 37 appointments that we deemed inappropriate. In total there were 50 former government employees among the 106 expert and consultant appointments we reviewed.

The primary reason the 24 appointments of former government employees were inappropriate was that the appointees were assigned to positions that involved operating duties that should have been performed by full-time staff. Agencies could have avoided this problem by hiring the former government employees as reemployed annuitants (if they had retired from the federal government) or by reinstating them to permanent or temporary positions.

In the time period covered by our review, other appointment authorities were available to agencies to bring in special temporary help, but the agency personnel officials we interviewed did not seem knowledgeable about appropriate uses of alternative appointment authorities. For example, agencies may give competitive and noncompetitive temporary or term appointments to applicants who meet the eligibility criteria.<sup>10</sup> For an unanticipated or urgent need, agencies can use the special needs appointment, which allows agencies to hire persons without going through competitive employment procedures.

In December 1989, OPM expanded the special needs appointment authority to allow agencies to hire persons noncompetitively to meet a legitimate critical need that could not be met by other appointment authorities. OPM expanded the purposes for which special needs appointments could be made to include such circumstances as appointments pending completion of competitive examining procedures. This appointing authority was not available to agencies for the appointments

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<sup>8</sup>The Department of State had been inappropriately using consultants and experts to increase staff but, as a result of our work and a recent Department of State Office of the Inspector General (OIG) report, the Department issued instructions to terminate the practice of inappropriately using experts and consultants to augment the workforce.

<sup>9</sup>The term former government employees, as used here, includes retired federal government employees, persons who had been appointed to permanent or political positions in the federal government, and persons who had worked as staff fellows at the National Institutes of Health.

<sup>10</sup>See Chapter 316 of OPM's FPM.

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covered in our review. The personnel appointing authorities discussed above apply to positions at GS-15 or below.

Experts and consultants cannot be appointed to SES positions. If the work to be assigned calls for duties appropriate to SES, agencies can use the SES limited-term or limited emergency appointment. However, to use these types of appointments, agencies must obtain prior OPM approval.

We recognize the federal government's hiring system can be complex and slow. In an August 1990 report on federal recruiting and hiring, we said that simpler, more timely employment procedures and more flexibility were needed, especially for hard-to-fill jobs. OPM has been working on ways to provide more flexibility.

In addition to the reasons agency officials gave for making the inappropriate appointments, we believe that agency personnel officials misinterpreted the FPM guidance regarding the duties of experts and consultants. For example, personnel and program officials in six of the nine installations reviewed thought experts could do the work of regular employees even though the FPM states that experts and consultants cannot be used for full-time, continuous work or for work that can be done as well by regular employees.

The confusion may be because of broad FPM guidance and unclear definitions. The FPM states that experts can have operating duties and consultants cannot, but the FPM does not discuss the meaning of operating duties. The FPM defines the expert position as a position that, for satisfactory performance, requires the services of an expert in the particular field with duties that cannot be done satisfactorily by nonexperts in the field. The consultant position is defined as one that primarily requires the performance of advisory services rather than the performance of operating functions.

The OPM official responsible for developing the FPM guidance explained that while experts can supervise and carry out operating duties, they cannot be hired to do continuous, full-time work. He added that OPM is planning to make revisions to FPM Chapter 304 but will not be addressing distinctions between the work of experts and consultants. We believe that to avoid future misuse of the appointment authority, the FPM should be revised to better define the duties of the expert and consultant positions.

## Inadequate Compliance With FPM Internal Control Procedures

The FPM requires that agencies follow internal control procedures for ensuring the appropriate use and appointment of experts and consultants. The procedures contain instructions for documenting and reviewing the appointments and for communicating to the appointing officials the requirements for making appropriate appointments (see app. I). We found that the installations we reviewed generally did not follow many of these procedures. Agency personnel officials often said they were unaware of the procedures. Some officials acknowledged they knew the requirements but said that sometimes outside factors, such as pressure from program officials to fill vacancies and incomplete forms submitted by the appointees, precluded them from complying with all the requirements.

## Documentation Deficiencies

None of the installations complied with all the FPM documentation requirements in making expert and consultant appointments. The administrative process for appointing experts and consultants begins when an agency program manager requests in writing the services of experts and consultants from its personnel office. According to OPM instructions, the request should include a position description, explaining the need for the position and the duties the appointee is expected to carry out, and documentation on the appointees' qualifications.

The FPM also requires that a high-level agency management official review the documentation on the proposed appointment and certify prior to employment that all legal and OPM requirements are met. The official signing the preappointment review certification must be satisfied with the conditions of the appointment.<sup>11</sup> The conditions include the need for the position, the temporary or intermittent nature of the work, the appointee's qualifications, the completeness of documentation, and the soundness of the decision that the expert or consultant is the most appropriate appointing authority. Of 138 appointments we reviewed, 71 had missing, late, unsigned, or undated preappointment review certifications.<sup>12</sup> Some personnel officials said that at times they were under pressure to approve the appointments because program managers needed staff immediately, and they believed that they needed to assist the program offices in getting the required staff.

<sup>11</sup>The certificate documenting the preappointment review must be maintained in the appointee's OPF along with all other documents relevant to the appointment.

<sup>12</sup>As discussed in appendix III, we reviewed all 138 appointments to examine compliance with internal control requirements.

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The certifying official must also be satisfied that the appointee's financial disclosure statement was obtained and that no conflicts of interest exist. Eight of the nine installations we reviewed generally complied with this requirement. The Department of Housing and Urban Development (HUD) did not use preappointment review certificates, as required in FPM Chapter 304, appendix A, during the period covered by our review but reinstated their use as a result of our review of HUD's Financial Disclosure Program.<sup>13</sup>

We found that 2 installations made over half of their 16 appointments with missing or inadequate resumes or Standard Forms (SF) 171.<sup>14</sup> These documents were inadequate because they were incomplete or too general to allow the personnel official to determine the appointees' qualifications. A personnel official at the Nuclear Regulatory Commission (NRC) explained that it hires experts and consultants that are very well known in their fields, but these persons do not always provide the necessary paperwork. He also said that NRC personnel officials rely on the agency's program managers' knowledge of the experts and consultants to determine if the persons are well qualified. Until our review was done, the agency did not see the need to require additional documentation. Personnel officials at the National Aeronautics and Space Administration (NASA) could not explain why the documents were missing or incomplete but agreed to better document the qualifications for future appointments. The officials said that NASA was implementing new procedures for appointing experts and consultants in its headquarters personnel office and would revise instructions to address this issue.

Sixty-two appointments had vague position descriptions; that is, they lacked the required detailed descriptions explaining the duties to be performed and why the position actually required an expert or consultant. For example, the request for services of a consultant at one agency installation stated that a consultant was hired to review and submit recommendations on technology transfer and utilization programs, coordinate commercialization activities, and do "other such tasks as assigned." This description does not explain the temporary nature of the work and why a consultant was needed as opposed to a regular government employee.

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<sup>13</sup>See *Government Ethics: HUD Financial Disclosure Reports Missing or Not Reviewed* (GAO/ GGD-90-51, Feb. 6, 1990.)

<sup>14</sup>The SF-171 is the form used to apply for employment in the federal government.

Many agency personnel officials said they did not realize the position descriptions were too general to show whether duties were appropriate for the experts and consultants. They also said that the descriptions are often prepared far in advance by program officials who, at the time, have no specific information on the duties the incumbents will perform.

We found many errors in the SF-50s. This form is used by federal agencies to document and process personnel actions such as employment or termination of experts and consultants. The errors in the SF-50s included missing legal authority citations and incorrect pay plan codes. SF-50 data are used by OPM to monitor agencies' use of experts and consultants and to identify sites for its Personnel Management Evaluation (PME) program. The form also provides data that agencies can use to monitor the amounts paid to experts and consultants.

Table 2 summarizes the documentation and review deficiencies in the appointments we reviewed and projects the results to the 3,666 appointments the installations made in the 30-month period covered by our review.

**Table 2: Documentation Deficiencies in 138 Appointments<sup>a</sup>**

Deficiency	Number of appointments	Estimated appointments <sup>b</sup>	As a percent of 3,666 appointments
Incomplete, too general, or missing SF-171 or resume	16	310	9%
Vague position description	62	1,478	40
SF-50 errors	65	1,298	35
Missing, late, unsigned, or undated review certification	71	1,615	44

<sup>a</sup>Appointments do not add to 138 because they had multiple deficiencies.

<sup>b</sup>Our results were weighted to account for the number of appointments at each installation. Confidence levels are shown in appendix III.

**Quarterly Reviews Not Meaningful**

The FPM also requires that agencies frequently review the use of experts and consultants during their employment. OPM envisioned that reviews would be done each quarter as a control measure for ensuring the appointees' duties were appropriate, the time limits were observed, and the documentation was kept current. Five of the nine installations routinely prepared quarterly reports. Some reports were done by the agencies' personnel offices and were inventories of the appointments made and the days the appointees worked; other reports were forms signed by the program manager. According to agency officials, none of the reports

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represented an independent review of the appointees' duties to determine if the work was appropriate for experts and consultants. OPM officials said that agencies view the quarterly reports as paperwork requirements and not as substantive reviews of the appointments.

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### Agency Officials Unaware of Annual Communication Requirement

The FPM requires that each agency communicate to its appointing officials, at least annually, relevant highlights of FPM Chapter 304. Of the nine agency installations, one demonstrated it annually communicates to its appointing officials relevant information on the proper appointment of experts and consultants. Officials at the other installations said they were unaware of this requirement.

According to the FPM, communication may take the form of written issuances, orientation sessions for new managers, executive staff meetings, and training. The FPM is specific and comprehensive about the information it requires appointing officials to have. For example, the FPM requires appointing officials to know (1) what is and is not permitted under the law and OPM instruction; (2) that the improper use of the expert and consultant appointment authority is a violation of law, which represents illegal exception from civil service appointment and classification laws; and (3) the alternative appointing authorities available to staff jobs.

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### Better Oversight Is Needed

Although both the agencies and OPM are responsible for ensuring the proper use of experts and consultants, oversight of the appointments has been inadequate. We found that agency personnel offices generally did not review their use of experts and consultants because they either have no active PME programs or did not have the capability to do independent evaluations of the appointments made in their headquarters personnel offices. Moreover, except in one agency there were no Inspector General (IG) studies covering the appointments. In addition, OPM's evaluation efforts of experts and consultants have been limited.

Agencies are required by statute, presidential directive, and OPM instructions to review the effectiveness of personnel management in their organizations. In addition, 31 U.S.C. 1114(b) requires the IG or a comparable official of each agency to submit annually to Congress an evaluation of the progress the agency makes in establishing effective management controls over experts and consultants. Section 1114(b) states that if the agency does not have an IG or comparable official, the head of the agency or its designee shall submit the evaluations.



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## Agency Oversight of Appointed Experts and Consultants

We asked agencies for PME reports, special studies, and IG audits they may have prepared since 1986 addressing use of experts and consultants. As of March 1990, two of the nine installations we visited had reviewed experts and consultants as part of internal personnel management evaluations. These installations were the Public Health Service and the National Institutes of Health. Officials at three installations—NRC, the Federal Trade Commission, and the State Department—said that their agencies did not have active PME programs. The State Department said it was planning to implement a PME program in 1991.

The Department of Education, HUD, NASA, and the Environmental Protection Agency had formal evaluation programs, but they had not reviewed experts and consultants. Personnel officials said that experts and consultants are typically used in headquarters, and their evaluations generally covered regional operations. Personnel officials added that their agencies do not have the capability to do independent evaluations of the experts and consultants used in headquarters.

As of April 1990, except for the State Department, none of the agencies we reviewed covered expert and consultant appointments as part of the 31 U.S.C. 1114(b) requirement that IGs report to Congress annually on the progress agencies make regarding management controls over consulting services. Officials from the IG offices cited time and staff constraints and confusion about the scope of section 1114(b) as the main reasons for excluding appointments from their evaluations.

The confusion arises because the law requires that IGs evaluate management controls over consulting services within their agencies, but the statute (31 U.S.C. 1114(b)) does not mention appointments of experts and consultants. OMB Circular A-120 explains that the term consulting services includes advisory and assistance services obtained through personnel appointments, procurement contracts, and advisory committee membership. However, agencies generally interpret the term as referring only to services procured by contract and, therefore, do not report on the status of management controls over appointed experts and consultants. OMB staff acknowledged there is confusion on the scope of title 31 evaluations.

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## Limited OPM Evaluation Efforts

Prior to fiscal year 1984, OPM closely reviewed experts and consultants as part of its PME program. While the reviews disclosed some improper uses of the appointments, agencies generally used the appointing authority properly, according to OPM officials. In fiscal year 1984, OPM

changed its PME approach and discontinued systematic reviews of the appointments. OPM modified its PME approach again in 1989 and specifically included expert and consultant appointments in its fiscal years 1989 and 1990 governmentwide compliance reviews. In these reviews, OPM found procedural and documentation errors in the appointments of experts and consultants, such as failure to provide the required preappointment review certificates, document number of days worked, and do quarterly reviews.<sup>15</sup> OPM concluded that there were no systemic merit system problems with the use of experts and consultants. The results of the 1989 governmentwide compliance reviews were published in a March 1990 report.<sup>16</sup>

However, we believe that the OPM reviews were not designed to uncover merit system problems. To uncover these problems, OPM evaluators had to determine whether the work experts and consultants were assigned to do was appropriate and whether the appointees met FPM qualification requirements for the expert or consultant positions hired. However, OPM evaluators did not determine appropriateness or whether qualifications were met. OPM's fiscal year 1989 governmentwide reviews of experts and consultants focused on compliance with procedural and documentation requirements but did not address the propriety of expert and consultant appointments as they related to the merit system. OPM used the same approach in its fiscal year 1990 reviews.

OPM evaluators told us they did not determine the propriety of the appointments in relation to the merit system in the fiscal year 1989 reviews because OPM instructions do not allow them to "second guess" agency managers, and they were not provided enough time to do in-depth investigations. OPM officials agreed that OPM had played a limited role in overseeing expert and consultant appointments. They said that close monitoring of expert and consultant appointments is inconsistent with OPM's goals of increased delegation and giving agency managers more discretion in decision making. This view is reflected in OPM's instructions for carrying out the fiscal year 1989 governmentwide reviews of experts and consultants. The instructions say that "OPM's concern for decentralization and greater delegations to managers will be a key consideration in deciding the propriety of personnel decisions.

<sup>15</sup>According to OPM's report, all errors were reported to the installation heads and servicing personnel offices, and agencies were required to take corrective action.

<sup>16</sup>See Agency Compliance With Regulatory and OPM Requirements in Using Certain Personnel Authorities (OPM GWR 90-1, March 1990). In addition, OPM prepared separate reports on the individual installations audited.

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Therefore, in cases where judgment is involved, we will not substitute our judgment for management's."

We agree with OPM's philosophy of giving agency managers greater flexibility in personnel decision making. However, this flexibility does not mean that OPM should not make the judgments needed to fully exercise its statutory responsibility to evaluate whether appointments have been made in accordance with all applicable legal and regulatory requirements and merit system principles.

Other factors have limited OPM's role in overseeing expert and consultant appointments. According to OPM officials, it is not cost-effective to use more of OPM's declining staff resources for in-depth reviews of these appointments because past evaluations have not disclosed serious problems, agencies share oversight responsibility, and the number of appointments is relatively small.

More importantly, OPM believes that lack of authority to regulate the appointments has hampered OPM's oversight efforts. OPM officials said that attempts were made in the past to introduce legislation that would give them authority to regulate appointments, but the efforts were unsuccessful. From 1979 to 1986 at least eight bills were introduced (some at the request of OPM) to amend 5 U.S.C. 3109. The legislative proposals sought, among other things, to (1) better define the terms expert and consultant; (2) provide OPM clear authority to regulate and direct corrective action, including suspension of agency authority for violating the law and regulation; and (3) establish statutory reporting requirements.

We agree that 5 U.S.C. 3109 does not contain explicit authority for OPM to issue regulations on the use of experts and consultants. However, we believe, as stated in our 1980 report on the use of consultants, that on the basis of OPM's mission to ensure the integrity of the civil service and classification laws, OPM has an implied authority to issue regulations governing the employment of experts and consultants.<sup>17</sup> Because improper use of 5 U.S.C. 3109 affects the competitive civil service, OPM has the responsibility and the authority to write policy and procedures for the proper use of experts and consultants under 5 U.S.C. 1103 and 1104.

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<sup>17</sup>Government Earns Low Marks On Proper Use of Consultants (GAO/FPCD-80-48, June 1980).

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In 1980 we commented on two of the bills introduced to expand OPM's authority. We supported changes to 5 U.S.C. 3109 that would enable OPM to provide greater control and uniformity over the employment of experts and consultants. We continue to support the need for changes to the law that give OPM direct authority over expert and consultant appointments. However, we believe that even without changes to section 3109, OPM can use the authorities granted under sections 1103 and 1104 to better define the duties of experts and consultants and to issue regulations prohibiting the use of experts and consultants to do work that is continuous, full time, and can and should be performed by other government employees.

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## Conclusions

Agencies need flexibility in obtaining outside opinions and expertise for improvement of government services and operations. The expert and consultant appointment authority helps provide that flexibility.

Most of the 106 expert and consultant appointments we reviewed were made for appropriate reasons. However, we determined that 37 appointments were inappropriate, and most of these 37 appointees were assigned work of regular government employees, which is against the law. Although we recognize that the federal hiring process can be complex and slow, this is not a reason to break the rules for using experts and consultants. There are alternative appointment authorities available that agencies can use to bring in special temporary help to supplement the work of regular employees.

Part of the problem is due to agency officials' poor understanding of what is and is not appropriate, the types of alternative appointment authorities available, and the duties that experts and consultants can perform. We believe that OPM can better define appropriate duties for experts and consultants to avoid future misuse of the appointing authority.

Another reason for the misuse of expert and consultant appointments is that agencies did not adequately comply with FPM internal control requirements. Agency personnel officials involved in processing and approving the expert and consultant appointments should be better trained on all applicable requirements, the importance of the pre-appointment review process, and the value of maintaining adequate documentation on the appointment. It is OPM's responsibility to enforce the communication requirements to ensure the agency appointing officials are well informed of applicable legal and OPM requirements.

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OPM believes it lacks authority to regulate the use of experts and consultants and enforce compliance with federal requirements. We believe that under its general authority to protect civil service laws, OPM can regulate certain aspects of the employment of experts and consultants to ensure that appointments that circumvent the normal civil service rules are not made—such as those that permit the employment of experts and consultants to positions that should be filled by regular government employees. However, we agree that 5 U.S.C. 3109 does not give OPM explicit authority in this area and that amending 5 U.S.C. 3109 to authorize OPM to prescribe regulations governing the employment of experts and consultants would provide OPM greater control over the appointments.

Better oversight can also help detect and prevent misuse. Agency officials acknowledged the need for better monitoring and evaluation efforts. OPM should require agency personnel offices to develop a way to internally evaluate expert and consultant appointments. Until the agencies can do that, OPM and the IGS should take the lead in reviewing the appointments. OPM should continue to review the appointments as part of its evaluation program for compliance with the law, regulation, and OPM instruction. Also, OPM should assess the propriety of the appointments in its evaluations and better enforce documentation and processing requirements.

The IGS' evaluations should address whether agencies have effective management controls in place to ensure proper use of the appointments. These evaluations would build on the findings of OPM, agency reviews, and other studies that may have been done on appointed experts and consultants. As previously discussed, not many agencies complied with the 31 U.S.C. 1114(b) evaluation requirement because the statute does not explicitly state that agencies must report on the effectiveness of their management controls over expert and consultant appointments. We believe that Congress should revise the law to explicitly include appointed experts and consultants.

One of the issues raised during the course of this review was what actions could or should be taken against officials who violate applicable civil service laws, regulations, and OPM instructions in appointing experts and consultants. This accountability issue is complex and applies to other personnel actions. Accordingly, we plan to explore it separately in a broader context and will advise the Subcommittee of our findings.

## Recommendations to Congress

To achieve better control over the use of experts and consultants, we recommend that Congress

- amend 5 U.S.C. 3109 to authorize OPM to (1) develop regulations governing the employment of appointed experts and consultants, (2) take the necessary action (including withdrawal of the authority) to ensure compliance with the law and federal documentation and reporting requirements, and (3) require agencies to comply with any corrective action that OPM directs.
- amend 31 U.S.C. 1114(b) to explicitly state that IGS are required to evaluate the progress agencies make in establishing effective management controls over appointed experts and consultants.

## Recommendations to the Director of OPM

To improve compliance with federal requirements governing the expert and consultant appointing authority, we recommend that the Director of OPM

- revise FPM guidance to (1) define the meaning of operating duties, (2) give examples of the nonoperating duties experts and consultants can perform, and (3) specify that experts cannot do routine and continuous duties that are the responsibility of regular employees.
- issue regulations covering mandatory requirements for the employment of experts and consultants, including a prohibition on the use of experts and consultants to handle staff shortages and to expedite the process of hiring persons to other government positions.
- review, on a regular basis, agencies' use and documentation of the appointments.
- ensure that personnel officials receive appropriate training on the procedures for making expert and consultant appointments and that agencies comply with the FPM requirement that agencies annually communicate to the appointing officials key aspects of FPM Chapter 304.
- require that agencies review the appointments as part of their internal PME program and, if agencies do not have an existing program, OPM should require agencies to develop a plan for establishing a PME program within a specified time frame.

## Agency Comments and Our Evaluation

In written comments on a draft of this report (see app. IV), the Director, OPM, agreed with our recommendation to revise FPM Chapter 304 to provide better guidance on the type of work that is appropriate for experts and consultants. In addition, the Director agreed in principle with our

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recommendation that Congress amend 5 U.S.C. 3109 to grant OPM greater control over expert and consultant appointments.

However, the Director said that OPM does not have authority to implement our recommendation to issue regulations covering mandatory requirements for the employment of experts and consultants, including a prohibition on the use of experts and consultants to handle staff shortages and to expedite the process of hiring persons to other government positions. According to the Director, OPM lacks authority to issue regulations to govern agencies' employment of experts and consultants. However, under 5 U.S.C. 1103, OPM has the authority and responsibility to execute, administer, and enforce classification activities and the civil service laws, rules, and regulations. We recognize that OPM has implied authority to regulate the employment of experts and consultants, and thus we recommended that Congress amend 5 U.S.C. 3109 to give OPM explicit authority over expert and consultant appointments (see p. 20).

The Director also said that OPM lacks authority to require agencies to review expert and consultant appointments as part of their internal PMES. We believe that under the President's authority to issue rules governing the competitive service, set out in 5 U.S.C. 3302 and delegated to OPM under 5 U.S.C. 1104, OPM can require agencies to review their expert and consultant appointments to ensure that they are not being made to positions that should be in the competitive service and filled by regular appointments on the basis of merit principles. Clearly, such action is within the authority of OPM, an agency responsible for safeguarding the civil service system and its merit principles.

With respect to OPM's reviews of agencies' use of experts and consultants, the Director described its 1989 and 1990 evaluation program but did not say whether it will continue to review expert and consultant appointments in the future.

Regarding our recommendation to ensure that personnel officials receive appropriate training on the procedures for making expert and consultant appointments, the Director said that OPM offers two interagency training courses that cover the type of training we recommended. However, according to an OPM official who manages the training curriculum, neither of the courses OPM currently provides focus on expert and consultant appointments but may address questions that come up on this subject. In June 1991, an OPM official involved in OPM's training program told us that the two courses mentioned above are being revised and will address expert and consultant employment requirements.

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In addition to addressing our recommendations, the Director, OPM, said that HUD had filed preappointment certificates on the expert and consultant appointments that OPM reviewed. We met with OPM evaluation officials to discuss the contents of HUD's files on expert and consultant appointments. During this meeting, OPM officials agreed with our assessment that the form that HUD used in the past was primarily for the purpose of describing the experts' and consultants' expected duties and did not satisfy all the certification requirements outlined in FPM Chapter 304, appendix A.

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

Sincerely yours,



Bernard L. Ungar  
Director, Federal Human  
Resource Management Issues





# Guidance for Making Appropriate Expert and Consultant Appointments

FPM Chapter 304 and OMB's Circular A-120 contain the definitions, policy statements, and internal control requirements for making expert and consultant appointments. OPM and OMB guidance list the purposes for which it is appropriate to hire experts and consultants. These purposes include obtaining

- specialized opinions unavailable in the agency or in other agencies;
- outside viewpoints to avoid too-limited judgment on administrative or technical issues;
- advice on developments in industry, university, and foundation research;
- the opinions of experts whose prestige can contribute to the success of an important project;
- the advice of citizens to develop or implement government programs that by their nature or by statute call for citizen participation; and/or
- the skills of specialized persons who are not needed continuously, or who cannot serve regularly or full time.

OPM defines experts and consultants as follows:

"Expert means a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. An expert's knowledge and mastery of the principles, practices, problems, methods, and techniques of a field of activity, or of a specialized area in a field are clearly superior to those usually possessed by ordinarily competent persons in that activity. An expert usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity."

"Consultant means a person who serves primarily as an adviser to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. A consultant provides views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions (23 Comp. Gen. 497.) Generally, a consultant has a high degree of broad administrative, professional, or technical knowledge or experience which should make the advice distinctively valuable to the agency."

Examples the FPM gave of inappropriate uses of experts and consultants were cited in the background section of this report. OMB Circular A-120 prohibits the following uses of experts and consultants:

- to do work of a policy, decision-making, or managerial nature, which is the direct responsibility of agency officials;
- to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

- to aid in influencing or enacting legislation; and
- to obtain professional or technical advice that is readily available within the agency or another federal agency.

With respect to internal controls, the FPM contains requirements for documenting and reviewing appointments and communicating to appointing officials the requirements for making appropriate appointments. In order to process an expert or consultant appointment, the SF-50 must cite the correct codes for the pay plan and legal authorities. The pay plan code distinguishes an expert from a consultant or advisory committee member.

OPM's documentation requirements are comprehensive. For example, the FPM states that for each expert and consultant employed, agencies must establish an OPF containing the following documentation:

- a description of the position in enough detail to show that the position actually requires an expert's or consultant's services;
- an SF-171 or a description of the appointee's background and qualifications in enough detail to show that the agency qualified him/her for the position;
- a description of any regularly scheduled tour of duty for a less than full-time employee;
- an SF-50 showing the start of employment;
- an SF-50 showing termination of the employment;
- certification that a statement of employment and financial interests has been obtained, and it has been determined that no conflict of interest exists;
- certification that requirements concerning the appointee's qualifications, pay documentation, and use of the appointing authority have been met;
- the number of days worked in the previous service year for all reappointments of intermittent experts and consultants; and
- a preappointment review certificate attesting that all the conditions of the appointments have been met and that the appointment is in compliance with all applicable federal requirements.

According to the FPM, in approving the appointments, a high-level management official must review the proposed appointment and certify that (1) the position is temporary and necessary, (2) the appointee and position meet FPM Chapter 304 definitions, (3) the expert and consultant appointing authority is the most appropriate authority to use, (4) the

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**Appendix I  
Guidance for Making Appropriate Expert and  
Consultant Appointments**

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intended pay rate is appropriate, and (5) all other required documentation is in order.

# Expert and Consultant Appointments in the Federal Government (1986-1989)

<b>Year</b>	<b>Experts</b>	<b>Consultants</b>	<b>Total</b>
1989	920	2,572	<b>3,492</b>
1988	799	2,661	<b>3,460</b>
1987	888	2,658	<b>3,546</b>
1986	679	2,428	<b>3,107</b>

Note: Excludes the Postal Service.

Source: OPM Central Personnel Data File.

# Objectives, Scope, and Methodology

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The Chairman, Subcommittee on Federal Services, Post Office and Civil Service, Senate Committee on Governmental Affairs asked us to do a comprehensive review of experts and consultants. Per agreement with the Subcommittee, we focused on expert and consultant appointments made in the civilian sector and did not address consulting services procured by contract or obtained from advisory committee members.<sup>1</sup> We reported and testified on aspects of the consulting contract work in June 1988<sup>2</sup> and February 1989.<sup>3</sup>

Our objectives were to determine (1) whether experts and consultants have been appointed for appropriate reasons and in accordance with FPM and OMB guidance and (2) whether agencies and OPM are adequately overseeing the appointments.

The sampling methodology was designed to provide a 95 percent confidence level with a sampling error of plus or minus 10 percent. We randomly selected 138 expert and consultant appointments from those made by 9 installations between January 1986 and June 1988. Except for HUD, the installations selected for review were high users of experts and consultants. Together they accounted for about 76 percent of the total expert and consultant appointments made in the civilian sector from 1986 through 1988. HUD was included because of congressional concern about ethics problems with HUD's use of consultants. Table III.1 shows the appointments' universe and sample of the installations selected for review.

To draw our sample we used OPM's Central Personnel Data File (CPDF). We did not attempt to verify the information contained in the CPDF. However, in our sample there were 32 advisory committee members that agencies incorrectly processed as experts and consultants. We reviewed all 138 cases to determine compliance with OPM internal controls procedures. However, the 32 committee members were excluded from our analysis of the appropriateness of the appointments because members are governed by different federal requirements that were outside of our study scope.

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<sup>1</sup>Committee members are governed by the Federal Advisory Committee Act not OPM instructions.

<sup>2</sup>Government Consultants: Agencies' Consulting Services Contract Obligations for FY 1987 (GAO/GGD-88-99FS, June 23, 1988) and Government Consultants: Agencies' FY 1987 Consulting Services Obligations At Specified Reduction Levels (GAO/GGD-88-104FS, June 24, 1988).

<sup>3</sup>The Environmental Protection Agency's Use of Consultants (GAO/T-GGD-89-5, Feb. 3, 1989).

Our findings on internal control procedures represent the total 3,666 appointments made at the 9 locations where we did our work. Our findings on the appropriateness of the appointments represent 2,882 expert and consultant appointments. This number reflects the adjustments made to the original sample to discount the advisory committee members. As expected, when variables are projected to represent the universe of appointments the sampling errors are larger as shown in tables III.2 and III.3.

To evaluate oversight efforts, we interviewed OPM, OMB, and agency program and personnel officials and reviewed documents they provided. In addition, we talked to officials from the IG offices at the nine installations to determine whether they had done studies on appointed experts and consultants.

**Table III.1: Expert and Consultant Appointments Made Between January 1986 and June 1988 by Installations Selected for Review**

Installation	Appointments made	
	Universe <sup>a</sup>	Sample
Public Health Service Rockville, MD	1,277	28
Environmental Protection Agency Washington, D.C.	591	18
Department of State Washington, D.C.	442	14
National Aeronautics and Space Administration Washington, D.C.	318	13
National Institutes of Health Bethesda, MD	329	13
Nuclear Regulatory Commission Rockville, MD	280	13
Department of Education Washington, D.C.	196	13
Federal Trade Commission Washington, D.C.	181	13
Department of Housing and Urban Development Washington, D.C.	52	13
<b>Totals</b>	<b>3,666</b>	<b>138</b>

<sup>a</sup>Universe obtained from OPM Central Personnel Data File.

**Appendix III  
Objectives, Scope, and Methodology**

**Table III.2 Estimates and Confidence Intervals for GAO's Analysis of the Appropriateness of 106 Expert and Consultant Appointments**

	<b>Estimated appointments</b>	<b>Percent</b>
<b>Appropriate</b>		
Lower bound	1,816	63
Number	2,039	71
Upper bound	2,261	78
<b>Inappropriate</b>		
Lower bound	621	22
Number	843	29
Upper bound	1,066	37

**Table III.3: Estimates and Confidence Levels for GAO's Analysis of Documentation Deficiencies Found on 138 Appointments Reviewed**

	<b>Percent</b>			<b>Estimated appointments</b>		
	<b>Lower bound</b>	<b>Estimate</b>	<b>Upper bound</b>	<b>Lower bound</b>	<b>Estimate</b>	<b>Upper bound</b>
Inadequate or missing SF-171 or resume	5	9	12	176	310	444
Inadequate position description	32	40	49	1,169	1,478	1,788
Errors in the SF-50	32	35	39	1,176	1,298	1,421
Inadequate, missing, late certification	36	44	52	1,325	1,615	1,904



# Comments From the Office of Personnel Management



OFFICE OF THE DIRECTOR

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

MAY 9 1991

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

Dear Mr. Fogel:

We appreciate having the opportunity to provide comments on the draft General Accounting Office (GAO) report entitled Federal Workforce: Inappropriate Use of Experts and Consultants at Selected Civilian Agencies.

In your draft report you make several specific recommendations to OPM. Your first recommendation is that OPM "revise FPM guidance to (1) define the meaning of operating duties, (2) give examples of the non-operating duties experts and consultants can perform, and (3) specify that experts cannot do routine and continuous duties that are the responsibility of regular employees." We will begin work shortly to revise the Federal Personnel Manual (FPM), Chapter 304, on experts and consultants, and we will include guidance that is responsive to your first recommendation. We believe such additional guidance will help agencies better determine what work is appropriate for experts and consultants.

See p. 20.

The second recommendation made to OPM in the draft report is to "issue regulations covering mandatory requirements for the employment of experts and consultants, including a prohibition on the use of experts and consultants to handle staff shortages and to expedite the process of hiring persons to other government positions and review on a regular basis agencies' use and documentation of the appointments." As you know, OPM now lacks authority to prescribe regulations to govern agencies' employment of experts and consultants. We note with interest your proposal that Congress amend 5 U.S.C. 3109 to grant OPM regulatory authority "to achieve better control over the use of experts and consultants." We agree in principle with this proposal, but would, of course, want to review any proposed statutory language before expressing a formal position.

See p. 21.

Appendix IV  
Comments From the Office of  
Personnel Management

See pp. 16-17.

In line with the recommendation that OPM review regularly agencies use of appointments of experts and consultants, your report states on page 35 that "OPM should assess the propriety of [such] appointments in its evaluations and better enforce documentation and processing requirements." Because agencies have the requisite legal authority to make judgments, on assessing "propriety," our general position is that evaluators should not as a rule second-guess agency decisions. This is not to say we would not call an expert or consultant appointment erroneous on purely judgmental grounds if the evidence warranted. Further, the propriety of these appointments can usually be assessed adequately if the documentation is present.

See p. 21.

Our recent compliance reviews have focused on procedural and documentation requirements. We reviewed 85 expert and consultant appointments in fiscal year 1989 and 113 in fiscal year 1990. In both years we found very high rates of procedural and documentation error and required appropriate corrective action at the installation level. Following these reviews, we distributed a Survey of Agency Personnel Management Evaluation Program report to all directors of personnel last year and will do the same with the fiscal year 1990 report, which is currently under review in draft form, when it is completed.

See p. 21.

Your third recommendation is to "assure that personnel officials receive appropriate training on the procedures for making expert and consultant appointments and that agencies comply with the FPM requirement that agencies annually communicate to the appointing officials key aspects of FPM Chapter 304." OPM offers two interagency training courses, Basic Staffing and Placement, and Personnel Management for Supervisors and Managers. These courses cover the type of training you are recommending, and they are presented nationwide.

See p. 22.

Your fourth recommendation suggests that we "require agencies to review the appointments as part of their internal PME [personnel management evaluation] program. If agencies do not have an existing program, OPM should require agencies to develop a plan for establishing one within a specified time frame." Absent a specific finding of error, we do not have the authority to require agencies to review expert and consultant appointments. However, we can and will notify those agencies we found to have high expert and consultant error rates in our Fiscal Year 1990 Governmentwide review and urge them to give appropriate emphasis to expert and consultant reviews in their PME programs.

See p. 21.


Finally, your report states on page 21 that "HUD did not use preappointment certificates during the period covered by [the GAO] review, but reinstated its use as a result of GAO's review of HUD's Financial Disclosure Program." We concluded that HUD did execute

**Appendix IV  
Comments From the Office of  
Personnel Management**

and file consultant preappointment certificates, as required by FPM Chapter 304, A-1, on those expert and consultant appointments reviewed by us during that period.

Once again we appreciate having the opportunity to provide comments on your draft report. If you have any additional questions, please contact Linda White, at 606-1000.

Sincerely,



Constance Berry Newman  
Director

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# Major Contributors to This Report

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**General Government  
Division, Washington,  
D.C.**

Steven J. Wozny, Assistant Director, Federal Human Resource  
Management Issues  
Carmen Rivera-Lowitt, Evaluator-in-Charge  
Ronni Schwartz, Evaluator  
Don Allison, Personnel Specialist  
Michael O'Donnell, Personnel Specialist

---

**Office of the General  
Counsel**

Aldo Benejam, Attorney  
Jeffrey Forman, Attorney

---

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