

May 1997

THE EXCEPTED SERVICE

A Research Profile



Preface

The Government Performance and Results Act of 1993 (GPRA) has put discussions of civil service reform in a new light. Beginning this year, GPRA requires federal agencies to identify their missions and strategic goals, create measures by which to gauge their progress in meeting these goals, and focus their resources—whether budgetary, technological, or human—on creating results. But a key question is whether, under the current civil service system, agencies will have the flexibility to shape their human resource management (HRM) systems to meet these new needs. As we testified before the House Civil Service Subcommittee in October 1995, the civil service system as a whole is still viewed by many as burdensome to managers, unappealing to ambitious recruits, hidebound and outdated, overregulated, and inflexible.¹

When considering civil service reform, it is useful to remember that the federal government is not the “single employer” it is widely reputed to be. In the broadest sense, the civil service is actually divided into three services, for which different statutory provisions may apply for hiring, pay, labor-management relations, and other employment matters. The largest service—52 percent of the civil service in June 1996—is known as the “competitive service,” which has its statutory basis in the personnel provisions in title 5 of the U.S. Code. Almost all of the remaining 48 percent of federal civilian workers—nearly 1.4 million in all—are in the “excepted service.” They are employed in agencies or other federal organizations (such as certain government corporations) that operate outside the appointment provisions in title 5 of the U.S. Code. Besides the “competitive service” and the “excepted service,” the civil service includes the “Senior Executive Service,” or SES, which in June 1996 included some 7,000 members employed in many agencies across the federal government.

Some positions in the excepted service are covered by alternative personnel systems. One of Congress’s reasons for establishing alternative personnel systems for some federal entities was to exempt them from the strict rules governing the competitive service under title 5. At the previously mentioned hearing, we said that Congress might consider examining these alternative personnel systems for ideas about how the competitive service could be made more flexible and results-oriented.²

With the intention of delving further into the possibility that innovative models already exist, we took a broad, preliminary look at the excepted service as a whole. As the chapters that follow indicate, we found that the

¹Civil Service Reform: Changing Times Demand New Approaches (GAO/T-GGD-96-31, Oct. 12, 1995).

²GAO/T-GGD-96-31, pp. 5-6.

excepted service is not really a coherent “service” so much as a residual category covering all the many federal entities and groups of employees that are not part of the competitive service or the SES. Based on available data, this study portrays the distribution of excepted service employees across government, but with some significant omissions—primarily the intelligence agencies, for which official data were not readily available. (See chapter 1.) We found over 100 agencies employing excepted service employees in June 1996. These agencies ranged in size from the U.S. Postal Service, with more than 850,000 employees, to small agencies such as the Commission on Immigration Reform, with 14.

We also identified a number of methodological difficulties in examining the excepted service systematically and in greater detail. These constitute real stumbling blocks to exploring the excepted service for models or lessons applicable to civil service reform. They could make a wide-ranging study of the excepted service a demanding one, in both time and resources.

In preparing this study, our overarching objective was to provide an introduction to the excepted service and to identify issues that researchers would need to consider when planning future studies of it. Specifically, our objectives were to describe (1) the distribution of excepted service employees across government organizations; (2) the composition of the excepted service in terms of the various legal bases under which employees were appointed; (3) policy concerns and study focuses that have guided some prior studies; and (4) the coverage of agencies and employees, as well as data elements, in two data sources that were useful for studying the excepted service. Additionally, we sought to identify research issues and methodological difficulties associated with each of these objectives.

Background

As defined in section 2103 of title 5, the excepted service is a residual category of the civil service—that is, it comprises those civil service positions that are not in the competitive service or the SES. The Office of Personnel Management (OPM) has described the competitive service as including positions subject to the appointment provisions in chapter 33 of title 5; the excepted service includes all other positions (excluding those in the SES), regardless of whether they are subject to other chapters of title 5. For excepted service positions, each agency develops, within basic requirements prescribed by law or regulation, its own hiring system, which establishes the evaluation criteria to be used in filling these excepted

positions. Exceptions may be granted for agencies (such as the Tennessee Valley Authority (TVA) and the Federal Bureau of Investigation (FBI)) or for specific positions (such as Foreign Service employees and certain medical care personnel in the Department of Veterans Affairs (VA)).³

Although exception from the appointment provisions of title 5 is the minimum requirement for being considered part of the excepted service, excepted service entities may be excepted from other personnel provisions of title 5 as well, such as those covering position classification, pay, leave, and retirement. Because the circumstances and rationales under which these exceptions were granted or retained have varied, the component entities and employment systems in the excepted service are not uniformly excepted from the many personnel provisions of title 5. Nor are they subject to any single alternative set of laws, rules, and regulations, or to uniform oversight by OPM.

Originally, all federal employees were appointed noncompetitively, and a widespread practice arose that based hiring on political considerations—the so-called “spoils system.” But with the establishment of the competitive service in 1883, some—initially very few—civil servants came under the competitive service, for which positions were filled competitively, while others—the vast majority—were “excepted.” Over time, both the competitive and excepted services evolved significantly, with the excepted service’s component agencies and employment systems generally gaining or retaining their exceptions on an individual basis rather than a systematic one. The Foreign Service, for example, traces its exceptions back to the Constitution and to laws made in the 19th century, while the Federal Aviation Administration (FAA) received its general exception in 1995.

The rationale for exceptions has varied from one situation to the next.⁴ For example, TVA received its exception on the basis that the agency ought to be run like a business. The intelligence agencies (that is, the Central Intelligence Agency (CIA), the Defense Intelligence Agency (DIA), and the

³Exceptions are authorized (1) under statute (for example, for TVA and FBI) and, pursuant to statute, (2) under regulations issued by OPM (such as for certain positions held by attorneys, research associates, or political appointees), and (3) by Executive Order (such as for foreign nationals employed overseas and certain presidential appointees).

⁴We located only one general study of the excepted service done by the federal government that sought to identify the reasons for continuing agency exceptions. That study was done by the Civil Service Commission at the request of the Senate Committee on Post Office and Civil Service, and resulted in the 1973 report, *Statutory Exceptions to the Competitive Service*. The study’s coverage was not exhaustive of all exceptions; however, the study included about 40 agencies, and the Commission believed that the study covered all significant statutory exceptions from the competitive service.

National Security Agency (NSA)) received their exceptions on national security grounds. Doctors and nurses at VA were excepted under the rationale that the job market for these professionals was highly competitive.

The many exceptions have led to a range of variances from competitive service practices. For example, the CIA internal regulations for adverse actions are similar to the procedures of other federal agencies in providing employees with some protections, at least in cases of the removal of an employee. However, these protections are not guaranteed because CIA regulations provide the director with carte blanche authority to remove an employee. Also, in contrast to the right of most federal employees under title 5 provisions, CIA employees have no general right to appeal adverse actions to the Merit Systems Protection Board (MSPB).⁵

The Relevance of the Excepted Service to Civil Service Reform

While federal entities and groups of federal employees have gained or retained exceptions from the competitive service based on a variety of rationales, the assumption common to many of these exceptions seems to have been that exception from competitive service rules would help agencies do their jobs.⁶ A similar line of reasoning is commonly heard today in discussions concerning the best way to ensure the successful implementation of GPRA and, more broadly, to advance the idea of results-oriented government.

Part of this debate is over whether, with the goal of enhancing productivity and mission accomplishment, federal entities now governed by the competitive service rules should be allowed further flexibility in fashioning their HRM approaches, or even granted more widespread exceptions from the competitive service requirements. For example, the National Performance Review criticized competitive service rules as being too restrictive, and proposed granting agencies more flexibility in administering personnel systems that support their missions. This sort of criticism of the competitive service is not uncommon, even though many of the restrictions imposed on the competitive service have been loosened over the past 2 decades. Beginning with the Civil Service Reform Act of

⁵Intelligence Agencies: Personnel Practices at CIA, NSA, and DIA Compared With Those of Other Agencies (GAO/NSIAD-96-6, March 11, 1996), especially pp. 4, 31-33. This study was limited to examining equal employment opportunity and adverse action practices.

⁶However, the reasons for some exceptions may be based in practicality (such as it being impractical to examine, or impractical to hold competitive examinations, for certain government positions), or other national goals (such as those reflected in veterans readjustment appointments, which are noncompetitive appointments for certain veterans).

1978 (CSRA), repeated efforts have been made to create a competitive service that would allow individual agencies greater flexibility in shaping their own HRM practices. Nonetheless, what is sometimes heard today is a call for escaping the confines of title 5 entirely. FAA, for example, was granted a broad statutory exception in 1995 to develop its own HRM system. The administration, in its proposal to create nine performance-based organizations (PBO), would give these organizations considerable personnel authority outside competitive service rules.

Because excepted service entities are, to one extent or another, already outside title 5, we thought that comparing their existing employment systems and HRM practices with the competitive service could shed light on the current debate. A key question, however, for anyone who attempted so wide-ranging an examination of the excepted service would be the scope of the task at hand. We found, for example, that the heading “excepted service” covers positions in 123 organizations, and many more suborganizations. Further, we located relatively little recent research on which to base secondhand descriptions and analysis of the various personnel systems in the excepted service. Finally, we identified a variety of methodological difficulties that would need to be addressed if the excepted service were to be studied in depth.

Challenges to Future Studies of the Excepted Service

Although studying the excepted service in depth might be worthwhile for identifying innovative models for civil service reform, doing so could be a substantial challenge. We found that issues range from the apparent lack of a central source of information on the excepted service personnel systems, to the variations among excepted entities in the extent to which they are excepted, to how little officials at excepted service entities might understand of the differences between their systems and those of the competitive service, to the limitations on the basic statistical data now available.

Information on the excepted service entities’ personnel systems is apparently not collected in a single place; therefore, determining any trends or widespread practices in the excepted service would seem to necessitate original research, including extensive data gathering in many locations. Surveying the components of the excepted service could be difficult because not all of them exist as discrete organizations. (See chapter 2.) Some excepted entities are defined by agency—for example, TVA. But other exceptions may exist for classes of employees defined by a particular “appointing authority.” Federal workers employed under a

single appointing authority do not necessarily work for a single federal entity. We found that Foreign Service employees, for example, worked for the Departments of State, Agriculture, and Commerce; the Agency for International Development; and the Peace Corps. Similarly, we found that the 2,156 workers employed under the Panama Canal Employment Service appointing authority were spread over 32 separate organizations, from the Panama Canal Commission (648 employees) to the Defense Mapping Agency (1 employee). (See chapter 2.)

Another complexity in studying the excepted service arises from the varying exceptions from title 5 that apply to excepted entities. FAA, for example, is broadly excepted from title 5, in part to provide greater flexibility in compensation. But the FBI, although its positions are excepted from the competitive service, is still subject to the pay provisions of title 5. We did not find a recent comprehensive example of anyone having identified the statutory exceptions for all the excepted entities, proceeding through title 5 by chapter, subchapter, and section.⁷ Nor did we find recent broad studies on whether the many excepted entities have pursued different HRM approaches than they would have had they not been excepted.

Moreover, as suggested by findings from some previous studies, surveying officials of the excepted service entities directly to determine the differences between their HRM approaches and those of the competitive service might have limited value because these officials might not be familiar with the details of the title 5 requirements that do not apply to them. Therefore, they might not be able to accurately describe how their practices differ from those of the competitive service. (See chapter 3.)

Finally, merely drawing some statistical portraits of the excepted service might pose difficulties. The two sources of statistical data available from OPM both have advantages and disadvantages as sources of information on the excepted service. (See chapter 4.)

These and other methodological difficulties are discussed in the chapters that follow. These discussions are not intended to discourage further inquiry into the excepted service, but merely to point out some of the potential challenges such an inquiry would encounter. Some of the factors that would create these challenges are the same ones that would make an examination of the excepted service so promising—the sheer variety of

⁷The study we identified that comes closest is partial and somewhat dated. See “Comparison of Selected Features of Competitive and Excepted Services,” Appendix XI of Personnel Management Project, Volume 3, December 1977. The Personnel Management Project is discussed in chapter 3.

exceptions, for example, and the likely variety of resulting personnel systems and practices. It is possible that approaches that would be new to the competitive service already have a “track record” in the excepted service, and that wider knowledge of some of these approaches would inform the debate on civil service reform in a results-oriented environment.

To mitigate some of the difficulties of researching the excepted service, researchers might want to narrow the potential scope of their studies from the entire excepted service to the personnel systems of specific excepted service entities, as one agency has done on two occasions. (See chapter 3). Remembering that most excepted service employees are located in a relatively few government organizations (see chapter 1), this may be an approach worth considering.

Major contributors to this study are identified in appendix II.

A handwritten signature in black ink that reads "L. Nye Stevens". The signature is written in a cursive, flowing style.

L. Nye Stevens
Director, Federal Management
and Workforce Issues

Contents

Preface		1
Chapter 1		10
Organizational	Prevalence in Organizations	10
Distribution of	The Location of Most Excepted Service Employees	12
Excepted Service	Research Issues	21
Employees		
Chapter 2		23
Excepted Service	Many Appointing Authorities Within a Single Agency	24
Employment by Types	Appointing Authorities Spanning Agencies	25
of Appointing	Methodological Difficulties	25
Authority		
Chapter 3		29
Some Prior Studies of	Reasons for Exceptions	29
the Excepted Service	Finding Models in the Excepted Service	31
	Research Issues and Methodological Difficulties	31
Chapter 4		37
Two Sources of Data	Coverage of Agencies	37
on the Excepted	Available Information	38
Service	Methodological Difficulties	39
Appendixes	Appendix I: Objectives, Scope, and Methodology	42
	Appendix II: Major Contributors to This Staff Study	44
Tables	Table 1.1: Federal Civilian Employment by Type of Service and Branch of Government	11
	Table 1.2: Federal Civilian Employment by Type of Service in Parts of the Executive Branch	12
	Table 1.3: Excepted Service and Senior Executive Service Employees by Branch of Government	13
	Table 1.4: Federal Civilian Employment in the Excepted and Senior Executive Services, by Agency	14

Table 2.1: Appointing Authorities for Excepted Service Employees in the Veterans Health Administration	24
Table 2.2: Excepted Service Employees With Appointments Under the Foreign Service Authority, by Agency	25
Table 2.3: Number of Excepted Service Employees With Appointments Under the Panama Canal Employment Service Authority	27
Table 4.1: Comparison of Coverage of Federal Civilian Employment for Two Data Sources	38

Abbreviations

CFR	Code of Federal Regulations
CIA	Central Intelligence Agency
CPDF	Central Personnel Data File
CSRA	Civil Service Reform Act
DIA	Defense Intelligence Agency
FAA	Federal Aviation Administration
FBI	Federal Bureau of Investigation
FEMA	Federal Emergency Management Agency
FIPS	Federal Information Processing Standards
FPM	Federal Personnel Manual
GPRA	Government Performance and Results Act
GSA	General Services Administration
HRM	Human resource management
MSPB	Merit Systems Protection Board
NRC	Nuclear Regulatory Commission
NSA	National Security Agency
OPM	Office of Personnel Management
OMB	Office of Management and Budget
PBO	Performance-based organizations
SES	Senior Executive Service
TVA	Tennessee Valley Authority
USC	United States Code
VA	Department of Veterans Affairs
VHA	Veterans Health Administration

Organizational Distribution of Excepted Service Employees

The distribution of the approximately 1.4 million excepted service employees among the three branches of government, and among federal agencies, resists a simple description. This difficulty derives from the fact that the excepted service encompasses workers in all branches and many agencies, who are distributed unequally across and within branches and agencies. The following description introduces some of that complexity, while indicating some key generalizations that can be made about these employees' numbers and organizational locations. At the end of this discussion, we briefly note some additional portraits of the excepted service employees that could be done with the same data source.

Our description is based on OPM data from its Monthly Report of Federal Civilian Employment (Monthly Report) for June 1996. Civil service positions are in three services: the competitive service, the Senior Executive Service (SES), and the excepted service. Monthly Report data do not count SES employees separately from excepted service employees. We will refer to these combined counts as only representing excepted service employees. Treating the SES component of the counts as negligible is justified because other data for most civil service employees indicated that SES employees were less than 2 percent of the combined total.

Prevalence in Organizations

Generalization 1: The majority of employees in the judicial and legislative branches were in the excepted service, but this was not true for the executive branch.

As shown in table 1.1, excepted service personnel in June 1996 made up fewer than half of the employees in the executive branch, but they predominated in both the judicial and legislative branches. Indeed, almost every employee in the judicial branch was in the excepted service, as were almost 90 percent of employees in the legislative branch.⁸

⁸In the legislative branch, most agencies' personnel were all in the excepted service. The major break with this generalization was in the Government Printing Office, where almost all of the employees were in the competitive service and accounted for most of the competitive service employees in the legislative branch.

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

**Table 1.1: Federal Civilian Employment
by Type of Service and Branch of
Government (June 1996)**

Branch of government	Total number of employees	Competitive service		Excepted service and SES	
		Number of employees	Percent of branch	Number of employees	Percent of branch
Executive	2,826,659	1,503,837	53.2%	1,322,822	46.8%
Judicial	29,249	8	0.0 ^a	29,241	100.0 ^a
Legislative	32,715	3,895	11.9	28,820	88.1
Total	2,888,623	1,507,740	52.2%	1,380,883	47.8%

Note: Numbers include employees located in the United States and overseas. Numbers exclude employees of the CIA, DIA, and NSA.

^aPercentages equal 0.0 and 100.0 percent due to rounding.

Source: GAO analysis of OPM's Monthly Report of Federal Civilian Employment.

Generalization 2: In the executive branch, excepted service personnel were more prevalent in independent agencies than in executive departments.

Table 1.2 shows that the proportions of employees who were in the excepted service varied markedly between the parts of the executive branch. The largest employing part of the executive branch, executive departments, had a relatively low proportion of excepted service positions—about one employee in four was in the excepted service. In contrast, independent agencies, on average, predominantly employed excepted service employees. (Their proportion of 85 percent in the excepted service almost equaled the 88 percent of the legislative branch.) The part of the executive branch with the fewest employees, the Executive Office of the President, also predominantly employed excepted service employees, but to a somewhat lesser degree.

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

Table 1.2: Federal Civilian Employment by Type of Service in Parts of the Executive Branch (June 1996)

Parts of the executive branch of government	Total number of employees	Competitive service		Excepted service and SES	
		Number of employees	Percent of the part	Number of employees	Percent of the part
Executive Office of the President	1,587	630	39.7%	957	60.3%
Executive departments	1,751,983	1,346,509	76.9	405,474	23.1
Independent agencies	1,073,089	156,698	14.6	916,391	85.4
Total	2,826,659	1,503,837	53.2%	1,322,822	46.8%

Note: Numbers include employees located in the United States and overseas. Numbers exclude employees of the CIA, DIA, and NSA.

Source: GAO analysis of OPM's Monthly Report of Federal Civilian Employment; OPM.

The Location of Most Excepted Service Employees

Generalization 3: Most excepted service employees were located in the executive branch, particularly among independent agencies.

Despite the fact that the proportions of excepted service employees were higher in the legislative and judicial branches, the much larger executive branch employed the vast majority of excepted service employees. As shown in table 1.3, almost 96 percent of excepted service employees were located in the executive branch. Most of these employees (constituting about two-thirds of all excepted service employees) were spread across the many independent agencies, ranging from large agencies, such as the Postal Service (which had 855,579 excepted service employees),⁹ to small agencies, such as the Commission of Fine Arts (which had 1 excepted service employee). The remaining 4 percent of all excepted service employees were about equally split between the judicial and legislative branches.

⁹The Postal Reorganization Act of 1970 designated the Postal Service as an independent establishment—not agency—of the executive branch. Because we refer to it and others collectively as independent agencies, we do not maintain that distinction in the language of the text.

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

Table 1.3: Excepted Service and Senior Executive Service Employees by Branch of Government (June 1996)

Branch of government	Excepted service and SES	
	Number of employees	Percent of total
Executive	1,322,822	95.8% ^a
Executive Office of the President	957	0.1
Executive departments	405,474	29.4
Independent agencies	916,391	66.4
Judicial	29,241	2.1
Legislative	28,820	2.1
Total	1,380,883	100.0%

Note: Numbers include employees located in the United States and overseas. Numbers exclude employees of the CIA, DIA, and NSA.

^aThe sum of the subtotal percentages does not precisely equal this percentage due to rounding error.

Source: GAO analysis of OPM's Monthly Report of Federal Civilian Employment.

Generalization 4: Most excepted service employees were located in a relatively few government organizations.

Although table 1.4 lists 123 government organizations that had at least 1 excepted service employee, most excepted service employees were located in a few large organizations.¹⁰ A single agency, the U.S. Postal Service, employed 62 percent of such employees. The eight largest employers of excepted service workers employed over 90 percent of these employees. The first 32 organizations listed in table 1.4—those that had 1,000 or more such employees—employed over 99 percent of all excepted service employees. The remaining 91 organizations (of which 65 employed fewer than 100 excepted service employees) accounted for the locations of the remaining 1 percent of excepted service employees.

¹⁰Many of these organizations consist of suborganizations, such as departments, services, bureaus, and administrations. Excepted service employment was more concentrated in some of these suborganizations than in others. The headings shown in the table are the first-level headings published by OPM in its Employment and Trends reports.

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

**Table 1.4: Federal Civilian Employment
in the Excepted and Senior Executive
Services, by Agency (June 1996)**

	Organization	Excepted service and SES		
		Number of employees	Percent of all	Cumulative percent
1	U.S. Postal Service	855,579	62.0%	62.0%
2	Defense, Military Function (includes military departments; Military Function primarily excludes the Army Corps of Engineers)	124,761	9.0	71.0
3	Department of Veterans Affairs	112,800	8.2	79.2
4	Department of Transportation	47,916	3.5	82.6
5	Department of Justice	43,059	3.1	85.8
6	U.S. Courts (excludes the Supreme Court)	28,857	2.1	87.8
7	Department of State	19,646	1.4	89.3
8	Congress	17,964	1.3	90.6
9	Tennessee Valley Authority	16,390	1.2	91.8
10	Department of Health and Human Services	13,491	1.0	92.7
11	Department of the Interior	10,840	0.8	93.5
12	Department of Agriculture	10,460	0.8	94.3
13	Panama Canal Commission	9,152	0.7	94.9
14	Department of the Treasury	8,652	0.6	95.6
15	Department of Commerce	6,814	0.5	96.1
16	Library of Congress	4,580	0.3	96.4
17	U.S. Information Agency	4,221	0.3	96.7
18	Social Security Administration	3,813	0.3	97.0
19	General Accounting Office	3,623	0.3	97.2

(continued)

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

	Organization	Excepted service and SES		
		Number of employees	Percent of all	Cumulative percent
20	Defense, Civilian Function (primarily includes the Army Corps of Engineers)	3,389	0.2%	97.5%
21	Nuclear Regulatory Commission	3,187	0.2	97.7
22	Federal Emergency Management Agency	2,884	0.2	97.9
23	Federal Deposit Insurance Corporation	2,313	0.2	98.1
24	U.S. International Development Cooperation Agency	2,152	0.2	98.2
25	Architect of the Capitol	1,984	0.1	98.4
26	Board of Governors, Federal Reserve System	1,744	0.1	98.5
27	Environmental Protection Agency	1,728	0.1	98.6
28	Department of Energy	1,456	0.1	98.7
29	National Aeronautics and Space Administration	1,335	0.1	98.8
30	Securities and Exchange Commission	1,168	0.1	98.9
31	Peace Corps	1,125	0.1	99.0
32	Small Business Administration	1,019	0.1	99.1
33	Executive Office of the President	957	0.1	99.1
34	Office of Personnel Management	830	0.1	99.2
35	Department of Housing and Urban Development	791	0.1	99.3
36	National Labor Relations Board	752	0.1	99.3
37	National Archives and Records Administration	726	0.1	99.4

(continued)

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

	Organization	Excepted service and SES		
		Number of employees	Percent of all	Cumulative percent
38	Department of Education	701	0.1%	99.4%
39	Department of Labor	698	0.1	99.5
40	General Services Administration	693	0.1	99.5
41	Equal Employment Opportunity Commission	547	0.0	99.6
42	Federal Communications Commission	543	0.0	99.6
43	Federal Trade Commission	530	0.0	99.6
44	National Science Foundation	479	0.0	99.7
45	Smithsonian (includes the National Gallery of Art, Smithsonian Institution, Woodrow Wilson Center, and JFK Center for the Performing Arts)	463	0.0	99.7
46	Supreme Court	384	0.0	99.7
47	American Battle Monuments Commission	325	0.0	99.8
48	Federal Election Commission	303	0.0	99.8
49	Corporation for National and Community Service	284	0.0	99.8
50	Congressional Budget Office	243	0.0	99.8
51	Commodity Futures Trading Commission	209	0.0	99.8
52	Federal Mediation and Conciliation Service	204	0.0	99.8
53	U.S. Tax Court	153	0.0	99.9
54	Armed Forces Retirement Home	136	0.0	99.9
55	Merit Systems Protection Board	135	0.0	99.9

(continued)

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

	Organization	Excepted service and SES		
		Number of employees	Percent of all	Cumulative percent
56	Federal Labor Relations Authority	114	0.0%	99.9%
57	Pension Benefit Guaranty Corporation	112	0.0	99.9
58	National Foundation on the Arts and the Humanities	102	0.0	99.9
59	International Trade Commission	86	0.0	99.9
60	Defense Nuclear Facilities Safety Board	78	0.0	99.9
61	U.S. Court of Veterans Appeals	76	0.0	99.9
62	National Transportation Safety Board	69	0.0	99.9
63	Government Printing Office	62	0.0	99.9
64	Consumer Product Safety Commission	58	0.0	99.9
65	U.S. Institute of Peace	56	0.0	99.9
66	Export-Import Bank of the U.S.	52	0.0	99.9
67	Arms Control and Disarmament Agency	52	0.0	99.9
68	Holocaust Memorial Council	51	0.0	99.9
69	Botanic Garden	49	0.0	100.0
70	Postal Rate Commission	49	0.0	100.0
71	Federal Maritime Commission	35	0.0	100.0
72	Office of Special Counsel	34	0.0	100.0
73	Advisory Council on Historical Preservation	34	0.0	100.0
74	Federal Housing Finance Board	34	0.0	100.0

(continued)

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

	Organization	Excepted service and SES		
		Number of employees	Percent of all	Cumulative percent
75	National Credit Union Administration	33	0.0%	100.0%
76	Commission on Civil Rights	30	0.0	100.0
77	Selective Service System	28	0.0	100.0
78	Occupational Safety and Health Review Commission	26	0.0	100.0
79	U.S. Enrichment Corporation	25	0.0	100.0
80	Assassinations Records Review Board	23	0.0	100.0
81	Federal Mine Safety and Health Review Commission	23	0.0	100.0
82	Railroad Retirement Board	21	0.0	100.0
83	Office of Government Ethics	21	0.0	100.0
84	Farm Credit Administration	21	0.0	100.0
85	Federal Retirement Thrift Investment Board	21	0.0	100.0
86	Physician Payment Review Commission	18	0.0	100.0
87	Office of Compliance	17	0.0	100.0
88	International Boundary and Water Commission (U.S. and Mexico)	16	0.0	100.0
89	Prospective Payment Assessment Commission	15	0.0	100.0
90	Commission on Immigration Reform	14	0.0	100.0
91	National Capital Planning Commission	13	0.0	100.0
92	National Mediation Board	13	0.0	100.0

(continued)

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

	Organization	Excepted service and SES		
		Number of employees	Percent of all	Cumulative percent
93	Advisory Commission on Intergovernmental Relations	11	0.0%	100.0%
94	Nuclear Waste Technical Review Board	11	0.0	100.0
95	Commission on Protecting and Reducing Government Secrecy	8	0.0	100.0
96	Inter-American Foundation	7	0.0	100.0
97	National Commission on Libraries and Information Science	7	0.0	100.0
98	James Madison Memorial Scholarship Foundation	7	0.0	100.0
99	International Boundary Commission (U.S. and Canada)	7	0.0	100.0
100	Competitiveness Policy Council	6	0.0	100.0
101	John C. Stennis Center for Public Service Training and Development	5	0.0	100.0
102	International Joint Commission (U.S. and Canada)	4	0.0	100.0
103	Architectural and Transportation Barriers Compliance Board	4	0.0	100.0
104	National Education Goals Panel	3	0.0	100.0
105	National Council on Disability	3	0.0	100.0
106	African Development Foundation	3	0.0	100.0

(continued)

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

	Organization	Excepted service and SES		
		Number of employees	Percent of all	Cumulative percent
107	National Bankruptcy Review Commission	3	0.0%	100.0%
108	Appalachian Regional Commission	3	0.0	100.0
109	Harry S. Truman Scholarship Foundation	2	0.0	100.0
110	Office of Navajo and Hopi Indian Relocation	2	0.0	100.0
111	Marine Mammal Commission	2	0.0	100.0
112	Arctic Research Commission	2	0.0	100.0
113	Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation	2	0.0	100.0
114	Committee for Purchase from People Who Are Blind or Severely Disabled	2	0.0	100.0
115	Barry Goldwater Scholarship and Excellence in Education Foundation	2	0.0	100.0
116	Martin Luther King, Jr. Federal Holiday Commission	1	0.0	100.0
117	Farm Credit System Insurance Corporation	1	0.0	100.0
118	Federal Financial Institutions Examination Council	1	0.0	100.0
119	Japan-U.S. Friendship Commission	1	0.0	100.0
120	Delaware River Basin Commission	1	0.0	100.0

(continued)

**Chapter 1
Organizational Distribution of Excepted
Service Employees**

	Organization	Excepted service and SES		
		Number of employees	Percent of all	Cumulative percent
121	Susquehanna River Basin Commission	1	0.0%	100.0%
122	Columbus Fellowship Foundation	1	0.0	100.0
123	Commission of Fine Arts	1	0.0	100.0
Total		1,380,883	100.0%	100.0%

Note 1: Numbers include employees located in the United States and overseas. Numbers exclude employees of the CIA, DIA, and NSA.

Note 2: The "cumulative percent" will not always precisely equal the sum of all the relevant "percent of all" numbers due to rounding error. Numbers of employees that do not round up to 0.1 percent will show no impact on the percentages in the table.

Source: GAO analysis of OPM's Monthly Report of Federal Civilian Employment.

Research Issues

Since the excepted service is not a static entity, research interest may focus on the changing numbers and locations of excepted service employees. Change can occur for a variety of reasons. For instance, some agencies (for example, the Pennsylvania Avenue Development Corporation in 1996) may cease to exist; some (for example, the Office of Compliance in 1995) may come into being; and yet others (for instance, the Federal Aviation Administration, effective in 1996) may be newly excepted. Through OPM's Employment and Trends reports, which routinely provide tables based on Monthly Report data, these changes can be traced. Some data on the early history and growth of the competitive service can be found in the U.S. Civil Service Commission's History of the Federal Civil Service: 1789 to the Present (1941).

For some research purposes, it may be important to separate nonpermanent (temporary or indefinite) employees from permanent employees. The Monthly Report data allow for this separation. Agencies can vary greatly in their mix of permanent and nonpermanent appointments among excepted service employees. For example, according to the June 1996 data, 3 percent of the excepted service appointments in the Nuclear Regulatory Commission were nonpermanent appointments; the corresponding figure was 89 percent in the Federal Emergency

Chapter 1
Organizational Distribution of Excepted
Service Employees

Management Agency. (The average for all agencies with excepted service employees was 19 percent.)

Excepted Service Employment by Types of Appointing Authority

In chapter 1, we described the distribution of excepted service employees among federal branches and agencies. Another way to portray the distribution of excepted service employees is according to the many legal bases under which excepted service employees are appointed to their jobs.

The 1977 staff report for the President's Personnel Management Project characterized the complexities of the excepted service as "a tangled, confusing web of laws, regulations, authorities, and exceptions."¹¹ Exceptions may be granted for entire agencies (for example, the Tennessee Valley Authority or the Postal Service); parts of departments (for example, the Federal Bureau of Investigation within the Department of Justice); or specific positions (for example, Foreign Service positions in various agencies). In some instances, the exception applies to all personnel provisions of the competitive service; in other instances, the exception applies only to some provisions. Moreover, the legal basis of the exception may be by statute, or pursuant to statute through a regulation or an executive order.¹²

The purpose of this chapter is to examine some of the patterns and complexities of the excepted service that are associated with appointing authorities. The illustrations are based on OPM's Central Personnel Data File (CPDF) data on appointing authorities for June 1996.¹³ First, we illustrate that a single agency may include excepted service employees appointed under various authorities. Second, we discuss how a single appointing authority may be used to appoint excepted service employees in various agencies. Finally, we note some methodological difficulties arising out of the limitations of the CPDF data and the complexities of appointing authorities.

¹¹The President's Reorganization Project: Personnel Management Project: Final Staff Report, Volume 1, December 1977, p. 42.

¹²Under 5 U.S.C. 3302, the president is authorized to prescribe rules governing the competitive service, including authority to provide for necessary exceptions from competitive service. The president has delegated to OPM the authority to promulgate regulations implementing this provision.

¹³According to the technical definition used by CPDF, "current appointment authority" refers to the law, executive order, rule, regulation, or other basis that authorizes an employee's most recent conversion or accession action.

CPDF data are not directly comparable to the Monthly Report data, which were used in chapter 1 to describe the distribution of excepted service employees. Among other differences between the two data sources, which are detailed in chapter 4, the CPDF has less comprehensive coverage of agencies than the Monthly Report. However, of the two data sources, only the CPDF includes appointing authority data.

Many Appointing Authorities Within a Single Agency

Beyond excepted service employees possibly working side by side with competitive service employees in an agency, excepted service employees appointed under many different authorities may work in the same agency. As shown in table 2.1, as of June 1996, excepted service employees in the Veterans Health Administration (VHA) within VA were appointed under a variety of authorities. They were predominantly appointed under the authority of the VA Medical Personnel system, which is codified in title 38 of the U.S. Code. However, VHA also employed other excepted service employees under Schedules A, B, or C.¹⁴ VHA also had two presidential appointees. About 6,200 other employees had been appointed through another OPM regulation (5 CFR 307.103), which provides for the excepted service appointment of eligible veterans. A few others were appointed under other miscellaneous authorities. (As indicated by the authority categories of “missing codes” and “other citation,” this data source did not identify the appointing authority of over 21,000 excepted service employees in VHA.)

Table 2.1: Appointing Authorities for Excepted Service Employees in the Veterans Health Administration (June 1996)

Appointing authority	Number of employees
VA medical personnel (38 U.S.C.)	80,024
Schedule A	1,786
Schedule B	1,070
Schedule C	4
Presidential	2
Veterans' readjustment	6,208
Miscellaneous authorities ^a	23
"Other citation" ^b	21,095
No information (missing codes)	586
Total	110,798

^aThis category includes appointments under additional authorities, such as those governing restored employment.

^bIn the data, some appointing authorities are no more specifically defined than “other citation.”

Source: GAO analysis of OPM's Central Personnel Data File.

¹⁴Appointments under Schedule A are for positions, such as attorneys and chaplains, for which it is impracticable to examine. Schedule B covers positions for which it is impracticable to hold an open competition or to apply usual competitive examining procedures—for example, students in cooperative education programs. Appointments under Schedule C are for positions of a confidential or policy-determining nature, or which involve a close and confidential working relationship with the agency head or other key appointed officials; these positions include the majority of political appointees below cabinet and subcabinet levels. As described in part 213 of title 5 of the Code of Federal Regulations (5 CFR 213), OPM authorizes agencies to make appointments under these schedules.

Appointing Authorities Spanning Agencies

Appointing authorities may span agencies. An example is provided in table 2.2, which portrays the distribution of excepted service employees appointed under the authority of the Foreign Service statutory provisions, which are codified under title 22 of the U.S. Code. Although most of these employees were located in the Department of State and the Agency for International Development, this appointing authority was used in seven organizations.

Table 2.2: Excepted Service Employees With Appointments Under the Foreign Service Authority, by Agency (June 1996)

Organization	Number of excepted service employees appointed	
	Under Foreign Service authority	Under other authorities
Department of State	9,223	678
Agency for International Development	1,399	195
Department of Commerce: International Trade Administration	218	105
Department of Agriculture: Foreign Agricultural Service	189	128
Department of Agriculture: Animal and Plant Health Inspection Service	67	2,045
Department of Commerce: unknown suborganization	9	0
Peace Corps	1	879
Total	11,106	4,030

Source: GAO analysis of OPM's Central Personnel Data File.

Methodological Difficulties

The complexity of the excepted service raises various methodological difficulties. One is the difficulty of designing questionnaires or interviews that will successfully elicit information on various categories of excepted service employees. For example, excepted service employees in a single agency may be employed under different appointing authorities and may, therefore, be under differing sets of exceptions. Thus, a survey directed to their agency would either have to specify the categories of excepted service employees to which the various questions applied or allow the respondents to designate the categories of employees for which their answers applied.

Another methodological difficulty concerns identifying the entities for research, since excepted service entities can be either individually excepted agencies or appointing authorities under which workers are

employed in several, or even many, agencies. A related issue is that of deciding the level of organization, and the number of entities within an agency or appointing authority, from which data should be gathered. If, for example, one were researching the Panama Canal Employment Service appointing authority, one could choose to gather data from as many as 32 entities employing workers under its auspices. (See table 2.3.) The decision on how many entities to study in order to get adequate coverage of the Panama Canal Employment Service appointing authority might be a difficult one because significant variations in personnel systems among the entities might be unknown before surveying them, while trying to identify and contact respondents at every site might be difficult.

Chapter 2
Excepted Service Employment by Types of
Appointing Authority

Table 2.3: Number of Excepted Service Employees With Appointments Under the Panama Canal Employment Service Authority (June 1996)

Agency/ suborganization	Number of employees
Panama Canal Commission	648
Army—U.S. Army Southern Command	502
Air Force—Air Combat Command	291
Army—U.S. Army Information Systems Command	170
Army—U.S. Army Medical Command	141
Army—Joint Activities	118
Navy—Atlantic Fleet	83
Department of Defense—Dependents Schools	75
Air Force—Air Mobility Command	31
Department of Defense—Defense Commissary Agency	20
Army—U.S. Army Armament, Munitions and Chemical Command	17
Army—Field Operating Office of Office of Secretary of Army	8
GSA—Federal Supply Service	7
Army—U.S. Army Forces Command	6
Army—Military Traffic Management Command	5
Department of Defense—Defense Logistics Agency	4
Army—U.S. Army Aviation Systems Command	4
Army—Materiel Readiness Activities	4
Navy—Naval Facilities Engineering Command	3
Army—U.S. Army Corps of Engineers	3
Navy—Naval Medical Command	2
Navy—Naval Education and Training Command	2
Air Force—Office of Special Investigations	2
Army—U.S. Army Test and Evaluation Command	2
Army—U.S. Special Operations Command (Army)	1
Navy—Naval Security Group Command	1
Army—U.S. Army Criminal Investigation Command	1
Department of Defense—Defense Mapping Agency	1
Army—U.S. Army Tank Automotive Command	1
Army—U.S. Army Communications Electronics Command	1
Army—U.S. Army Intelligence and Security Command	1
Army—Field Operations Agencies of the Army Staff resourced through OA-22	1
Total	2,156

Note: Numbers exclude foreign nationals employed overseas. Numbers exclude employees of the CIA, DIA, and NSA.

Source: GAO analysis of OPM's Central Personnel Data File.

Chapter 2
Excepted Service Employment by Types of
Appointing Authority

Another methodological difficulty involves the CPDF. Our analysis above shows the usefulness of the CPDF data for tracing appointing authorities within and among agencies. Nevertheless, the CPDF has some important methodological limitations when used for this purpose. In particular, it cannot be used for comprehensive descriptions of the excepted service because it excludes some important excepted service agencies (for instance, the Postal Service, the CIA, NSA, and DIA) and foreign nationals working overseas. Further, CPDF information for a significant number of employees did not identify a specific appointing authority. For example, the authority for all of the excepted service employees in the FBI was only identified as “other citation.” (Additional information about the CPDF as a data source can be found in chapter 4.)

Some Prior Studies of the Excepted Service

Past policy concerns about the excepted service have led to different study focuses. One policy concern about the lack of unity resulting from the number of alternative personnel systems within the civil service led to studies of the validity of reasons for continuing agencies' exceptions to the competitive service. For example, why did one agency need policies different from those found in the competitive service to fill a clerk's job? Another concern focused on the criticisms of the competitive service's laws and regulations. This led to examinations of whether the various personnel systems in the excepted service offered beneficial models for reforming the competitive service.

In this chapter, we examine some prior reviews and studies that discussed these policy concerns. We also discuss some methodological difficulties that were revealed by the studies.

Reasons for Exceptions

At the request of the Senate Committee on Post Office and Civil Service, the Civil Service Commission produced a 1973 report, Statutory Exceptions to the Competitive Service. A central question at that time concerned the circumstances requiring agencies to have different personnel policies. The Commission addressed this question by asking 44 agencies to offer reasons that would justify the continuation of their exceptions. The study concentrated on exceptions from appointment provisions rather than on possible exceptions from the many other areas of human resource management covered by title 5.

This study revealed diverse reasons used to justify exceptions. Reasons included the need to work in a business-like fashion (TVA, Postal Service, and Veterans Canteen Service); the need to maintain secrecy about personnel matters for national security reasons (intelligence agencies); the need to serve several—federal, state, and military—masters concurrently (National Guard civilians); special needs in staffing overseas positions (Department of State); special needs in recruiting and paying medical personnel (VA); and the need for separate treatment of government branches (Library of Congress). The Commission concluded that a common theme throughout the various justifications was an emphasis on the flexibility provided by being excepted from the competitive service.

The Commission also reported its own technical opinion on the desirability of continuing each exception. It generally found the justifications lacking, concluding that many of the historical reasons for the statutory exceptions had ceased to exist. It expressed concern “over

the agencies' apparent inability to articulate specific reasons for continuing the statutory exceptions."¹⁵ In its view, the inflexibilities of the competitive service perceived by the agencies were not numerous or of overwhelming significance, and the competitive service could be adapted to include some flexibility features found in the excepted service. The Commission also expressed its general preference for further modification of the competitive service rather than for the exception of agencies or segments of agencies from the competitive service.

Similar to the Civil Service Commission's earlier report, the 1977 final staff report, Personnel Management Project (done as part of the President's Reorganization Project), characterized the excepted service in a way that generally questioned the reason for continuing exceptions. It stated that most agencies with exceptions operated smaller merit systems with features that paralleled or were comparable to the key merit requirements of the competitive service. To paraphrase the question asked in the report: If the competitive service could be reformed to provide greater policy diversity and procedural flexibility, and the circumstances that supported creating the exceptions had already greatly changed, what would be the remaining logic for the excepted service?¹⁶

The staff report differed from the earlier Commission report in that it did not try to catalog agencies' reasons for exceptions; rather, it recommended creating a framework to end the exceptions that could not be justified. (The Commission had differentiated its technical opinions from recommendations for legislative action, which would have had to take into account other factors, such as disruptions of functioning personnel systems and administrative and legislative convenience.) The staff report proposed the establishment of criteria by which to evaluate the need to continue to except certain agencies and alternative personnel systems from the competitive service. Under the proposal, agencies with alternative systems would have been required to present justifications, based on these criteria, to the president for his decision on whether to continue their excepted status or recommend to Congress legislation to change that status.

¹⁵U.S. Civil Service Commission, Statutory Exceptions to the Competitive Service, September 1973, p. 323.

¹⁶The President's Reorganization Project: Personnel Management Project: Final Staff Report, Volume 1, December 1977, pp. 42-43.

Finding Models in the Excepted Service

Other studies have had a different focus, one that sought to compare the personnel systems of individual excepted service entities with the systems created under title 5. These studies were based on the premise that particular alternative personnel systems included in the excepted service might provide models for rules, methods, or practices that could be beneficially adopted in the competitive service. The Merit Systems Protection Board (MSPB) has done two case studies based on this premise—one on health care occupations within VA and one on TVA.¹⁷ In contrast to the Commission's report, the MSPB studies focused on personnel systems rather than on appointments and tenure, and MSPB considered personnel improvements without raising the possibility of ending exceptions.

MSPB's study focus and policy concerns are illustrated by its report on TVA. On the one hand, MSPB noted that TVA had certain policies, such as granting union preference for certain hiring, that appeared to conflict with merit principles. It recommended that TVA change these policies. On the other hand, MSPB suggested that TVA's managerial discretion and ability to make rapid and significant changes in human resource management helped it to meet new or changing organizational demands. Here, MSPB recommended that Congress, OPM, and individual agencies consider TVA's policies and practices as they seek to improve relevant personnel laws, policies, and practices.

Research Issues and Methodological Difficulties

These previous studies implicitly or explicitly raise many research issues and methodological difficulties. These include how to judge the validity of reasons for exceptions, to measure the impact of a personnel practice on an agency's mission, and to determine whether successful features of a personnel system in one agency might be beneficially transferred to another agency.

Three other relevant issues are discussed below. These concern how to establish reasons for exceptions, determine the reliability of agency responses about flexibility, and describe and compare personnel systems. For each of these issues, prior studies illustrate some important methodological difficulties.

¹⁷MSPB published its studies as *The Title 38 Personnel System in the Department of Veterans Affairs: An Alternative Approach* (1991) and *The Tennessee Valley Authority and the Merit Principles* (1989).

Establishing the Reasons for Exceptions

Establishing the reasons for exceptions poses certain methodological difficulties for gathering adequate information. Although examining the legislative history might be helpful in determining the original reasons for the exceptions, there are limitations to this approach. First, the available legislative history record may not be definitive, since, as the Civil Service Commission noted in its 1973 report, it is reasonable to assume that considerations may have been involved that were not fully reflected in historical records. Second, unless the exception was created recently, legislative histories may not be relevant for establishing the current reasons because circumstances may have changed since the exception's creation.¹⁸

Another approach to establishing current reasons may be to ask agencies to justify their exceptions. This approach requires respondents to construct reasons, and the Commission's 1973 study raised issues about what constitutes an adequate response. The Commission concluded that most agencies were unable to articulate specific reasons for continuing their statutory exceptions. It is unclear whether this vagueness resulted from an actual lack of adequate justification, the respondents' misunderstanding of what constituted an adequately specific justification, or the respondents' lack of knowledge about the competitive service provisions to which their exceptions needed to be compared. The Commission's study relied on agencies to provide narrative justifications for continuing the exceptions, and the Commission emphasized that it had asked respondents to be very specific. Any future researcher might consider whether, and if so how, more specific responses could be elicited from respondents.

Determining the Reliability of Responses

A second research issue is whether agency respondents can reliably assess the flexibility of personnel requirements and practices under the competitive service. In *Statutory Exceptions to the Competitive Service* (1973), the Civil Service Commission agreed with certain agencies' assertions that their personnel practices would not be allowed under title 5, and disagreed with others. For example, the Commission stated that several agencies were under the misconception that competitive procedures for selection necessarily required a written test; it also noted

¹⁸Although a complete legislative history of an agency's operation outside of, or prior to, the creation of the competitive service may go back more than a century, the history of many current exceptions goes back no farther than the Ramspeck Act of 1940. That act authorized the president to remove almost all exceptions that had been created since the passage of the Civil Service Act of 1883. In the Civil Service Commission's 1973 report about statutory exceptions, it is noted that the Ramspeck Act resulted in the Commission being largely concerned with exceptions that had occurred since 1940.

that both interviews and peer referrals could have their place in competitive service selections. The Commission speculated that some responses might reflect some excepted service agencies' long independence from competitive service appointment laws and regulations; such respondents might not be familiar with the ways in which the competitive service had evolved in response to concerns with past rigidities and weaknesses.

However, this reliability problem may not simply reflect the misperceptions of officials in excepted service agencies, whose role might not require a working knowledge of the competitive service provisions that cover other agencies. Our prior work suggests that some agency officials may not clearly understand the actual sources of perceived inflexibilities or constraints in their own agencies. For example, at a 1995 symposium we sponsored,¹⁹ a participant recounted an incident in which Internal Revenue Service officials learned that constraints on their prerogatives were not so extensive as they had thought; OPM representatives at one meeting told them a particular constraint was self-imposed and not an OPM requirement. In addition, a recent study of ours found that several participating agencies discovered, while preparing their waiver requests for a pilot project, that the burdens and constraints that confronted their managers often were imposed by the agency itself or its parent department and were not the result of requirements imposed by central management agencies.²⁰

This reliability issue is critical to a comparison of the flexibility of personnel systems in the competitive and excepted services. If respondents' assessments cannot be assumed to be reliable, any comparison based on their views would be suspect. Thus, one would be uncertain whether policies and procedures found in excepted service agencies would be unavailable to competitive service agencies due to the stricter requirements of title 5. Conversely, one would also be uncertain whether excepted service agencies needed their exceptions in order to adopt particular policies or procedures.

Consequently, researchers addressing the flexibility issue might take one of two differing approaches to reliably determining and comparing the

¹⁹Transforming the Civil Service: Building the Workforce of the Future: Results of a GAO-Sponsored Symposium ([GAO/GGD-96-35](#), Dec. 26, 1995), p. 9.

²⁰GPRA: Managerial Accountability and Flexibility Pilot Did Not Work as Intended ([GAO/GGD-97-36](#), April 1997) p.4. A similar instance is reported in [Management Reform: Status of Agency Reinvention Efforts](#) ([GAO/GGD-96-69](#), March 1996).

approaches and legal bases of personnel systems in the two services. The first approach would be to rely on respondents to make the comparisons, while (1) ensuring that respondents were adequately knowledgeable in this regard and/or (2) finding methods to confirm the legal basis of any constraints they perceived. The second approach would be to rely on the respondents only for descriptions of their personnel systems; the researchers would then compare the personnel systems and determine their legal bases. The second approach would probably require more time and expertise on the part of researchers than would the first.

Describing and Comparing Personnel Systems

Identifying the appointing authority (as was done in chapter 2) is only a starting point for describing a personnel system in the excepted service. Such a description could include the personnel system's various exceptions from title 5; its statutory, regulatory, and policy bases; and the actual practices it involves. The set of exceptions might be identified through an extensive review of the many relevant chapters and subchapters of title 5 where exceptions to coverage by particular provisions are defined.²¹ The statutory requirements for the personnel system might be found in a separate title of the U.S. Code, and regulatory requirements might be found in the Code of Federal Regulations. Personnel manuals and union agreements might further define policies and procedures covering particular personnel systems within the excepted service. To understand actual day-to-day practices and how the features of the personnel system interact would likely require additional information for each personnel system to be studied. This information might already exist, for example, in previous research documents, or new information might be gathered through case studies.

However, legal research may well involve complications that are not immediately apparent. For example, all applicable statutes for an alternative personnel system may not be explicit in the public law creating the exception. For instance, section 347 of the 1996 Department of Transportation Appropriation Act directed the FAA to develop a new personnel management system. The act states that the new system is not subject to title 5 provisions, except for some clearly specified sections and chapters. Although other applicable statutes are not explicitly specified in the act, an FAA document explains that FAA continues to be subject to four more chapters of title 5, the non-personnel management provisions of title 5, and those portions of title 5 that specifically apply to the Secretary of

²¹This type of analysis is illustrated in Appendix XI, "Comparison of Selected Features of Competitive and Excepted Services," in *Personnel Management Project*, Volume 3, December 1977.

Transportation. Through its own discretion, FAA also incorporated additional sections and chapters of title 5 into its new personnel management system.²²

A researcher can also find complexities in the configuration of exceptions under a single appointing authority. For instance, according to the 1991 MSPB report, the law provides for different personnel rules for the different medical care occupations under title 38 U.S.C. Seven occupations—physician, dentist, registered nurse, expanded-function dental auxiliary, optometrist, physician assistant, and podiatrist—“are covered by rules separate from those of title 5 for placement, pay administration, leave, hours of duty, discipline, adverse actions and appeals, and performance management. These employees are covered only by the title 5 retirement rules.”²³ Another five occupations—practical nurse, occupational therapist, pharmacist, physical therapist, and respiratory therapist—share placement and pay administration provisions with other title 38 occupations. However, unlike other title 38 employees, persons in these occupations are paid under the General Schedule rather than under a separate pay scale and are subject to title 5 performance management, leave, and discipline provisions.

Comparing excepted service and competitive service human resource management systems may require detailed examinations of the personnel systems within both services. In some ways, title 5 provisions do provide stark contrasts with personnel practices in some excepted service agencies. For example, TVA negotiates with employee unions on a wide range of matters, including pay, job classification, and health insurance, but title 5 specifically prohibits agencies from negotiating on these and other specific matters. Nevertheless, one cannot assume that the title 5 requirements result in a single personnel system among competitive service agencies that always sharply contrasts with those of excepted service agencies. For example, title 5 provides OPM the discretion to use pay and grade-setting provisions provided under title 38 for VA health care occupations currently covered under title 5 in other agencies; in effect, this means that some competitive service positions could have the same pay and grade-setting provisions as found in the excepted positions in VA. A second example arises from OPM’s authority under title 5 to conduct demonstration projects, under which participating agencies can diverge from a broad range of title 5 requirements. Thus, to the extent that the

²²FAA Personnel Management System, March 28, 1996, pp. i-ii.

²³The Title 38 Personnel System in the Department of Veterans Affairs: An Alternative Approach (1991), p. 7.

flexibilities allowed under title 5 result in less uniform agency personnel systems in the competitive service, comparisons between the competitive service and the excepted service personnel systems would have to consider variations in the competitive service, as well as in the excepted service.²⁴

²⁴Recent proposals for performance-based organizations have described some of the existing personnel flexibilities under title 5. For example, see OPM's "Template of Personnel Flexibilities for Use by Agencies Selected for Conversion to Performance-Based Organizations," March 27, 1996, especially part II.

Two Sources of Data on the Excepted Service

OPM maintains two data sources, based on data routinely submitted by agencies, that provide information about the excepted service. One is the Monthly Report of Federal Civilian Employment (Monthly Report), which contains summary employment data for agencies. The other is the Central Personnel Data File (CPDF), which contains personnel information on most federal civilian employees. Each data source has advantages and disadvantages for providing information about the excepted service.

In chapters 1 and 2, we used these data sources to draw different statistical portraits of the excepted service. In this chapter, we detail the differences between the two data sources that affect their use for this purpose. We also identify some unresolved issues concerning their coverage and accuracy, as well as the methodological difficulty of mixing data from the two sources in an analysis.

Coverage of Agencies

Of the two sources, the Monthly Report gives more comprehensive information on the governmentwide distribution of excepted service employees. As shown in table 4.1, the Monthly Report was designed to provide more comprehensive coverage of federal agencies than the CPDF. Although both sources exclude nonappropriated fund employees²⁵ and some agencies (for example, the CIA, DIA, and NSA), the CPDF excludes more agencies (for example, all judicial branch agencies and many legislative branch agencies). The CPDF also excludes the Postal Service, which employed 62 percent of all excepted service employees in June 1996.

²⁵These include employees paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States conducted for the comfort and improvement of personnel of the armed forces. These employees are broadly excepted from title 5, as specified in section 2105 of that title.

Chapter 4
Two Sources of Data on the Excepted Service

Table 4.1: Comparison of Coverage of Federal Civilian Employment for Two Data Sources

Central Personnel Data File	Monthly Report of Federal Civilian Employment
Includes employees in the executive branch, with some exclusions:	Includes employees in the executive branch, with some exclusions:
Excludes White House Office and Office of the Vice President employees.	
Excludes Board of Governors of the Federal Reserve System, Postal Rate Commission, U.S. Postal Service, and Tennessee Valley Authority employees.	
Excludes commissioned officers in the Department of Commerce, Department of Health and Human Services, and the Environmental Protection Agency.	
Excludes Central Intelligence Agency, Defense Intelligence Agency, and National Security Agency employees.	Excludes Central Intelligence Agency, Defense Intelligence Agency, and National Security Agency employees.
Excludes employees in the judicial branch.	Includes employees in the judicial branch.
Includes legislative branch employees in only the Government Printing Office, the U.S. Tax Court, and several small commissions.	Includes employees in the legislative branch.
Excludes most nonappropriated fund personnel.	Excludes nonappropriated fund personnel.
Excludes non-U.S. citizens in foreign countries.	Includes non-U.S. citizens in foreign countries.

Source: OPM, Operating Manual: Federal Workforce Reporting Systems, December 26, 1994.

Available Information

Although limited to fewer agencies, the CPDF has been designed to provide more information about excepted service employees than does the Monthly Report. The Monthly Report collects summary counts for employees in the excepted service and the SES (combined) by agency, with breakouts for permanent (versus temporary or indefinite) appointments, major geographic locations, and accessions.²⁶ (Accessions are additions to an agency's workforce resulting from new hires, reappointments, transfers, and other personnel actions.)

²⁶The reporting system for the Monthly Report is described in OPM's Operating Manual: Federal Workforce Reporting Systems, December 26, 1994. Additional details are found in OPM's Standard Form 113-A: Monthly Report of Federal Civilian Employment: User Guide, August 1, 1996. Tables based on the data are routinely disseminated through OPM's Employment and Trends reports.

In contrast, the CPDF includes all this information and considerably more personnel data, such as occupation and pay plan,²⁷ and collects this data on each employee. Perhaps most importantly, the CPDF can separate excepted service employees from SES and competitive service employees. It also indicates the legal or regulatory basis (that is, the appointing authority) for appointing excepted service employees. For agencies covered by both sources, the CPDF also provides data on more agency suborganizations. Thus, the CPDF—and not the Monthly Report—could show, for example, that most excepted service employees in VA were within the Veterans Health Administration, and that most of these were appointed under the Veterans Medical Personnel Authority.

Methodological Difficulties

Future researchers will have to consider at least two unresolved issues about these data sources. As we have shown, the Monthly Report has better coverage of the excepted service than does the CPDF; the first unresolved issue concerns the completeness of the Monthly Report's coverage. A second unresolved issue is the accuracy of data in the CPDF and the Monthly Report. Moreover, future researchers should be aware of the methodological difficulty of mixing data from the two data sources.

Since the Monthly Report is designed to capture almost all federal civilian employment, it does provide an extensive list of agencies with excepted service employees. However, we have not verified that it is an exhaustive list.²⁸ In particular, although the Monthly Report includes data on government corporations, we have not verified that all corporations with federal civilian employment are reported in it.²⁹ Previous studies of the excepted service, although dated, have examined other entities that are explicitly excluded from reporting to the Monthly Report. These include the major intelligence agencies and the nonappropriated fund employees

²⁷The many data elements of the CPDF are listed in OPM's Operating Manual: Federal Workforce Reporting Systems, December 26, 1994. The full data dictionary is found in The Guide to Personnel Data Standards (previously known as FPM Supplement 292-1, Personnel Data Standards).

²⁸Other agencies' lists of federal agencies might be used to identify federal agencies, if any, that do not appear in OPM lists. These other lists include the Office of Management and Budget's (OMB) annual list of designated federal entities and federal entities, OMB's federal budget data by agency, the National Institute of Standards and Technology's Codes for the Identification of Federal and Federally Assisted Organizations (FIPS PUB 95-1), and the Office of the Federal Register's The United States Government Manual. Even if additional agencies were found on these lists, further investigation would be necessary to determine whether the discovered agencies were subsumed under other agencies in the OPM lists, and whether they were employing excepted service employees.

²⁹Determining the universe of government corporations may be difficult. Our prior study found that no comprehensive descriptive definition of, or criteria for, creating government corporations existed, and counts of their number have varied widely. See Government Corporations: Profiles of Existing Corporations (GAO/GGD-96-14, December 1995).

at various agencies. (According to a Department of Defense official, that department alone had about 170,000 nonappropriated fund employees.)

We have not examined the accuracy of either data source. According to OPM, a number of quality control operations are performed on CPDF data, and, where possible, comparisons are made between CPDF data and Monthly Report data to identify any large data discrepancies.³⁰ OPM has also developed a program for checking Monthly Report data for logical inconsistencies, missing values, and out-of-expected-range data; through this program, agencies may interactively correct their data in response to error messages, when they have electronically submitted their data.³¹

Given the differences between the two data sources, mixing their data in an analysis can raise issues of accuracy. Since the Monthly Report data cover different agencies than do CPDF data, aggregate findings are not directly comparable between the two data sources. Moreover, even data for the same agency drawn from the two sources may not be comparable. Discrepancies in counts for agencies—whether resulting from understandable differences in coverage (such as CPDF’s exclusion of foreign nationals employed overseas) or other possible reasons, such as inaccurate counts—can be fairly large. For instance, CPDF data as of June 1996 indicated that the Federal Emergency Management Agency (FEMA) employed 7,984 excepted service employees; Monthly Report data for the same month indicated that FEMA employed 2,884.³²

³⁰We have a separate study currently under way to examine the accuracy of data in the CPDF.

³¹OPM’s efforts to promote quality control for the CPDF are described in its Operating Manual: Federal Workforce Reporting Systems, December 26, 1994, especially pp. 2-3, 41. OPM’s program to check Monthly Report data is presented in its “Listing of SF 113-A Reporting Edits,” Standard Form 113-A: Monthly Report of Federal Civilian Employment: User Guide, August 1, 1996, pp. 36-45.

³²According to an OPM official, this discrepancy primarily resulted from the many FEMA employees on nonpay status in June 1996, who were counted in the CPDF data and not in the Monthly Report data.

Objectives, Scope, and Methodology

Our overarching objective was to provide an introduction to the excepted service and to identify research issues for planning future studies of it. Specifically, our objectives were to describe (1) the distribution of excepted service employees across government organizations; (2) the composition of the excepted service in terms of the various legal bases under which employees were appointed; (3) policy concerns and study focuses that have guided some prior studies; and (4) the coverage of agencies and employees, and available information, in two data sources that were useful for studying the excepted service. Additionally, we sought to identify research issues and methodological difficulties associated with each of these objectives.

For the first objective of describing the distribution of excepted service employees across government organizations, we analyzed OPM data from the Monthly Report of Federal Civilian Employment (Monthly Report) for June 1996. Since Monthly Report data do not count SES employees separately from excepted service employees, our use of the combined number is not a precise count of excepted service employees. However, we determined that the imprecision was very small; based on our analysis of data from the CPDF, which covers most federal civilian employees, SES employees made up less than 2 percent of the combined count in June 1996. Although the Monthly Report covers almost all agencies, it does not provide a full count of excepted service employees since it collects data neither from the major intelligence agencies nor on nonappropriated fund employees who were included in some previous studies of statutory exceptions to the competitive service.

For the second objective of describing the legal bases of excepted service employees' appointments, we analyzed OPM's CPDF data on appointing authorities for June 1996. Because the CPDF data exclude over half the positions in the excepted service, we illustrate patterns for particular agencies and appointment authorities, rather than describing the entire excepted service.

For the first and second objectives, we did not verify the data used in our descriptions since that was beyond the scope of this introduction to the excepted service. The descriptions are for June 1996.

To identify policy concerns and study focuses in prior studies of the excepted service, we reviewed four studies that illustrate significantly different approaches to studying the excepted service.

Our fourth objective was to describe the completeness of coverage and available information in two data sources, the CPDF and the Monthly Report, that we used for analyzing aspects of the excepted service for objectives 1 and 2. We described their coverage and information based primarily on OPM documentation, although we also clarified some details about the Monthly Report with the OPM manager in charge of it.

We identified research issues and methodological difficulties associated with the four objectives by considering them in light of our standard processes for planning a study.³³ We examined the various ways in which data on the personnel systems in the excepted service might be collected, and identified the limitations on what these data might reveal and on what we might be able to report about them. These considerations, and our review of some previous studies, led us to identify certain research issues and methodological difficulties that are likely to confront any researcher who intends to delve more deeply into the excepted service in the future.

³³These processes include identifying research questions, the needed data, available data sources, methods of data collection and analysis, the type of supportable findings, and potential limitations of findings.

Major Contributors to This Staff Study

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

Stephen E. Altman, Assistant Director, Federal Management and
Workforce Issues
Michael J. O'Donnell, Advisor
Gregory H. Wilmoth, Senior Social Science Analyst

**Denver Regional
Office**

Terry J. Hanford, Evaluator-in-Charge

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000 or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested

