

Biography of an Ideal

A History of the Federal Civil Service

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Message from the Director

Biography of an Ideal is a concise history of the United States civil service and the remarkable employees who have helped make our country great. It is a unique work, prepared by those who have been given the honor and privilege of protecting and administering our merit-based system, first at the Civil Service Commission and now at the U.S. Office of Personnel Management.

Originally published in conjunction with the 75th anniversary of the landmark Civil Service Act of 1883 and updated in 1973, the current edition adds important chapters that memorialize the critical developments in the civil service in the last three decades. The Civil Service Reform Act of 1978 brought fundamental structural changes that gave birth to OPM, the Merit Systems Protection Board, and a new Senior Executive Service. The election of the first American President with an advanced degree in business at the beginning of the 21st century brings new emphasis on results-oriented management of the Federal Government and a maturing role for OPM as central personnel agent.

In his 2001 inaugural address, President Bush spoke of the grand and enduring ideals that unite Americans across the generations. The grandest of these, the "unfolding American promise that everyone belongs, that everyone deserves a chance, that no insignificant person was ever born."

That grand ideal lies at the core of the American civil service, as do so many of our laws and institutions. It is embodied in the remarkably timeless merit system principles, the firm foundation on which our civil service has been built and on which we will continue to build as we write the next chapters in the history of the civil service in the United States. These principles have served our Nation well during times of war and peace, and since September 11th, we have again turned to the merit principles as the basis for the Federal workforce that will help us prevail in our efforts against those who seek to destroy our system of governance. The challenges are many as we work to perfect our ideal and create an even better, fairer system based on the merit principles, a system that will attract and motivate the best and the brightest of the rising generation to heed the call to public service.

This 120th anniversary edition of Biography of an Ideal is dedicated to the countless public servants in whose footsteps the next generation will follow; men and women who, throughout the years, have applied their talent, skills, and energy on behalf of our country. Thanks to their contributions, the ideals of our founders serve today as an inspiration for the world.

It is my hope that we will continue to honor their legacy, and in the spirit of former Civil Service Commissioner and President Theodore Roosevelt, remain in the arena of public service to stand tall in the face of danger and place service to our country first.

Kay Coles James, Former Director
U.S. Office of Personnel Management

Introductory Text

Through the Years

While this history will trace the development of the Federal civil service from the founding of the United States of America to the present day, the watershed date was 1883. In that year the Civil Service Act became law and the United States Civil Service Commission was established. So there is an institutional story to be told, as well as the story tracing the steady growth and development of the Federal Government's personnel system.

Original Commission

President Chester A. Arthur signed the Civil Service Act of 1883 into law on January 16. Less than 2 months later—on March 9, 1883—his three appointees to the new positions of United States Civil Service Commissioner took office.

The first head of the Commission was Dorman B. Eaton of New York, principal author of the Civil Service Act and a man who for many years had devoted himself to the cause of civil service reform. His colleagues were John M. Gregory of Illinois—lawyer, minister, editor, writer, teacher, and former president of Illinois University—and Judge Leroy D. Thoman—lawyer and newspaper editor.

To assist these three men in their important duties was the first staff, consisting of a chief examiner (Charles Lyman of Connecticut), a secretary (William S. Roulhac of North Carolina), a stenographer (John T. Doyle), and a messenger (Matthew F. Halloran).

These 7 people, first operating out of a 2-room office in a private dwelling on Fourteenth Street NW, in Washington, DC, were in charge of administering and doing the daily work of regulating positions in the new "competitive service," which originally contained 13,900 positions. These positions were mostly minor clerkships—only 10.5 percent of the total Federal workforce of 132,800 in 1883.

One Hundred and Twenty Years Later

The changes brought about by 120 years are tremendous—in size and in scope—not only in what used to be the "Commission" and its activities but of Government operations.

Today the Office of Personnel Management has jurisdiction over a civil service (non-postal) of 1,361,975. And other agencies, created at the same time as OPM by the Civil Service Reform Act of 1978, continue other functions of the former Civil Service Commission: the Merit System Protection Board, the Office of Special Counsel, and the Federal Labor Relations Board.

The current Federal workforce is made up of more than 1,886,238 employees—more than 90 percent of whom work under some form of merit system. They staff more than 107 Government departments and agencies. They are stationed throughout the United States and its territories, and in many foreign countries. Federal agencies range in size from the 680,000-employee, worldwide Department of Defense civilian staff to the White House Commission on the National Moment of Remembrance, with 1 paid employee.

Occupations Run Gamut

Numbers tell only part of the story. Whereas the 1883 Commission dealt with the problems of recruiting for and regulating little more than minor clerkships, today's civil service system must accommodate the employment of information technology workers, space scientists, scientific researchers of all kinds, social workers, accountants—an almost endless list of professions and occupations.

The American people look to their Government for many more services than they did in 1883, and as a result the work of Federal employees touches every American every day. Government workers function in the areas of foreign policy, national defense, homeland security, environmental protection, and missile and space development. They print and mint our money, control narcotics, regulate immigration, and collect taxes and duties. They help to conserve land and revitalize land that is unproductive, bring electricity into rural homes, enforce Federal laws, and administer Social Security. They operate the atomic energy program, forecast the weather, and protect national parks and forests. They conduct research—in physics, electronics, meteorology, geology, metallurgy, and other scientific fields—which has far-reaching effects on the health, welfare, economy, and security of our Nation. They control our airways, standardize our weights and measures, develop flood-control measures, and perform hundreds of other services required by the American people.

Scope of This History

This history, covering the years 1789 to 2003, can give only highlights:

- It tells how two pistol shots, resulting in tragedy, consolidated an indignant American public opinion and literally forced the passage of the long-overdue Civil Service Act: an inspiring example of the power of public opinion at its idealistic best.
- It shows how the story of civil service is inextricably entwined with the history of America. For example, the very first debate ever held in the United States Senate revolved about a public-service problem. Also, certain famous American sayings, such as "To the victor belong the spoils" and "Turn the rascals out!" sprang from early Government-service practices.
- In emphasizing the indispensable role played by the merit system in representative government, this history also seeks to increase public understanding of the work done by Government employees and the way these services affect the day-to-day life of every United States citizen.
- Finally, this piece of work seeks to stimulate interest in Government service as a career and stresses the great strides that have been made in developing a true career civil service in this country.

Timeframe

The year 1883 is of paramount importance to the history of the Federal civil service because it saw the signing of the Civil Service Act, which marked the transition from the wild, unbridled "spoils system" of public service in this country to the orderly, unpolitical, and infinitely more efficient merit system.

The 214 years covered in this history, therefore, divide themselves into 94 premerit years (1789 to 1883); then the 95 years of the steady development of personnel administration under the Civil Service Commission; and then 25 years of the continued evolution of the civil service, following the Civil Service Reform Act and under the guidance of the Office of Personnel Management.

One Hundred and Twentieth Anniversary

The civil service story is an eventful one—above all a part of the story of American democracy and American strength.

Civil service in the United States has been surprisingly sensitive to the deepest desires of the people, to the needs of the Government, and to major political, economic, and social developments, not only in the United States but also, in more recent years, in the world at large. It responds to the demands of our people, our Government, and the times, whether 1789, 1883, 1938, or 2003.

Changing Federal Service

Public service has undergone much drastic change during its more than 200-year history in America, in five distinct phases:

One: The staid, able service of the founding period.

Two: The spoils era, when national elections were gigantic lotteries, with Government employment as the prize.

Three: The early, unspectacular years of the competitive civil service, when high-level professional and executive career jobs were relatively few.

Four: The beginning of the modern civil service, whose career employees serve worldwide in assignments requiring high levels of professional and executive capacity, judgment, energy, and skill.

Five: The 25 years since passage of the Civil Service Reform Act in 1978, with continuing commitment to merit principles, and increased emphasis and sharper focus on performance management.

Merit System Principles

1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
3. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.
4. All employees should maintain high standards of integrity, conduct, and concern for the public interest.
5. The Federal workforce should be used efficiently and effectively.
6. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.
7. Employees should be:
 - Protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - Prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
8. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences:
 - A violation of any law, rule, or regulation, or
 - Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Civil Service Act of 1883

Civil Service Act of 1883

[As originally passed]

Forty-Seventh Congress of the United States of America;

At the Second Session

Begun and held at the City of Washington on

Monday, the fourth day of December, one thousand eight hundred eighty-two

An Act to regulate and improve the civil service of the United States

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That the president is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

The commissioners shall each receive a salary of three thousand five hundred dollars a year. And each of said commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a commissioner.

Sec. 2. That is shall be the duty of said commissioners:

FIRST. To aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

SECOND. And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative

capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been resident of such place.

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Sixth, that no person in said service as any right to use his official authority or influence to coerce the political action of any person or body.

Seventh, there shall be non-competitive examinations in all proper cases before the commission, when competent persons do not compete, after notice as been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

Eighth, that notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission.

And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.

THIRD. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, an, through its members or the

examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.

FOURTH. Said commission may make investigation concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates and those in the public service, in respect to the execution of this act.

FIFTH. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act.

Sec 3. That said commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings which shall be at all times open to him. The chief examiner shall be entitled to receive a salary at the rate of three thousand dollars a year, and he shall be paid his necessary traveling expenses incurred in the discharge of his duty. The commission shall have a secretary, to be appointed by the President, who shall receive a salary of one thousand six hundred dollars per annum. It may, when necessary, employ a stenographer, and a messenger, who shall be paid, when employed, the former at the rate of one thousand six hundred dollars a year, and the latter at the rate of six hundred dollars a year. The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of examiners, and may at any time substitute any other person in said service living in such State or Territory in the place of any one so selected. Such boards of examiners shall be so located as to make it reasonably convenient and inexpensive for applicants to attend before them; and where there are persons to be examined in any State or Territory, examinations shall be held therein at least twice in each year. It shall be the duty of the collector, postmaster, and other officers of the United States, at any place outside of the District of Columbia where examinations are directed by the President or by said board to be held, to allow the reasonable use of the public buildings for holding such examinations, and in all proper ways to facilitate the same.

Sec. 4. That it shall be the duty of the Secretary of the Interior to cause suitable and convenient rooms and accommodations to be assigned or provided, and to be furnished, heated, and lighted, at the city of Washington, for carrying on the work of said commission and said examinations, and to cause the necessary stationery and other articles to be supplied, and the necessary printing to be done for said commission.

Sec. 5. That any said commissioner, examiner, copyists, or messenger, or any person in the public service who shall willfully and corruptly, by himself or in cooperation with one or more other persons, defeat, deceive, or obstruct any person in respect of his or her right of examination according to any such rules or regulations, or who shall willfully, corruptly, and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined hereunder, or aid in so doing or who shall willfully and corruptly make any false representations concerning the same or concerning the person examined, or who shall willfully and corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, or to be examined, being appointed, employed, or promoted, shall for each such offense be deemed guilty of a misdemeanor, and upon conviction there-of, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment not less than ten days, nor more than one year, or by both such fine and imprisonment.

Sec. 6. That within sixty days after the passage of this act it shall be the duty of the secretary of the Treasury, in as near conformity as may be the classification of certain clerks now existing under the one hundred and sixty-third section of the Revised Statutes, to arrange in classes the several clerks and persons employed by the collector, naval officer, surveyor, and appraisers, either of them, or being in the public service, at their respective offices in each customs district where the whole number of said clerks and persons shall be all together as many as fifty. And there after, from time to time, on the direction of the President, said Secretary shall make the like classification or arrangement of clerks and persons so employed, in connection with any said office or offices, in any other customs district. And, upon like request, and for the purposes of this act, said Secretary shall arrange in one or more of said classes, or of existing classes, any other clerks, agents, or persons employed under his department in any said district not now classified; and every such arrangement and classification upon being made shall be reported to the President.

Second. Within said sixty days it shall be the duty of the Postmaster-General, in general conformity to said one hundred and sixty-third section, to separately arrange in classes the several clerks and persons employed, or in the public service, at each post-office, or under any postmaster of the United States, where the whole number of said clerks and persons shall together amount to as many as fifty. And thereafter, from time to time, on the direction of the President, it shall be the duty of the Postmaster-General to arrange in like classes the clerks and persons so employed in the postal service in connection with any other post-office; and every such arrangement and classification upon being made shall be reported to the President.

Third. That from time to time said Secretary, the Postmaster-General and each of departments mentioned in the one hundred and fifty-eighth section of the Revised Statutes, and each head of an office, shall on the direction of the President and for facilitating the execution of this act,

respectively revise any then existing classification or arrangement of those in their respective departments and offices, and shall, for the purposes of the examination herein provided for, include in one or more of such classes, so far as practicable, subordinate places, clerks, and the public service pertaining to their respective departments not before classified for examination.

Sec. 7. That after the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specifically exempted from such examination in conformity herewith. But nothing herein contained shall be construed to take from those honorably discharged from the military or naval service any preference conferred by the seventeen hundred and fifty-four section of the Revised Statutes, nor to take from the President any authority not inconsistent with this act conferred by the seventeen hundred and fifty-third section of said statutes; nor shall any officer not in the executive branch of the government, or any person merely employed as a laborer or workman, be required to be classified hereunder; nor, unless by direction of the Senate, shall any person who has been nominated for confirmation by the Senate be required to be classified or to pass an examination.

Sec. 8. That no person habitually using intoxicating beverages to excess shall be appointed to, or retained in, any office, appointment, or employment to which the provisions of this act are applicable.

Sec. 9. That whenever there are already two or more members of a family in public service in the grades covered by this act, no other member of such family shall be eligible to appointment to any of said grades.

Sec. 10. That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or member of the House of Representatives, except as to the character or residence of the applicant shall be received or considered by any person concerned in making any examination or appointment under this act.

Sec. 11. That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

Sec. 12. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

Sec. 13. No officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

Sec. 14. That no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable on account of or to be applied to the promotion of any political object whatever.

Sec. 15. That any person who shall be guilty of violating any provision of the foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court.

J. WARREN KEIFER
Speaker of the House of Representatives

DAVID DAVIS
President of the Senate pro tempore

Approved January sixteenth 1883
CHESTER A. ARTHUR

Civil Service Reform Act of 1978

PL 95-454 (S 2640)

OCTOBER 13, 1978

An Act to reform the civil service laws.

Be it enacted by the Senate and House of Representatives of the United States

of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Reform Act of 1978".

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SEC. 2. The table of contents is as follows:

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Sec. 101. Merit system principles; prohibited personnel practices.

TITLE II -- CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

Sec. 201. Office of Personnel Management. Sec. 202. Merit Systems Protection Board and Special Counsel. Sec. 203. Performance appraisals. Sec. 204. Adverse actions. Sec. 205. Appeals. Sec. 206. Technical and conforming amendments.

TITLE III -- STAFFING

Sec. 301. Volunteer service. Sec. 302. Interpreting assistants for deaf employees. Sec. 303. Probationary period. Sec. 304. Training. Sec. 305. Travel, transportation, and subsistence. Sec. 306. Retirement. Sec. 307. Veterans and preference eligibles. Sec. 308. Dual pay for retired members of the uniformed services. Sec. 309. Civil service employment information. Sec. 310. Minority recruitment program. Sec. 311. Temporary employment limitation.

TITLE IV -- SENIOR EXECUTIVE SERVICE

Sec. 401. General provisions. Sec. 402. Authority for employment. Sec. 403. Examination, certification, and appointment. Sec. 404. Retention preference. Sec. 405. Performance rating. Sec. 406. Awarding of ranks. Sec. 407. Pay rates and systems. Sec. 408. Pay administration. Sec. 409. Travel, transportation, and subsistence. Sec. 410. Leave. Sec. 411. Disciplinary actions. Sec. 412. Retirement. Sec. 413. Conversion to the Senior Executive Service. Sec. 414. Limitations on executive positions. Sec. 415. Effective date; congressional review.

TITLE V -- MERIT PAY

Sec. 501. Pay for performance. Sec. 502. Incentive awards amendments. Sec. 503. Technical and conforming amendments. Sec. 504. Effective date.

TITLE VI -- RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

Sec. 601. Research programs and demonstration projects. Sec. 602. Intergovernmental Personnel Act amendments. Sec. 603. Amendments to the mobility program.

TITLE VII -- FEDERAL SERVICE LABOR- MANAGEMENT RELATIONS

Sec. 701. Federal service labor-management relations. Sec. 702. Backpay in case of unfair labor practices and grievances. Sec. 703. Technical and conforming amendments. Sec. 704. Miscellaneous provisions.

TITLE VIII -- GRADE AND PAY RETENTION

Sec. 801. Grade and pay retention.

TITLE IX -- MISCELLANEOUS

Sec. 901. Study on decentralization of governmental functions. Sec. 902. Savings provisions. Sec. 903. Authorization of appropriations. Sec. 904. Powers of President unaffected except by express provisions. Sec. 905. Reorganizations plans. Sec. 906. Technical and conforming amendments. Sec. 907. Effective date.

FINDINGS AND STATEMENT OF PURPOSE

Sec. 3. It is the policy of the United States that --,

(1) in order to provide the people of the United States with a competent, honest, and productive Federal work force reflective of the Nation's diversity, and to improve the quality of public service,

Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices;

(2) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Federal employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

(3) Federal employees should receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

(4) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate allegations involving prohibited personnel practices and reprisals against Federal employees for the lawful disclosure of certain information and may file complaints against agency officials and employees who engage in such conduct;

(5) the function of filling positions and other personnel functions in the competitive service and in the executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

(6) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified executives needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

(7) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

(8) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional oversight, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public;

(9) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess; and

(10) the right of Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them, with full regard for the public interest and the effective conduct of public business, should be specifically recognized in statute.

TITLE I -- MERIT SYSTEM PRINCIPLES

MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES

Sec. 101. (a) Title 5, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23 -- MERIT SYSTEM PRINCIPLES

" Sec. "2301. Merit system principles. "2302. Prohibited personnel practices. "2303. Prohibited personnel practices in the Federal Bureau of Investigation. "2304. Responsibility of the General Accounting Office. "2305. Coordination with certain other provisions of law.

" Section 2301. Merit system principles

"(a) This section shall apply to --,

"(1) an Executive agency;

"(2) the Administrative Office of the United States Courts; and

"(3) the Government Printing Office.

"(b) Federal personnel management should be implemented consistent with the following merit system principles:

"(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

"(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

"(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

"(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

"(5) The Federal work force should be used efficiently and effectively.

"(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

"(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

"(8) Employees should be --,

"(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

"(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

"(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences --,

"(A) a violation of any law, rule, or regulation, or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(c) In administering the provisions of this chapter --,

"(1) with respect to any agency (as defined in section 2302(a) (2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

"(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

"Section 2302. Prohibited personnel practices

"(a)(1) For the purpose of this title, 'prohibited personnel practice' means any action described in subsection (b) of this section.

"(2) For the purpose of this section --,

"(A) 'personnel action' means --,

"(i) an appointment;

"(ii) a promotion;

"(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

"(iv) a detail, transfer, or reassignment;

"(v) a reinstatement;

"(vi) a restoration;

"(vii) a reemployment;

"(viii) a performance evaluation under chapter 43 of this title;

"(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; and

"(x) any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level;

with respect to an employee in, or applicant for, a covered position in an agency;

"(B) 'covered position' means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include --,

"(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making or policy-advocating character; or

"(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.

"(C) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include --,

"(i) a Government corporation;

"(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

"(iii) the General Accounting Office.

"(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority --,

"(1) discriminate for or against any employee or applicant for employment --,

"(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

"(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

"(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

"(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

"(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

"(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such

recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of --,

"(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

"(B) an evaluation of the character, loyalty, or suitability of such individual;

"(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

"(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

"(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

"(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

"(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

"(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for --,

"(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences --,

"(i) a violation of any law, rule, or regulation, or

"(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public

health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences --,

"(i) a violation of any law, rule, or regulation, or

"(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

"(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

"(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or

"(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

"(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

"(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under --,

"(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

"(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

"(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

"(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

"(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

"2303.

Prohibited personnel practices in the Federal Bureau of Investigation

"(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences --,

"(1) a violation of any law, rule, or regulation, or

"(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, 'personnel action' means any action described in clauses (i) through (x) of section 2302(a) (2) (A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character).

"(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

"(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title.

"Section 2304.

Responsibility of the General Accounting Office

"(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

"(b) the General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of --,

"(1) significant actions taken by the Board to carry out its functions under this title; and

"(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

" Section 2305.

Coordination with certain other provisions of law

" No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat, 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), the Act entitled ' An Act to provide certain administrative authorities for the National Security Agency, and for other purposes', approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), and the Act entitled ' An Act to amend the Internal Security Act of 1950', approved March 26, 1964 (78 Stat. 168; 50 U.S. C. 831-835)."

(b) (1) The table of chapters for part III of title 5, United States Code, is amended by adding after the item relating to chapter 21 the following new item:

"23. Merit system principles-----2301".

(2) Section 7153 of title 5, United States Code, is amended --,

(A) by striking out "Physical handicap" in the catchline and inserting in lieu thereof "Handicapping condition"; and

(B) by striking out "physical handicap" each place it appears in the text and inserting in lieu thereof "handicapping condition".

TITLE II -- CIVIL SERVICE FUNCTIONS; PERFORMANCE APPRAISAL; ADVERSE ACTIONS

OFFICE OF PERSONNEL MANAGEMENT

Sec. 201. (a) Chapter 11 of title 5, United States Code, is amended to read as follows:

"CHAPTER 11 -- OFFICE OF PERSONNEL MANAGEMENT

" Sec. "1101. Office of Personnel Management. "1102. Director; Deputy Director; Associate Directors. "1103. Functions of the Director. "1104. Delegation of authority for personnel management. "1105. Administrative procedure.

" Section 1101.

Office of Personnel Management

" The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal, which shall be judicially noticed, and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations.

" Section 1102.

Director; Deputy Director; Associate Directors

"(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as Director shall be 4 years.

"(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of Director is vacant.

"(c) No individual shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or at the direction of the President. The Director and Deputy Director shall not recommend any individual for appointment to any position (other than Deputy Director of the Office) which requires the advice and consent of the Senate.

"(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.

" Section 1103.

Functions of the Director

"(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104 of this title, by such employees of the Office as the Director designates:

"(1) securing accuracy, uniformity, and justice in the functions of the Office;

"(2) appointing individuals to be employed by the Office;

"(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

"(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

"(5) executing, administering, and enforcing --,

"(A) the civil service rules and regulations of the President and the Office and the laws governing the civil service; and

"(B) the other activities of the Office including retirement and classification activities; except with respect to functions for which the Merit Systems Protection Board or the Special Counsel is primarily responsible;

"(6) reviewing the operations under chapter 87 of this title;

"(7) aiding the President, as the President may request, in preparing such civil service rules as the President prescribes, and otherwise advising the President on actions which may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay,

conditions of service, tenure, and separation of employees; and

"(8) conducting, or otherwise providing for the conduct of, studies and research under chapter 47 of this title into methods of assuring improvements in personnel management.

"(b) (1) The Director shall publish in the Federal Register general notice of any rule or regulation which is proposed by the Office and the application of which does not apply solely to the Office or its employees. Any such notice shall include the matter required under section 553(b) (1), (2), and (3) of this title.

"(2) The Director shall take steps to ensure that --,

"(A) any proposed rule or regulation to which paragraph (1) of this subsection applies is posted in offices of Federal agencies maintaining copies of the Federal personnel regulations; and

"(B) to the extent the Director determines appropriate and practical, exclusive representatives of employees affected by such proposed rule or regulation and interested members of the public are notified of such proposed rule or regulation.

"(3) Paragraphs (1) and (2) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency.

" Section 1104.

Delegation of authority for personnel management

"(a) Subject to subsection (b) (3) of this section --,

"(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

"(2) the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service;

except that the Director may not delegate authority for competitive examinations with respect to positions that have requirements which are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.

"(b) (1) The Office shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

"(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

"(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations.

"(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b)(2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a)(2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b)(1) of this section, the agency involved shall take any corrective action the Office may require.

" Section 1105.

Administrative procedure

" Subject to section 1103(b) of this title, in the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553."

(b)(1) Section 5313 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(24) Director of the Office of Personnel Management."

(2) Section 5314 of such title is amended by inserting at the end thereof the following new paragraph:

"(68) Deputy Director of the Office of Personnel Management."

(3) Section 5316 of such title is amended by inserting after paragraph (121) the following:

"(122) Associate Directors of the Office of Personnel Management (5)."

(c)(1) The heading of part II of title 5, United States Code is amended by striking out "THE UNITED STATES CIVIL SERVICE COMMISSION" and inserting in lieu thereof "CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES".

(2) The item relating to chapter 11 in the table of chapters for part II of such title is amended by striking out "Organization" and inserting in lieu thereof "Office of Personnel Management".

MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

Sec. 202. (a) Title 5, United States Code, is amended by inserting after chapter 11 the following new chapter:

"CHAPTER 12 -- MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

" Sec. "1201. Appointment of members of the Merit Systems Protection Board. "1202. Term of office; filling vacancies; removal. "1203. Chairman; Vice Chairman. "1204. Special Counsel; appointment and removal. "1205. Powers and functions of the Merit Systems Protection Board and Special Counsel. "1206. Authority and responsibilities of the Special Counsel. "1207. Hearings and decisions on complaints filed by the Special Counsel. "1208. Stays of certain personnel actions. "1209. Information.

" Section 1201. Appointment of members of the Merit Systems Protection Board

" The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The Chairman and members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

" Section 1202. Term of office, filling vacancies; removal

"(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

"(b) A member appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201 of this title.

"(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire under this section.

"(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

" Section 1203. Chairman; Vice Chairman

"(a) The President shall from time to time, appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

"(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"(c) During the absence or disability of both the Chairman and Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

" Section 1204. Special Counsel; appointed and removal

" The Special Counsel of the Merit Systems Protection Board shall be appointed by the President from attorneys, by and with the advice and consent of the Senate, for a term of 5 years. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

" Section 1205. Powers and functions of the Merit Systems Protection Board and Special Counsel

"(a) The Merit Systems Protection Board shall --,

"(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, section 2023 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

"(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

"(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

"(4) review, as provided in subsection (e) of this section, rules and regulations of the Office of Personnel Management.

"(b)(1) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) Any member of the Board, the Special Counsel, and any administrative law judge appointed by the Board under section 3105 of this title may --,

"(A) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia; and

"(B) order the taking of depositions and order responses to written interrogatories.

"(3) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b)(2) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(d)(1) In any proceeding under subsection (a)(1) of this section, any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

"(2) In enforcing compliance with any order under subsection (a) (2) of this section, the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued and no payment shall be made out of the Treasury of the United States for any service specified in such order.

"(3) In carrying out any study under subsection (a)(3) of this section, the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to

personnel records or information collected by the Office and may require additional reports from other agencies as needed.

"(e)(1) At any time after the effective date of any rule or regulation issued by the Director in carrying out functions under section 1103 of this title, the Board shall review any provision of such rule or regulation --,

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Counsel requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision --,

"(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b) of this title; or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302 (b) of this title.

"(3)(A) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

"(B) Any review conducted by the Board pursuant to this subsection shall be limited to determining --,

"(i) the validity on its face of the provision under review; and

"(ii) whether the provision under review has been validly implemented.

"(C) The Board shall require any agency --,

"(i) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

"(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

"(f) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

"(g) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register. "(h) Except as provided in section 518 of title 28, relating to litigation

before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

"(i) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

"(j) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11).

"(k) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

" Section 1206. Authority and responsibilities of the Special Counsel

"(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

"(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the

investigation was initiated a written statement notifying the person of the termination of the investigation and the reasons therefor.

"(3) In addition to authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

"(b)(1) In any case involving --,

"(A) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences --,

"(i) a violation of any law, rule, or regulation; or

"(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

"(B) a disclosure by an employee or applicant for employment to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences --,

"(i) a violation of any law, rule, or regulation; or

"(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identity of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under subsection (a) of this section or under paragraph (3) of this subsection, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to carry out the functions of the Special Counsel.

"(2) Whenever the Special Counsel receives information of the type described in paragraph (1) of this subsection, the Special Counsel shall promptly transmit such information to the appropriate agency head.

"(3)(A) In the case of information received by the Special Counsel under paragraph (1) of this section, if, after such review as the Special Counsel determines practicable (but not later than 15 days after the receipt of the information), the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to the public health or safety, the Special Counsel may, to the extent provided in subparagraph (B) of this paragraph, require the head of the agency to --,

"(i) conduct an investigation of the information and any related matters transmitted by the Special Counsel to the head of the agency; and

"(ii) submit a written report setting forth the findings of the head of the agency within 60 days after the date on which the information is transmitted to the head of the agency or within any longer period of time agreed to in writing by the Special Counsel.

"(B) The Special Counsel may require an agency head to conduct an investigation and submit a written report under subparagraph (A) of this paragraph only if the information was transmitted to the Special Counsel by --,

"(i) any employee or former employee or applicant for employment in the agency which the information concerns; or

"(ii) any employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

"(4) Any report required under paragraph (3)(A) of this subsection shall be reviewed and signed by the head of the agency and shall include --,

"(A) a summary of the information with respect to which the investigation was initiated;

"(B) a description of the conduct of the investigation;

"(C) a summary of any evidence obtained from the investigation;

"(D) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(E) a description of any corrective action taken or planned as a result of the investigation, such as --,

"(i) changes in agency rules, regulations, or practices;

"(ii) the restoration of any aggrieved employee;

"(iii) disciplinary action against any employee; and

"(iv) referral to the Attorney General of any evidence of a criminal violation.

"(5)(A) Any such report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in paragraph (3)(A)(ii) of this subsection, the Special Counsel may transmit a copy of the information which was transmitted to the agency head to the President and to the Congress together with a statement noting the failure of the head of the agency to file the required report.

"(B) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (3) of this subsection is referred to the Attorney General --,

"(i) the report shall not be transmitted to the complainant; and

"(ii) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(6) Upon receipt of any report of the head of any agency required under paragraph (3)(A)(ii) of this subsection, the Special Counsel shall review the report and determine whether --,

"(A) the findings of the head of the agency appear reasonable; and

"(B) the agency's report under paragraph (3)(A)(ii) of this subsection contains the information required under paragraph (4) of this subsection.

"(7) Whenever the Special Counsel transmits any information to the head of the agency under paragraph (2) of this subsection but does not require an investigation under paragraph (3) of this subsection, the head of the agency shall, within a reasonable time after the information was transmitted, inform the Special Counsel, in writing, of what action has been or is to be taken and when such action will be completed. The Special Counsel shall inform the complainant of the report of the agency head.

"(8) Except as specifically authorized under this subsection, the provisions of this subsection shall not be considered to authorize disclosure of any information by any agency or any person which is --,

"(A) specifically prohibited from disclosure by any other provision of law; or

"(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(9) In any case under subsection (b)(1)(B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(c)(1)(A) If, in connection with any investigation under this section, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved, and to the Office, and may report the determination, findings, and recommendations to the President. The Special Counsel may include in the report recommendations as to what corrective action should be taken.

"(B) If, after a reasonable period, the agency has not taken the corrective action recommended, the Special Counsel may request the Board to consider the matter. The Board may order such corrective action as the Board considers appropriate, after opportunity for comment by the agency concerned and the Office of Personnel Management.

"(2)(A) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(B) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel may proceed with any investigation or proceeding instituted under this section notwithstanding that the alleged violation has been reported to the Attorney General.

"(3) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred which is not referred to in paragraph (1) or (2) of this subsection, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states --,

"(A) that the head of the agency has personally reviewed the report; and

"(B) what action has been, or is to be, taken, and when the action will be completed.

"(d) The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under subsections (b)(3)(A) and (c)(3) of this section, together with --,

"(1) reports by the heads of agencies under subsection (b)(3) (A) of this section, in the case of matters referred under subsection (b); and

"(2) certifications by heads of agencies under subsection (c)

(3), in the case of matters referred under subsection (c). The Special Counsel shall take steps to ensure that any such public list does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

"(e)(1) In addition to the authority otherwise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning --,

"(A) political activity prohibited under subchapter III of chapter 73 of this title,

relating to political activities by Federal employees;

"(B) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

"(C) arbitrary or capricious withholding of information prohibited under section 552 of this title,

except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

"(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

"(E) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(2) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in paragraph (1)(D) or (1)(E) of this subsection if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

"(f) During any investigation initiated under this section, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"(g)(1) Except as provided in paragraph (2) of this subsection, if the Special Counsel determines that disciplinary action should be taken against any employee --,

"(A) after any investigation under this section, or

"(B) on the basis of any knowing and willful refusal or failure by an employee to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing his determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Merit Systems Protection Board in accordance with section 1207 of this title.

"(2) In the case of an employee in a confidential, policy-making, policy- determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in paragraph (1) of this subsection, together with any response by the employee, shall be presented to the President for appropriate action in lieu of being presented under section 1207 of this title.

"(h) If the Special Counsel believes there is a pattern of prohibited personnel practices and such practices involve matters which are not otherwise appealable to the Board under section 7701 of this title, the Special Counsel may seek corrective action by filing a written complaint with the Board against the agency or employee involved and the Board shall order such corrective action as the Board determines necessary.

"(i) The Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board and the Special Counsel shall not have any right of judicial review in connection with such intervention.

"(j)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

"(2) Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of

Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

"(k) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

"(1) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73 of this title).

"(m) The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this section, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this subsection shall include whatever recommendations for legislation or other action by Congress the Special Counsel may deem appropriate.

" Section 1207.

Hearings and decisions on complaints filed by the Special Counsel

"(a) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under section 1206(g) of this title is entitled to --,

"(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(2) be represented by an attorney or other representative;

"(3) a hearing before the Board or an administrative law judge appointed under section 3105 of this title

and designated by the Board;

"(4) have a transcript kept of any hearing under paragraph (3) of this subsection; and

"(5) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

"(b) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.

"(c) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States court of appeals for the judicial circuit in which the employee resides or is employed at the time of the action.

"(d) In case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter.

" Section 1208.

Stays of certain personnel actions

"(a)(1) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 15 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

"(2) Any member of the Board requested by the Special Counsel to order a stay under paragraph (1) of this subsection shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

"(3) Unless denied under paragraph (2) of this subsection, any stay under this subsection shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

"(b) Any member of the Board may, on the request of the Special Counsel, extend the period of any stay ordered under subsection (a) of this subsection for a period of not more than 30 calendar days.

"(c) The Board may extend the period of any stay granted under subsection (a) of this section for any period which the Board considers appropriate, but only if the Board concurs in the determination of the Special Counsel under such subsection, after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved.

" Section 1209.

Information

"(a) Notwithstanding any other provision of law or any rule, regulation or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

"(b) The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices."

(b) Any term of office of any member of the Merit Systems Protection Board serving on the effective date of this Act shall continue in effect until the term would expire under section 1102 of title 5, United States Code, as in effect immediately before the effective date of this Act, and upon expiration of the term, appointments to such office shall be made under sections 1201 and 1202 of title 5, United States Code (as added by this section).

(c)(1) Section 5314(17) of title 5, United States Code, is amended by striking out " Chairman of the United States Civil Service Commission" and inserting in lieu thereof "Chairman of the Merit Systems Protection Board".

(2) Section 5315(66) of such title is amended by striking out "Members, United States Civil Service Commission" and inserting in lieu thereof "Members, Merit Systems Protection Board".

(3) Section 5315 of such title is further amended by adding at the end thereof the following new paragraph:

"(123) Special Counsel of the Merit Systems Protection Board."

(4) Paragraph (99) of section 5316 of such title is hereby repealed.

(d) The table of chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 11 the following new item: "12. Merit Systems Protection Board and Special Counsel----- 1201".

PERFORMANCE APPRAISAL

Sec. 203. (a) Chapter 43 of title 5, United States Code, is amended to read as follows:

"CHAPTER 43 -- PERFORMANCE APPRAISAL

" SUBCHAPTER I -- GENERAL PROVISIONS

" Sec. "4301. Definitions. "4302. Establishment of performance appraisal systems. "4303. Actions based on unacceptable performance. "4304. Responsibilities of Office of Personnel Management. "4305. Regulations.

" Section 4301.

Definitions

" For the purpose of this subchapter --,

"(1) 'agency' means --,

"(A) an Executive agency;

"(B) the Administrative Office of the United States Courts; and

"(C) the Government Printing Office; but does not include --,

"(i) a Government corporation;

"(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

"(iii) the General Accounting Office;

"(2) 'employee' means an individual employed in or under an agency, but does not include --,

"(A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

"(B) an individual in the Foreign Service of the United States;

"(C) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans' Administration whose pay is fixed under chapter 73 of title 38;

"(D) an administrative law judge appointed under section 3105 of this title;

"(E) an individual in the Senior Executive Service;

"(F) an individual appointed by the President; or

"(G) an individual occupying a position not in the competitive service excluded from coverage of this subchapter by regulations of the Office of Personnel Management; and

"(3) 'unacceptable performance' means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position.

" Section 4302.

Establishment of performance appraisal systems

"(a) Each agency shall develop one or more performance appraisal systems which --,

"(1) provide for periodic appraisals of job performance of employees;

"(2) encourage employee participation in establishing performance standards; and

"(3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

"(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for --,

"(1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system;

"(2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;

"(3) evaluating each employee during the appraisal period on such standards;

"(4) recognizing and rewarding employees whose performance so warrants;

"(5) assisting employees in improving unacceptable performance; and

"(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

" Section 4303.

Actions based on unacceptable performance

"(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

"(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to --,

"(A) 30 days' advance written notice of the proposed action which identifies --,

"(i) specific instances of unacceptable performance by the employee on which the proposed action is based; and

"(ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

"(B) be represented by an attorney or other representative;

"(C) a reasonable time to answer orally and in writing; and

"(D) a written decision which --,

"(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

"(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

"(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

"(c) The decision to retain, reduce in grade, or remove an employee --,

"(1) shall be made within 30 days after the date of expiration of the notice period, and

"(2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee --,

"(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

"(B) for which the notice and other requirements of this section are complied with.

"(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

"(e) Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title.

"(f) This section does not apply to --,

"(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title,

"(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

"(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

" Section 4304.

Responsibilities of the Office of Personnel Management

"(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

"(b)(1) The Office shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.

"(2) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which any such system meets the requirements of this subchapter and shall periodically report its findings to the Office and to the Congress.

"(3) If the Office determines that a system does not meet the requirements of this subchapter (including regulations prescribed under section 4305), the Office shall direct the agency to implement an appropriate system or to correct operations under the system, and any such agency shall take any action so required.

" Section 4305.

Regulations

" The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter."

(b) The item relating to chapter 43 in the chapter analysis for part III of title 5, United States Code, is amended by striking out "Performance Rating" and inserting in lieu thereof "Performance Appraisal".

ADVERSE ACTIONS

Sec. 204. (a) Chapter 75 of title 5, United States Code, is amended by striking out subchapters I, II, and III and inserting in lieu thereof the following:

"SUBCHAPTER I -- SUSPENSION FOR 14 DAYS OR LESS

" Section 7501.

Definitions

"For the purpose of this subchapter --,

"(1) 'employee' means an individual in the competitive service who is not serving a probationary or trial period under an initial

appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a

temporary appointment limited to 1 year or less; and

"(2) 'suspension' means the placing of an employee, for disciplinary

reasons, in a temporary status without duties and pay.

" Section 7502.

Actions covered

" This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

" Section 7503. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

"(b) An employee against whom a suspension for 14 days or less is proposed is entitled to --,

"(1) an advance written notice stating the specific reasons for the proposed action;

"(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer:

"(3) be represented by an attorney or other representative; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

" Section 7504.

Regulations

" The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

" SUBCHAPTER II -- REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN
GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

"Section 7511.

Definitions; application

"(a) For the purpose of this subchapter --,

"(1) 'employee' means --,

"(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

"(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

"(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

"(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subchapter does not apply to an employee --,

"(1) whose appointment is made by and with the advice and consent of the Senate;

"(2) whose position has been determined to be of a confidential, policy- determining, policy- making or policy-advocating character by --,

"(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

"(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

"(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.

" Section 7512.

Actions covered

" This subchapter applies to --,

"(1) a removal;

"(2) a suspension for more than 14 days;

"(3) a reduction in grade;

"(4) a reduction in pay; and

"(5) a furlough of 30 days or less;

but does not apply to --,

"(A) a suspension or removal under section 7532 of this title,

"(B) a reduction-in-force action under section 3502 of this title,

"(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)

(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

"(D) a reduction in grade or removal under section 4303 of this title, or

"(E) an action initiated under section 1206 or 7521 of this title.

" Section 7513.

Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action is proposed is entitled to --,

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

" Section 7514.

Regulations

" The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations."

"SUBCHAPTER III -- ADMINISTRATIVE LAW JUDGES

" Section 7521.

Actions against administrative law judges

"(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause

established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

"(b) The actions covered by this section are --,

"(1) a removal;

"(2) a suspension;

"(3) a reduction in grade;

"(4) a reduction in pay; and

"(5) a furlough of 30 days or less;

but do not include --,

"(A) a suspension or removal under section 7532 of this title;

"(B) a reduction-in-force action under section 3502 of this title;

or

"(C) any action initiated under section 1206 of this title."

(b) So much of the analysis for chapter 75 of title 5, United States Code, as precedes the items relating to subchapter IV is amended to read as follows:

" CHAPTER 75 -- ADVERSE ACTIONS

"SUBCHAPTER I -- SUSPENSION OF 14 DAYS OR LESS

" Sec. "7501. Definitions. "7502. Actions covered. "7503. Cause and procedure. "7504. Regulations.

" SUBCHAPTER II -- REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN

GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

"7511. Definitions; application. "7512. Actions covered. "7513. Cause and procedure. "7514. Regulations.

" SUBCHAPTER III -- ADMINISTRATIVE LAW JUDGES

"7521. Actions against administrative law judges."

APPEALS

Sec. 205. Chapter 77 of title 5, United States Code, is amended to read as follows:

" CHAPTER 77 -- APPEALS

" Sec. "7701. Appellate procedures. "7702. Actions involving discrimination. "7703. Judicial review of decisions of the Merit Systems Protection Board.

" Section 7701.

Appellate procedures

"(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right --,

"(1) to a hearing for which a transcript will be kept; and

"(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

"(b) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a) (1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

"(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision --,

"(A) in the case of an action based on unacceptable performance described in section 4303 of this title, is supported by substantial evidence, or

"(B) in any other case, is supported by a preponderance of the evidence.

"(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment --,

"(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

"(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

"(C) shows that the decision was not in accordance with law. "(d)(1) In any case in which --,

"(A) the interpretation or application of any civil service law, rule, or regulation, under the jurisdiction of the Office of Personnel Management is at issue in any proceeding under this section; and

"(B) the Director of the Office of Personnel Management is of the opinion that an erroneous decision would have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office;

the Director may as a matter of right intervene or otherwise participate in that proceeding before the Board. If the Director exercises his right to participate in a proceeding before the Board, he shall do so as early in the proceeding as practicable. Nothing in this title shall be construed to permit the Office to interfere with the independent decisionmaking of the Merit Systems Protection Board.

"(2) The Board shall promptly notify the Director whenever the interpretation of any civil service law, rule, or regulation, under the jurisdiction of the Office is at issue in any proceeding under this section.

"(e)(1) Except as provided in section 7702 of this title, any decision under subsection (b) of this section shall be final unless --,

"(A) a party to the appeal or the Director petitions the Board for review within 30 days after the receipt of the decision; or

"(B) the Board reopens and reconsiders a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administration law judge is required to be acted upon by the Board.

"(2) The Director may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office.

"(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may--,

"(1) consolidate appeals filed by two or more appellants, or

"(2) join two or more appeals filed by the same appellant and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

"(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee, as the case may be, determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

"(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

"(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (d) of this section.

"(i)(1) Upon the submission of any appeal to the Board under this section, the Board, through reference to such categories of cases, or other means, as it determines appropriate, shall establish and announce publicly the date by which it intends to complete action on the matter. Such date shall assure expeditious consideration of the appeal, consistent with the interests of fairness and other priorities of the Board. If the Board fails to complete action on the appeal by

the announced date, and the expected delay will exceed 30 days, the Board shall publicly announce the new date by which it intends to complete action on the appeal.

"(2) Not later than March 1 of each year, the Board shall submit to the Congress a report describing the number of appeals submitted to it during the preceding calendar year, the number of appeals on which it completed action during that year, and the number of instances during that year in which it failed to conclude a proceeding by the date originally announced, together with an explanation of the reasons therefor.

"(3) The Board shall by rule indicate any other category of significant Board action which the Board determines should be subject to the provisions of this subsection.

"(4) It shall be the duty of the Board, an administrative law judge, or employee designated by the Board to hear any proceeding under this section to expedite to the extent practicable that proceeding.

"(j) The Board may prescribe regulations to carry out the purpose of this section.

" Section 7702. Actions involving discrimination

"(a)(1) Notwithstanding any other provision of law, and except as provided in paragraph (2) of this subsection, in the case of any employee or applicant for employment who--,

"(A) has been effected by an action which the employee or applicant may appeal to the Merit Systems Protection Board, and

"(B) alleges that a basis for the action was discrimination prohibited by--,

"(i) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16c),

"(ii) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)),

"(iii) section 501 of the Rehabilitation Act of 1973 (29 U. S.C. 791),

"(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631,633a), or

"(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv) of this subparagraph,

the Board shall, within 120 days of the filing of the appeal, decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures under section 7701 of this title and this section.

"(2) In any matter before an agency which involves --,

"(A) any action described in paragraph (1)(A) of this subsection; and

"(B) any issue of discrimination prohibited under any provision of law described in paragraph (1)(B) of this subsection;

the agency shall resolve such matter within 120 days. The decision of the agency in any such matter shall be a judicially reviewable action unless the employee appeals the matter to the Board under paragraph (1) of this subsection.

"(3) Any decision of the Board under paragraph (1) of this subsection shall be judicially reviewable action as of--,

"(A) the date of issuance of the decision if the employee or applicant does not file a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, or

"(B) the date the Commission determines not to consider the decision under subsection (b)(2) of this section.

"(b)(1) An employee or applicant may, within 30 days after notice of the decision of the Board under subsection (a)(1) of this section, petition the Commission to consider the decision.

"(2) The Commission shall, within 30 days after the date of the petition, determine whether to consider the decision. A determination of the Commission not to consider the decision may not be used as evidence with respect to any issue of discrimination in any judicial proceeding concerning that issue.

"(3) If the Commission makes a determination to consider the decision, the Commission shall, within 60 days after the date of the determination, consider the entire record of the proceedings of the Board and, on the basis of the evidentiary record before the Board, as supplemented under paragraph (4) of this subsection, either--,

"(A) concur in the decision of the Board; or

"(B) issue in writing another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law--,

"(i) the decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive referred to in subsection (a)(1)(B) of this section, or

"(ii) the decision involving such provision is not supported by the evidence in the record as a whole.

"(4) In considering any decision of the Board under this subsection, the Commission may refer the case to the Board, or provide on its own, for the taking (within such period as permits the Commission to make a decision within the 60-day period prescribed under this subsection) of additional evidence to the extent it considers necessary to supplement the record.

"(5)(A) If the Commission concurs pursuant to paragraph (3)(A) of this subsection in the decision of the Board, the decision of the Board shall be a judicially reviewable action.

"(B) If the Commission issues any decision under paragraph (3)(B) of this subsection, the Commission shall immediately refer the matter to the Board.

"(c) Within 30 days after receipt by the Board of the decision of the Commission under subsection (b)(5)(B) of this section, the Board shall consider the decision and--,

"(1) concur and adopt in whole the decision of the Commission; or

"(2) to the extent that the Board finds that, as a matter of law. (A) The Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation or policy directive, or (B) the Commission decision involving such provision is not supported by the evidence in the record as a whole--,

"(i) reaffirm the initial decision of the Board; or

"(ii) reaffirm the initial decision of the Board with such revisions as it determines appropriate.

If the Board takes the action provided under paragraph (1), the decision of the Board shall be a judicially reviewable action.

"(d)(1) If the Board takes any action under subsection (c)(2) of this section, the matter shall be immediately certified to a special panel described in paragraph (6) of this subsection. Upon certification, the Board shall, within 5 days (excluding Saturdays, Sundays, and holidays), transmit to the special panel the administrative record in the proceeding, including--,

"(A) the factual record compiled under this section,

"(B) the decisions issued by the Board and the Commission under this section, and

"(C) any transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

"(2)(A) The special panel shall, within 45 days after a matter has been certified to it, review the administrative record transmitted to it and, on the basis of the record, decide the issues in dispute and issue a final decision which shall be a judicially reviewable action.

"(B) The special panel shall give due deference to the respective expertise of the Board and Commission in making its decision.

"(3) The special panel shall refer its decision under paragraph (2) of this subsection to the Board and the Board shall order any agency to take any action appropriate to carry out the decision.

"(4) The special panel shall permit the employee or applicant who brought the complaint and the employing agency to appear before the panel to present oral arguments and to present written arguments with respect to the matter.

"(5) Upon application by the employee or applicant, the Commission may issue such interim relief as it determines appropriate to mitigate any exceptional hardship the employee or applicant might otherwise incur as a result of the certification of any matter under this subsection, except that the Commission may not stay, or order any agency to review on an interim basis, the action referred to in subsection (a)(1) of this section.

"(6)(A) Each time the Board takes any action under subsection (c)(2) of this section, a special panel shall be convened which shall consist of--,

"(i) an individual appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 6 years as chairman of the special panel each time it is convened;

"(ii) one member of the Board designated by the Chairman of the Board each time a panel is convened; and

"(iii) one member of the Commission designated by the Chairman of the Commission each time a panel is convened.

The chairman of the special panel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

"(B) The chairman is entitled to pay at a rate equal to the maximum annual rate of basic pay payable under the General Schedule for each day he is engaged in the performance of official business on the work of the special panel.

"(C) The Board and the Commission shall provide such administrative assistance to the special panel as may be necessary and, to the extent practicable, shall equally divide the costs of providing the administrative assistance.

"(e)(1) Notwithstanding any other provision of law, if at any time after--,

"(A) the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action under this section or an appeal under paragraph (2) of this subsection;

"(B) the 120th day following the filing of an appeal with the Board under subsection (a)(1) of this section, there is no judicially reviewable action (unless such action is not as the result of the filing of a petition by the employee under subsection (b) (1) of this section); or

"(C) the 180th day following the filing of a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this title, there is no final agency action under subsection (b), (c), or (d) of this section;

an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), or section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(d)).

"(2) If, at any time after the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action, the employee may appeal the matter to the Board under subsection (a)(1) of this section.

"(3) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a) (1) of this section after a judicially reviewable action, including the decision of an agency under subsection (a)(2) of this section.

"(f) In any case in which an employee is required to file any action, appeal, or petition under this section and the employee timely files the action, appeal, or petition with an agency other than the agency with which the action, appeal, or petition is to be filed, the employee shall be treated as having timely filed the action, appeal, or petition as of the date it is filed with the proper agency.

" Section 7703. Judicial review of decisions of the Merit Systems Protection Board

"(a)(1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

"(2) The Board shall be the named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision issued by the Board under section 7701. In review of a final order or decision issued under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.

"(b)(1) Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the Court of Claims or a United States court of appeals as provided in chapters 91 and 158, respectively, of title 28. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

"(2) Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), and section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702.

"(c) In any case filed in the United States Court of Claims or a United States court of appeals, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be--,

"(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(2) obtained without procedures required by law, rule, or regulation having been followed; or

"(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

"(d) The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the District of Columbia if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the

Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals."

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 206. Section 2342 of title 28, United States Code, is amended--,

(1) by striking out "and" at the end of paragraph (4),

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof ";and", and

(3) by adding at the end thereof the following new paragraph:

"(6) all final orders of the Merit Systems Protection Board except as provided for in section 7703(b) of title 5."

TITLE III-- STAFFING

VOLUNTEER SERVICE

Sec. 301. (a) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

" Section 3111. Acceptance of volunteer service

"(a) For the purpose of this section, 'student' means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

"(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U. S.C. 665(b)), the head of an agency may accept, subject to regulations issued by the Office, voluntary service for the United States if the service--,

"(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for the student;

"(2) is to be uncompensated; and

"(3) will not be used to displace any employee.

"(c) Any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims)."

(b) The analysis of chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"3111. Acceptance of volunteer service."

INTERPRETING ASSISTANTS FOR DEAF EMPLOYEES

Sec. 302. (a) Section 3102 of title 5, United States Code, is amended--,

(1) by redesignating paragraph (4) of subsection (a) as paragraph (5), by striking out "and" at the end of paragraph (3), and inserting after paragraph (3) the following new paragraph (4):

"(4) 'deaf employee' means an individual employed by an agency who, in accordance with regulations prescribed by the head of the agency, establishes to the satisfaction of the appropriate authority of the agency concerned that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and";

(2) in subsection (b), by inserting "and interpreting assistant or assistants for a deaf employee" after "or assistants for a blind employee", and amending the last sentence to read as follows: " A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18.";

(3) in subsection (c), by inserting "or deaf" after "blind"; and

(4) by inserting at the end thereof the following new subsection:

"(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter III of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work."

(b)(1) The analysis of chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3102 and inserting in lieu thereof the following:

"3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees."

(2) The heading for section 3102 of title 5, United States Code, is amended to read as follows:

"Section 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees"

(c) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "open meetings" a comma and "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees),".

PROBATIONARY PERIOD

Sec. 303. "a) Section 3321 of title 5, United States Code, is amended to read as follows:

" Section 3321. Competitive service; probationary period

"(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation--,

"(1) before an appointment in the competitive service becomes final; and

"(2) before initial appointment as a supervisor or manager becomes final.

"(b) An individual--,

"(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

"(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

"(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service."

(b) The item in the analysis for chapter 33 of title 5, United States Code, is amended to read as follows: "3321. Competitive service; probationary period."

TRAINING

Sec. 304. Section 4103 of title 5, United States Code, is amended by inserting "(a)" before " In order to increase" and by adding at the end thereof the following new subsection:

"(b)(1) Notwithstanding any other provision of this chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.

"(2) Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Personnel Management that there exists a reasonable expectation of placement in another agency.

"(3) In selecting an employee for training under this subsection, the head of the agency shall consider--,

"(A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

"(B) the employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

"(C) the benefits to the Government which would result from retaining the employee in the Federal service."

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Sec. 305. Section 5723(d) of title 5, United States Code, is amended by striking out "not".

RETIREMENT

Sec. 306. Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

"(2) voluntarily, during a period when the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function, as determined by the Office of Personnel Management, and the employee is serving in a geographic area designated by the Office;"

VETERANS AND PREFERENCE ELIGIBLES

Sec. 307. (a) Effective beginning October 1, 1980, section 2108 of title 5, United States Code, is amended--,

(1) by striking out "and" at the end of paragraph (2);

(2) by inserting in paragraph (3) after "means" the following: ",except as provided in paragraph (4) of this section";

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon;
and

(4) by adding at the end thereof the following new paragraphs:

"(4) except for the purposes of chapters 43 and 75 of this title,

'preference eligible' does not include a retired member of the armed forces unless--,

"(A) the individual is a disabled veteran; or

"(B) the individual retired below the rank of major or its equivalent; and

"(5) 'retired member of the armed forces' means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member."

(b)(1) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

" Section 3112. Disabled veterans; noncompetitive appointment

"Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional

employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more."

(2) The Director of the Office of Personnel Management shall include in the report required by section 2014(d) of title 38, United States Code, the same type of information regarding the use of the authority provided in section 3112 of title 5, United States Code (as added by paragraph (1) of this subsection), as is required by such section 2014 with respect to the use of the authority to make veterans readjustment appointments.

(3) The analysis of chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item: "3112. Disabled veterans; noncompetitive appointment."

(c) Section 3312 of title 5, United States Code, is amended--,

(1) by inserting "(a)" before "In"; and

(2) by adding at the end thereof the following new subsection:

"(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated."

(d) Section 3318(b) of title 5, United States Code, is amended to read as follows:

"(b)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or

insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

"(2) In the case of a preference eligible described in section 2108(3) (C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

"(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of--,

"(A) the reasons submitted by the appointing authority in support of the proposed passover, and

"(B) the findings of the Office.

"(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated."

(e) Section 3502 of title 5, United States Code, is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

"(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees."

(f) Section 3503 of title 5, United States Code, is amended by striking out in subsection (a) and (b) "each preference eligible employee" and inserting in lieu thereof "each competing employee" both places it appears.

(g) Section 3504 of title 5, United States Code, is amended--,

(1) by inserting "(a)" before " In"; and

(2) by adding at the end thereof the following new subsection:

"(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated."

(h)(1) Section 3319 of chapter 33 of title 5, United States Code, is repealed.

(2) The analysis for chapter 33 of title 5, United States Code, is amended by striking out the item relating to section 3319.

DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED SERVICES

Sec. 308. (a) Section 5532 of title 5, United States Code, relating to retired officers of the uniformed services, is amended by redesignating subsections (c) and (d) as subsections (d) and (e) and by inserting after subsection (b) the following:

"(c)(1) If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay (reduced as provided under subsection (b) of this section), exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under paragraph (2) of this subsection. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

"(2) The amount of each reduction under paragraph (1) of this subsection allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period (reduced as provided under subsection (b) of this section), except that the amount of the reduction may not result in--,

"(A) the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule; or

"(B) the amount of retired pay or retainer pay being reduced to an amount less than the amount deducted from the retired or retainer pay as a result of participation in any survivor's benefits in connection with the retired or retainer pay or veterans insurance programs."

(b) Section 5531 of title 5, United States Code is amended--,

(1) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) 'member' has the meaning given such term by section 101 (23) of title 37;"

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof ";and"; and

(3) by adding at the end thereof the following new paragraph:

"(3) 'retired or retainer pay' means retired pay, as defined in section 8311(3) of this title,

determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10."

(c) Section 5532(d) of title 5, United States Code, as amended by subsection (a), is amended--,

(1) by striking out "subsection (b) of";

(2) by striking out "or retirement" each place it appears and inserting in lieu thereof "or retainer";

(3) by striking out "a retired officer of a regular component of a uniformed service" and inserting in lieu thereof "a member or former member of a uniformed service who is receiving retired or retainer pay"; and

(4) in paragraph (1), by striking out "whose retirement was" and inserting in lieu thereof "whose retired or retainer pay is computed, in whole or in part,".

(d) Section 5532(e) of title 5, United States Code, as amended by subsection (a), is amended to read as follows:

"(e) The Office of Personnel Management may, during the 5-year period after the effective date of the Civil Service Reform Act of 1978 authorize exceptions to the restrictions in subsections (a), (b), and (c) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. An exception granted by the office with respect to any individual shall terminate upon a break in service of 3 days or more."

(e) Section 5532(b) of title 5, United States Code, is amended by striking out "or retirement" each place it appears and inserting in lieu thereof "or retainer".

(f)(1) The heading for section 5532 of title 5, United States Code, is amended to read as follows:

" Section 5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay".

(2) The item relating to section 5532 in the table of sections for chapter 55 of title 5, United States Code, is amended to read as follows:

"5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay."

(g)(1) Except as provided in paragraph (2) of this subsection, the amendments made by this section shall apply only with respect to pay periods beginning after the effective date of this Act and only with respect to members of the uniformed services who first receive retired or retainer pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

(2) Such amendments shall not apply to any individual employed in a position on the date of the enactment of this Act so long as the individual continues to hold any such position (disregarding any break in service of 3 days or less) if the individual, on that date, would have been entitled to retired or retainer pay but for the fact the individual does not satisfy any applicable age requirement.

(3) The provisions of section 5532 of title 5, United States Code, as in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed services who is receiving retired pay on or before such date, or any individual to whom paragraph (2) applies, in the same manner and to the same extent as if the preceding subsections of this section had not been enacted.

CIVIL SERVICE EMPLOYMENT INFORMATION

Sec. 309. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"Section 3327. Civil service employment information

"(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

"(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of--,

"(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, and

"(2) the period during which applications will be accepted.

As used in this subsection, 'agency' means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service."

(b) The table of sections for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3326 the following new item:

"3327. Civil service employment information."

MINORITY RECRUITMENT PROGRAM

Sec. 310. Section 7151 of title 5, United States Code, is amended--,

(1) by striking out the section heading and inserting in lieu thereof the following:

" Section 7151. Antidiscrimination policy; minority recruitment program";

(2) by inserting after such section heading the following new subsection:

"(a) For the purpose of this section--,

"(1) 'underrepresentation' means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

"(2) 'category of civil service employment' means--,

"(A) each grade of the General Schedule described in section 5104 of this title;

"(B) each position subject to subchapter IV of chapter 53 of this title;

"(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.";

(3) by inserting "(b)" before " It is the policy"; and

(4) by adding at the end thereof the following new subsection:

"(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable--,

"(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

"(2) that the Office conduct a continuing program of--,

"(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

"(B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

"(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall--,

"(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

"(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

"(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

"(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate."

TEMPORARY EMPLOYMENT LIMITATION

Sec. 311. (a) The total number of civilian employees in the executive branch, on September 30, 1979, on September 30, 1980, and on September 30, 1981, shall not exceed the number of such employees on September 30, 1977.

(b)(1) For the purpose of this section, "civilian employees in the executive branch" means all civilian employees within the executive branch of the Government (other than in the United States Postal Service or the Postal Rate Commission), whether employed on a full-time, part-time, or intermittent basis and whether employed on a direct hire or indirect hire basis.

(2)(A) Such term does not include individuals participating in special employment programs established for students and disadvantaged youth.

(B) The total number of individuals participating in such programs shall not at any time exceed 60,000.

(c) In applying the limitation of subsection (a)--,

(1) part-time civilian employees in excess of the number of part-time civilian employees in the executive branch employed on September 30, 1977, may be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employees' regularly scheduled workweek; and

(2) the number of civilian employees in the executive branch on September 30, 1977, shall be determined on the basis of the number of such employees as set forth in the Monthly Report of Civilian Employment published by the Civil Service Commission.

(d)(1) The provisions of this section shall not apply during a time of war or during a period of national emergency declared by the Congress or the President.

(2)(A) Subject to the limitation of subparagraph (B) of this paragraph, the President may authorize employment of civilian employees in excess of the limitation of subsection (a) if he deems that such action is necessary in the public interest.

(B) The President may not, under this paragraph, increase the maximum number of civilian employees in the executive branch by more than the percentage increase of the population of the United States since September 30, 1978, as estimated by the Bureau of the Census.

(e) The President shall provide that no increase occurs in the procurement of personal services by contract by reason of the enactment of this section except in cases in which it is to the financial advantage of the Government to do so.

(f) The President shall prescribe regulations to carry out the purposes of this section.

(g) The provisions of this section shall terminate on January 31, 1981.

TITLE IV-- SENIOR EXECUTIVE SERVICE

GENERAL PROVISIONS

Sec. 401. (a) Chapter 21 of title 5, United States Code, is amended by inserting after section 2101 the following new section:

Section 2101a. The Senior Executive Service

" The ' Senior Executive Service' consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title).".

(b) Section 2102(a)(1) of title 5, United States Code, is amended--,

(1) by striking out "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

(3) by adding at the end thereof the following new subparagraph:

"(C) positions in the Senior Executive Service;"

(c) Section 2103(a) of title 5, United States Code, is amended by inserting before the period at the end thereof the following: "or the Senior Executive Service".

(d) Section 2108(5) of title 5, United States Code (as amended in section 307 of this Act), is further amended--

(1) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following: "but does not include applicants for, or members of, the Senior Executive Service."

(e) The analysis for chapter 21 of title 5, United States Code, is amended by inserting after the item relating to section 2101 the following new item:

"2101a. The Senior Executive Service."

AUTHORITY FOR EMPLOYMENT

Sec. 402. (a) Chapter 31 of title 5, United States Code, is amended by inserting after section 3112 (as added by section 307(b) of this Act), the following new subchapter:

"SUBCHAPTER II-- THE SENIOR EXECUTIVE SERVICE

" Section 3131. The Senior Executive Service

"It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to--

"(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

"(2) ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in efficiency, productivity, quality of work or service, cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

"(3) assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under

them;

"(4) recognize exceptional accomplishment;

"(5) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

"(6) provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

"(7) protect senior executives from arbitrary or capricious actions;

"(8) provide for program continuity and policy advocacy in the management of public programs;

"(9) maintain a merit personnel system free of prohibited personnel practices;

"(10) ensure accountability for honest, economical, and efficient Government;

"(11) ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

"(12) provide for the initial and continuing systematic development of highly competent senior executives;

"(13) provide for an executive system which is guided by the public interest and free from improper political interference; and

"(14) appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities.

" Section 3132. Definitions and exclusions

"(a) For the purpose of this subchapter--,

"(1) 'agency' means an Executive agency, except a Government corporation and the General Accounting Office, but does not include--,

"(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

"(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, as determined by the President, an Executive

agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

"(2) ' Senior Executive Service position' means any position in an agency which is in GS-16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule

or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee--,

"(A) directs the work of an organizational unit;

"(B) is held accountable for the success of one or more specific programs or projects;

"(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

"(D) supervises the work of employees other than personal assistants; or

"(E) otherwise exercises important policy-making, policy-determining, or other executive functions; but does not include--,

"(i) any position in the Foreign Service of the United States;

"(ii) an administrative law judge position under section 3105 of this title; or

"(iii) any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425);

"(3) 'senior executive' means a member of the Senior Executive Service;

"(4) 'career appointee' means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

"(5) 'limited term appointee' means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

"(6) 'limited emergency appointee' means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

"(7) 'noncareer appointee' means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

"(8) 'career reserved position' means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

"(9) 'general position' means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

"(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

"(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

"(3) Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which--

"(A) is under the Executive Schedule,

or for which the rate of basic pay is determined by reference to the Executive Schedule, and

"(B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under section 2102 of this title or otherwise required by law to be in the competitive service,

shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

"(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

"(c) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall--,

"(1) review the application and stated reasons,

"(2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and

"(3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written determination, make the exclusion for the period determined by the President to be appropriate.

"(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

"(e) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

"(f) If--,

"(1) any agency is excluded under subsection (c) of this section, or

"(2) any exclusion is revoked under subsection (e) of this section,

the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation.

" Section 3133. Authorization of positions; authority for appointment

"(a) During each even-numbered calendar year, each agency shall--,

"(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

"(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

"(b) Each agency request submitted under subsection (a) of this section shall--,

"(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

"(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

"(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency.

"(d)(1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.

"(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

"(e)(1) Not later than July 1, 1979, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of the Civil Service Reform Act of 1978, which are to be career reserved positions. Except as provided in paragraph (2) of this subsection, the number of positions required by this subsection to be career reserved positions shall not be less than the number of the positions then in the Senior Executive Service which, before the date of such Act, were authorized to be filled only through competitive civil service examination.

"(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions (other than positions described in section 3132(b)(3) of this title) which--,

"(A) involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

"(B) involve significant participation in the major political policies of the President; or

"(C) require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

The Director shall provide a full explanation for his determination in each case.

" Section 3134. Limitations on noncareer and limited appointments

"(a) During each calendar year, each agency shall--,

"(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

"(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

"(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

"(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

"(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of--,

"(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

"(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by--,

"(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations,

as in effect on such date, or

"(B) appointments to level IV or V of the Executive Schedule

which were not required on such date to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

"(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies.

" Section 3135. Biennial report

"(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each odd-numbered calendar year, a report on the Senior Executive Service. The report shall include--,

"(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

"(2) the authorized number of career appointees and noncareer appointees, in the aggregate and by agency, for the then current fiscal year;

"(3) the position titles and descriptions of Senior Executive Service positions designated for the then current fiscal year;

"(4) a description of each exclusion in effect under section 3132(c) of this title during the preceding fiscal year;

"(5) the number of career appointees, limited term appointees, limited emergency appointees, and noncareer appointees, in the aggregate and by agency, employed during the preceding fiscal year;

"(6) the percentage of senior executives at each pay rate, in the aggregate and by agency, employed at the end of the preceding fiscal year;

"(7) the distribution and amount of performance awards, in the aggregate and by agency, paid during the preceding fiscal year;

"(8) the estimated number of career reserved positions which, during the two fiscal years following the then current fiscal year, will become general positions and the estimated number of general positions which during such two fiscal years, will become career reserved positions; and

"(9) such other information regarding the Senior Executive Service as the Office considers appropriate.

"(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each even-numbered calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

" Section 3136. Regulations

" The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(b) Section 3109 of title 5, United States Code, is amended by inserting at the end thereof the following new subsection:

"(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section."

(c) The analysis for chapter 31 of title 5, United States Code, is amended--,

(1) by striking out the heading for chapter 31 and inserting in lieu thereof the following:

"CHAPTER 31--AUTHORITY FOR EMPLOYMENT

" SUBCHAPTER I--EMPLOYMENT AUTHORITIES"; and

(2) by inserting at the end thereof the following:

"SUBCHAPTER II-- THE SENIOR EXECUTIVE SERVICE

" Sec. "3131. The Senior Executive Service. "3132. Definitions and exclusions. "3133. Authorization of positions; authority for appointment. "3134. Limitations on noncareer and limited appointments. "3135. Biennial report. "3136. Regulations."

EXAMINATION, CERTIFICATION, AND APPOINTMENT

Sec. 403. (a) Chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

" SUBCHAPTER VIII-- APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT
IN THE

SENIOR EXECUTIVE SERVICE

"Section 3391. Definitions

" For the purpose of this subchapter, 'agency', ' Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"Section 3392. General appointment provisions

"(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency--,

"(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

"(2) after consultation with the Office, with respect to standards for general positions.

"(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

"(c) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply--,

"(1) to the extent provided under regulations prescribed by the Office, and

"(2) so long as the appointee continues to serve under such Presidential appointment.

"(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

" Section 3393. Career appointments

"(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from--,

"(1) all groups of qualified individuals within the civil service; or

"(2) all groups of qualified individuals whether or not within the civil service.

"(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including--,

"(1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

"(2) making written recommendations to the appropriate appointing authority concerning such candidates.

"(c)(1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

"(2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for--,

"(A) consideration of demonstrated executive experience;

"(B) consideration of successful participation in a career executive development program which is approved by the Office; and

"(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

"(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

"(e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

"(f) The title of each career reserved position shall be published in the Federal Register.

" Section 3394. Noncareer and limited appointments

"(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

"(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

" Section 3395. Reassignment and transfer within the Senior Executive Service

"(a)(1) A career appointee in an agency--,

"(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

"(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

"(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of the reassignment at least 15 days in advance of such reassignment.

"(b)(1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

"(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

"(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

"(d) A noncareer appointee in an agency--,

"(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

"(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

"(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned--,

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who--,

"(i) is a noncareer appointee; and

"(ii) has the authority to reassign the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to--,

"(A) any reassignment under section 4314(b)(3) of this title; or

"(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

" Section 3396. Development for and within the Senior Executive Service

"(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office.

"(b) The Office shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office finds that any agency's program under subsection (a) of this section is not in compliance with the criteria

prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

"(c)(1) The head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness. A sabbatical shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel expenses (including per diem allowances) as the head of the agency may determine to be essential for the study or experience.

"(2) A sabbatical under this subsection may not be granted to any career appointee--,

"(A) more than once in any 10-year period;

"(B) unless the appointee has completed 7 years of service--,

"(i) in one or more positions in the Senior Executive Service;

"(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

"(iii) in any combination of such positions, except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

"(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

"(3)(A) Any career appointee in an agency may be granted a sabbatical under this subsection only if the appointee agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of 2 consecutive years.

"(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency who granted the sabbatical) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

"(d) The Office shall encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector.

" Section 3397. Regulations

" The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(b) The analysis for chapter 33 of title 5, United States Code, is amended by inserting after the item relating to section 3385 the following:

"SUBCHAPTER VIII-- APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT
IN THE

SENIOR EXECUTIVE SERVICE

" Sec. "3391. Definitions. "3392. General appointment provisions. "3393. Career appointments. "3394. Noncareer and limited appointments. "3395. Reassignment and transfer within the Senior Executive Service. "3396. Development for and within the Senior Executive Service. "3397. Regulations."

RETENTION PREFERENCE

Sec. 404. (a) Section 3501(b) of title 5, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof: "or to a member of the Senior Executive Service."

(b) Chapter 35 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

" SUBCHAPTER V--REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE
SENIOR

EXECUTIVE SERVICE

"Section 3591. Definitions

" For the purpose of this subchapter, 'agency', ' Senior Executive Service position', 'senior executive', 'career appointee', 'limited term appointee', 'limited emergency appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of this title.

"Section 3592. Removal from the Senior Executive Service

"(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service--,

"(1) during the 1-year period of probation under section 3393 (d) of this title, or

"(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

"(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed--,

"(A) within 120 days after an appointment of the head of the agency; or

"(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who--,

"(i) is a noncareer appointee; and

"(ii) has the authority to remove the career appointee.

"(2) Paragraph (1) of this subsection does not apply with respect to--,

"(A) any removal under section 4314(b)(3) of this title; or

"(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

"(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

" Section 3593. Reinstatement in the Senior Executive Service

"(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if--,

"(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43 of this title.

"(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

" Section 3594. Guaranteed placement in other personnel systems

"(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(b) A career appointee--,

"(1) who has completed the probationary period under section 3393(d) of this title; and

"(2) who is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

"(c)(1) For purposes of subsections (a) and (b) of this section--,

"(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 or above of the General Schedule,

or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

"(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of--,

"(i) the rate of basic pay in effect for the position in which placed;

"(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

"(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

"(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

"(2) An employee who is receiving basic pay under paragraph (1) (B) (ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1) (B) (i) of this subsection for the position in which the employee is placed.

" Section 3595. Regulations

" The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(c) The chapter analysis for chapter 35 of title 5, United States Code, is amended by inserting the following new item:

"SUBCHAPTER V--REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE
SENIOR

EXECUTIVE SERVICE

" Sec. "3591. Definitions. "3592. Removal from the Senior Executive Service. "3593. Reinstatement in the Senior Executive Service. "3594. Guaranteed placement in other personnel systems. "3595. Regulations."

PERFORMANCE RATING

Sec. 405. (a) Chapter 43 of title 5, United States Code, is amended by adding at the end thereof the following:

" SUBCHAPTER II-- PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

"Section 4311. Definitions

" For the purpose of this subchapter, 'agency', 'senior executive', and 'career appointee' have the meanings set forth in section 3132(a) of this title.

"Section 4312. Senior Executive Service performance appraisal systems

"(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to--,

"(1) permit the accurate evaluation of performance in any position on the basis of criteria which are related to the position and which specify the critical elements of the position;

"(2) provide for systematic appraisals of performance of senior executives;

"(3) encourage excellence in performance by senior executives; and

"(4) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

"(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide--,

"(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the senior executive and communicated to the senior executive;

"(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

"(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing and have the rating reviewed by an employee in a higher executive level in the agency before the rating becomes final.

"(c)(1) The Office shall review each agency's performance appraisal system under this section, and determine whether the agency performance appraisal system meets the requirements of this subchapter.

"(2) The Comptroller General shall from time to time review performance appraisal systems under this section to determine the extent to which any such system meets the requirements under this subchapter and shall periodically report its findings to the Office and to each House of the Congress.

"(3) If the Office determines that an agency performance appraisal system does not meet the requirements under this subchapter (including regulations prescribed under section 4315), the agency shall take such corrective action as may be required by the Office.

"(d) A senior executive may not appeal any appraisal and rating under any performance appraisal system under this section.

" Section 4313. Criteria for performance appraisals

" Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as--,

"(1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

"(2) cost efficiency;

"(3) timeliness of performance;

"(4) other indications of the effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

"(5) meeting affirmative action goals and achievement of equal employment opportunity requirements.

" Section 4314. Ratings for performance appraisals

"(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

"(1) one or more fully successful levels,

"(2) a minimally satisfactory level, and

"(3) an unsatisfactory level.

"(b) Each performance appraisal system shall provide that--,

"(1) any appraisal and any rating under such system--,

"(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

"(B) are conducted at least annually, subject to the limitation of subsection (c)(3) of this section;

"(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

"(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance;

"(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award under section 5384 of this title;

"(3) any senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

"(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

"(c)(1) Each agency shall establish, in accordance with regulations prescribed by the Office, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency.

"(2) The supervising official of the senior executive shall provide to the performance review board, an initial appraisal of the senior executive's performance. Before making any recommendation with respect to the senior executive, the board shall review any response by the senior executive to the initial appraisal and conduct such further review as the board finds necessary.

"(3) Performance appraisals under this subchapter with respect to any senior executive shall be made by the appointing authority only after considering the recommendations by the performance review board with respect to such senior executive under paragraph (1) of this subsection.

"(4) Members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. Notice of the appointment of an individual to serve as a member shall be published in the Federal Register.

"(5) In the case of an appraisal of a career appointee, more than one-half of the members of the performance review board shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office determines that there exists an insufficient number of career appointees available to comply with the requirement.

"(d) The Office shall include in each report submitted to each House of the Congress under section 3135 of this title a report of--,

"(1) the performance of any performance review board established under this section,

"(2) the number of individuals removed from the Senior Executive Service under subchapter V of chapter 35 of this title for less than fully successful executive performance, and

"(3) the number of performance awards under section 5384 of this title.

" Section 4315. Regulations

" The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(b) The analysis for chapter 43 of title 5, United States Code, is amended by inserting at the end thereof the following:

"SUBCHAPTER II-- PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

" Sec. "4311. Definitions. "4312. Senior Executive Service performance appraisal systems. "4313. Criteria for performance appraisals. "4314. Ratings for performance appraisals. "4315. Regulations."

AWARDING OF RANKS

Sec. 406. (a) Chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new section:

" Section 4507. Awarding of ranks in the Senior Executive Service

"(a) For the purpose of this section, 'agency', 'senior executive', and 'career appointee' have the meanings set forth in section 3132(a) of this title.

"(b) Each agency shall submit annually to the Office recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The recommendations may take into account the individual's performance over a period of years. The Office shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank.

"(c) During any fiscal year, the President may, subject to subsection (d) of this section, award to any career appointee recommended by the Office the rank of--,

"(1) Meritorious Executive, for sustained accomplishment, or

"(2) Distinguished Executive, for sustained extraordinary accomplishment.

A career appointee awarded a rank under paragraph (1) or (2) of this subsection shall not be entitled to be awarded that rank during the following 4 fiscal years.

"(d) During any fiscal year--,

"(1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

"(2) the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

"(e) (1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-sum payment of \$10,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

"(2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of \$20,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title."

(b) The analysis for chapter 45 of title 5, United States Code, is amended by adding at the end thereof the following new item: "4507. Awarding of Ranks in the Senior Executive Service."

PAY RATES AND SYSTEMS

Sec. 407. (a) Chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

" SUBCHAPTER VIII-- PAY FOR THE SENIOR EXECUTIVE SERVICE

"sec. 5381. Definitions

" For the purpose of this subchapter, 'agency', ' Senior Executive Service position', and 'senior executive' have the meanings set forth in section 3132(a) of this title.

"Sec. 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

"(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and there-after adjusted by the President subject to subsection (b) of this section.

"(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS-- 16 of the General Schedule and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5308 or 5373 of this title.

"(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount determined by the President to be appropriate. The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305 (a)(3) or (c)(1) of this title.

"(d) The rates of basic pay tht are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.

" Sec. 5383. Setting individual senior executive pay

"(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each senior executive under such appointing authority.

"(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, and 5384 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year.

"(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

"(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction at least 15 days in advance of the reduction.

" Sec. 5384. Performance awards in the Senior Executive Service

"(a)(1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

"(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

"(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

"(2) The amount of a performance award under this section shall be determined by the agency head but may not exceed 20 percent of the career appointee's rate of basic pay.

"(3) The number of career appointees in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This paragraph shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.

"(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

"(d) The Office of Personnel Management may issue guidance to agencies concerning the proportion of Senior Executive Service salary expenses that may be appropriately applied to payment of performance awards and the distribution of awards.

" Sec. 5385. Regulations

" The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter."

(b) The analysis of chapter 53 of title 5, United States Code, is amended by adding at the end thereof the following new items:

"SUBCHAPTER VIII-- PAY FOR THE SENIOR EXECUTIVE SERVICE

" Sec. "5381. Definitions. "5382. Establishment and adjustment of rates of pay for the Senior Executive Service. "5383. Setting individual senior executive pay. "5384. Performance awards in the Senior Executive Service. "5385. Regulations."

Sec. 408. (a) Chapter 55 of the title 5, United States Code, is amended--,

(1) by inserting "other than an employee or individual excluded by section 5541(2) (xvi) of this section"

immediately before the period at the end of section 5504(a)(B);

(2) by amending section 5541(2) by striking out "or" after clause (xiv), by striking out the period after clause (xv) and inserting"; or" in lieu thereof, and by adding the following clause at the end thereof:

"(xvi) member of the Senior Executive Service."; and

(3) by inserting "other than a member of the Senior Executive Service" after "employee" in section 5595(a)(2)(i).

(b)(1) Section 5311 of title 5, United States Code, is amended by inserting", other than Senior Executive Service positions", after "positions".

(2) Section 5331(b) of title 5, United States Code, is amended by inserting", other than Senior Executive Service positions", after "positions".

TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Sec. 409. (a) Section 5723(a)(1) of title 5, United States Code, is amended by striking out"; and" and inserting in lieu thereof "or of a new appointee to the Senior Executive Service; and".

(b) Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"Sec. 5752. Travel expenses of Senior Executive Service candidates

" Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency."

(c) The analysis for chapter 57 of title 5, United States Code, is amended by inserting after the item relating to section 5751 the following new item: "5752. Travel expenses of Senior Executive Service candidates."

LEAVE

Sec. 410. Section 6304 of title 5, United States Code, is amended--,

(1) in subsection (a), by striking out "and (e)" and inserting in lieu thereof "(e), and (f);, and

(2) by adding at the end thereof the following new subsection:

"(f) Annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section."

DISCIPLINARY ACTIONS

Sec. 411. Chapter 75 of title 5, United States Code, is amended--,

(1) by inserting the following in the chapter analysis after subchapter IV:

" SUBCHAPTER V--SENIOR EXECUTIVE SERVICE

" Sec. "7541. Definitions. "7542. Actions covered. "7543. Cause and procedure."; and

(2) by adding the following after subchapter IV:

" SUBCHAPTER V--SENIOR EXECUTIVE SERVICE

"Sec. 7541. Definitions

" For the purpose of this subchapter--, "(1) 'employee' means a career appointee in the Senior Executive Service who--,

"(A) has completed the probationary period prescribed under section 3393(d) of this title; or

"(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

"(2) 'suspension' has the meaning set forth in section 7501(2)

of this title.

" Sec 7542 Actions covered

" This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title.

" Sec. 7543 Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action covered by this sub-chapter is proposed is entitled to--,

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and "(4) a written decision and specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request."

RETIREMENT

Sec. 412. (a) Section 8336 of title 5, United States Code, is amended by redesignating subsection (h) as subsection (i) and inserting immediately after subsection (g) the following new subsection:

"(h) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity."

(b) Section 8339(h) of title 5, United States Code, is amended by striking out "section 8336(d)" and inserting in lieu thereof "section 8336(d) or (h)".

CONVERSION TO THE SENIOR EXECUTIVE SERVICE

Sec. 413. (a) For the purpose of this section, "agency", "Senior Executive Service position", "career appointee", "career reserved position", "limited term appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title), and "Senior Executive Service" has the meaning set forth in section 2101a of such title 5 (as added by this title).

(b)(1) Under the guidance of the Office of Personnel Management, each agency shall--

(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those position it considers should be career reserved positions; and

(B) submit to the Office a written request for--

(i) a specific number of Senior Executive Service positions; and

(ii) authority to employ a specific number of noncareer appointees.

(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this sub-section, and shall establish interim authorizations in

accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act), and shall publish the titles of the authorized positions in the Federal Register.

(c)(1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to--,

(A) decline conversion and be appointed to a position under such employee's current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified in writing of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under--,

(1) a career or career-conditional appointment; or

(2) a similar type of appointment in an excepted service position, as determined by the Office;

in a position which is designated as a Senior Executive Service position shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393(b)--(e) of title 5, United States Code (as added by this title).

(e) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is--,

(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code,

other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed as a noncareer appointee to an appropriate general position in the Senior Executive Service or shall be separated.

(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of sub-section (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall--,

(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

(j) Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Board orders in its decision on an appeal under this subsection.

(k) The Office shall prescribe regulations to carry out the purpose of this section.

LIMITATIONS ON EXECUTIVE POSITIONS

Sec. 414. (a)(1)(A) The following provisions of section 5108 of title 5, United States Code, relating to special authority to place positions at GS-- 16, 17, and 18 of the General Schedule, are hereby repealed:

(i) paragraphs (2), (4) through (11), and (13) through (16) of subsection (c), and

(ii) subsections (d) through (g).

(B) Notwithstanding any other provision of law (other than section 5108 of such title 5), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) under any such provision to place one or more positions in GS--16, 17, or 18 of the General Schedule, is hereby terminated.

(C) Subsection (a) of section 5108 of title 5, United States Code, is amended to read as follows:

"(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 10,777) which may at any one time be placed in--,

"(i) GS--16, 17, and 18; and

"(ii) the Senior Executive Service, in accordance with section 3133 of this title.

A position may be placed in GS--16, 17, or 18, only by action of the Director of the Office of Personnel Management. The authority of the Director under this subsection shall be carried out by the President in the case of positions proposed to be placed in GS--16, 17, and 18 in the Federal Bureau of Investigation."

(D) Subsection (c) of section 5108 of title 5, United States Code, is amended--,

(i) by redesignating paragraph (3) as paragraph (2) and by inserting "and" at the end thereof; and

(ii) by redesignating paragraph (12) as paragraph (3) and by striking out the semicolon at the end and inserting in lieu thereof a period.

(2)(A) Notwithstanding any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.

(B) Section 3104 of title 5, United States Code, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a)(1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed 517) for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).

"(3) In addition to the number of positions authorized by paragraph (1) of this subsection, the Librarian of Congress may establish, without regard to the second sentence of paragraph (1) of this subsection, not more than 8 scientific or professional positions to carry out the research and development functions of the Library of Congress which require the services of specially qualified personnel."

(C) Subsection (c) of such section 3104 is amended--

(i) by striking out "(c)" and inserting in lieu thereof "(b)"; and

(ii) by striking out "to establish and fix the pay of positions under this section and section 5361 of this title" and inserting in lieu thereof "to fix under section 5361 of this title the pay for positions established under this section".

(3)(A) The provisions of paragraphs (1) and (2) of this subsection shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act continues to occupy such position.

(B) The Director--

(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS--16, 17, and 18 of the General Schedule, and

(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies.

(b)(1) Section 5311 of title 5, United States Code, is amended by inserting "(a)" before " The Executive Schedule," and by adding at the end thereof the following new subsection:

"(b)(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

"(2) For the purpose of this subsection, 'executive level position'

means--,

"(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for

positions under section 5316 of this title, or

"(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position, as defined in section 3132(a) of this title."

(2) The President shall transmit to the Congress by January 1, 1980, a plan for authorizing executive level positions in the executive branch which shall include the maximum number of executive level positions necessary by level and a justification for the positions.

EFFECTIVE DATE; CONGRESSIONAL REVIEW

Sec. 415. (a)(1) The provisions of this title, other than sections 413 and 414(a), shall take effect 9 months after the date of the enactment of this Act.

(2) The provisions of section 413 of this title shall take effect on the date of the enactment of this Act.

(3) The provisions of section 414(a) of this title shall take effect 180 days after the date of the enactment of this Act.

(b)(1) The amendments made by sections 401 through 412 of this title shall continue to have effect unless, during the first period of 60 calendar days of continuous session of the Congress beginning after 5 years after the effective date of such amendments, a concurrent resolution is introduced and adopted by the Congress disapproving the continuation of the Senior Executive Service. Such amendments shall cease to have effect on the first day of the first fiscal year beginning after the date of the adoption of such concurrent resolution.

(2) The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(3) The provisions of subsections (d), (e), (f), (g), (h), (i), (j), and (k) of section 5305 of title 5, United States Code, shall apply with respect to any concurrent resolution referred to in paragraph (1) of this subsection, except that for the purpose of this paragraph the reference in such subsection (e) to 10 calendar days shall be considered a reference to 30 calendar days.

(4) During the 5-year period referred to in paragraph (1) of this subsection, the Director of the Office of Personnel Management shall include in each report required under section 3135 of title 5, United States Code (as added by this title) an evaluation of the effectiveness of the Senior Executive Service and the manner in which such Service is administered.

TITLE V--MERIT PAY

PAY FOR PERFORMANCE

Sec. 501. Part III of title 5, United States Code, is amended by inserting after chapter 53 the following new chapter:

" CHAPTER 54--MERIT PAY AND CASH AWARDS

" Sec. "5401. Purpose. "5402. Merit pay system. "5403. Cash award program. "5404. Report. "5405. Regulations.

"sec. 5401. Purpose

"(a) It is the purpose of this chapter to provide for--,

"(1) a merit pay system which shall--,

"(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;

"(B) use performance appraisals as the basis for determining merit pay adjustments;

"(C) within available funds, provide for training to improve objectivity and fairness in the evaluation of performance; and

"(D) regulate the costs of merit pay by establishing appropriate control techniques; and

"(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

"(b)(1) Except as provided in paragraph (2) of this subsection, this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS--13, 14, or 15 of the General Schedule described in section 5104 of this title.

"(2)(A) Upon application under subparagraph (C) of this paragraph, the President may, in writing, exclude an agency or any unit of an agency from the application of this chapter if the President considers such exclusion to be required as a result of conditions arising from--,

"(i) the recent establishment of the agency or unit, or the implementation of a new program,

"(ii) an emergency situation, or

"(iii) any other situation or circumstance.

"(B) Any exclusion under this paragraph shall not take effect earlier than 30 calendar days after the President transmits to each House of the Congress a report describing the agency or unit to be excluded and the reasons therefor.

"(C) An application for exclusion under this paragraph of an agency or any unit of an agency shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency or unit should be excluded from this chapter. The Office shall review the application and reasons, undertake such other review as it considers appropriate to determine whether the agency or unit should be excluded from the coverage of this chapter, and upon completion of its review, recommend to the President whether the agency or unit should be so excluded.

"(D) Any agency or unit which is excluded pursuant to this paragraph shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

"(E) The Office shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this paragraph be revoked. The President may at any time revoke, in writing, any exclusion under this paragraph.

" Sec. 5402. Merit pay system

"(a) In accordance with the purpose set forth in section 5401(a)(1) of this title, the Office of Personnel Management shall establish a merit pay system which shall provide for a range of basic pay for each grade to which the system applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each grade under chapter 53 of this title.

"(b)(1) Under regulations prescribed by the Office, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

"(2) Determinations to provide pay increases under this sub-section--,

"(A) may take into account individual performance and organizational accomplishment, and

"(B) shall be based on factors such as--,

"(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

"(ii) cost efficiency;

"(iii) timeliness of performance; and

"(iv) other indications of the effectiveness, productivity, and quality of performance of the employees for whom the employee is responsible;

"(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

(D) shall be made in accordance with regulations issued by the Office which relate to the distribution of increases authorized under this subsection.

"(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

"(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of the fiscal year by the Office on the basis of the amount estimated by the Office to be necessary to reflect--,

"(A) within-grade step increases and quality step increases which would have been paid under subchapter III of chapter 53 of this title

during the fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered; and

"(B) adjustments under section 5305 of this title

which would have been paid under such subchapter during the fiscal year to such employees if the employees were not so covered, less an amount reflecting the adjustment under subsection (c)(1) of this section in rates of basic pay payable to the employees for the fiscal year.

"(c)(1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the greater of--,

"(A) one-half of the percentage of the adjustment in the annual rate of pay which corresponds to the percentage generally applicable to positions not covered by the merit pay system in the same grade as the position; or

"(B) such greater amount of such percentage of such adjustment in the annual rate of pay as may be determined by the Office.

"(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

"(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

"(d) Under regulations prescribed by the Office, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

"(e) For the purpose of section 5941 of this title rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

" Sec. 5403. Cash award program

"(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who--,

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

"(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who--,

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

"(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns.

"(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

"(e)(1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed \$10,000.

"(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be awarded to the employee on the approval of the Office.

"(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system.

" Sec. 5404. Report

" The Office of Personnel Management shall include in each annual report required by section 1308(a) of this title a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include--,

"(1) an analysis of the cost and effectiveness of the merit pay system and the cash award program; and

"(2) a statement of the agencies and units excluded from the coverage of this chapter under section 5401(b)(2) of this title, the reasons for which each exclusion was made, and whether the exclusion continues to be warranted.

" Sec. 5405. Regulations

" The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter."

INCENTIVE AWARDS AMENDMENTS

Sec. 502. (a) Section 4503(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

(b) Section 4504(1) of title 5, United States Code, is amended by inserting after "operations" the following: "or achieves a significant reduction in paperwork".

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 503. (a) Section 4501(2)(A) of title 5, United States Code, is amended by striking out"; and" and inserting in lieu thereof ",but does not include an employee covered by the merit pay system established under section 5402 of this title; and".

(b) Section 4502(a) of title 5, United States Code, is amended by striking out "\$5,000" and inserting in lieu thereof "\$10,000".

(c) Section 4502(b) of title 5, United States Code, is amended--,

(1) by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(2) by striking out "\$5,000" and inserting in lieu thereof "\$10,000"; and

(3) by striking out "the Commission" and inserting in lieu thereof "the Office".

(d) Section 4506 of title 5, United States Code, is amended by striking out "Civil Service Commission may" and inserting in lieu thereof "Office of Personnel Management shall".

(e) The second sentence of section 5332(a) of title 5, United States Code, is amended by inserting after "applies" the following:", except an employee covered by the merit pay system established under section 5402 of this title,".

(f) Section 5334 of title 5, United States Code (as amended in section 801(a)(3)(G) of this Act), is amended--,

(1) in paragraph (2) of subsection (c), by inserting", or for an employee appointed to a position covered by the merit pay system established under section 5402 of this title, any dollar amount," after "step"; and

(2) by adding at the end thereof the following new subsection:

"(f) In the case of an employee covered by the merit pay system established under section 5402 of this title, all references in this section to 'two steps' or 'two step-increases' shall be deemed to mean 6 percent."

(g) Section 5335(e) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,".

(h) Section 5336(c) of title 5, United States Code, is amended by inserting after "individual" the following: "covered by the merit pay system established under section 5402 of this title, or,".

(i) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 53 the following new item: "54. Merit Pay and Cash Awards.....5401".

EFFECTIVE DATE

Sec. 504. (a) The provisions of this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981, except that such provisions may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management.

(b) The Director of the Office of Personnel Management shall include in the first report required under section 5404 of title 5, United States Code (as added by this title), information with respect to the progress and cost of the implementation of the merit pay system and the cash award program established under chapter 54 of such title (as added by this title).

TITLE VI- RESEARCH, DEMONSTRATION, AND OTHER PROGRAMS

RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Sec. 601. (a) Part III of title 5, United States Code, is amended by adding at the end of subpart C thereof the following new chapter:

"CHAPTER 47--PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

" Sec. "4701. Definitions. "4702. Research programs. "4703. Demonstration projects. "4704. Allocation of funds. "4705. Reports. "4706. Regulations.

" Sec. 4701. Definitions

"(a) For the purpose of this chapter--,

"(1) 'agency' means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include--,

"(A) a Government corporation;

"(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof which is designated by the President and which has as its principal function the conduct of foreign intelligence or counterintelligence activities; or

"(C) the General Accounting Office;

"(2) 'employee' means an individual employed in or under an agency;

(3) 'eligible' means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

"(4) 'demonstration project' means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

"(5) 'research program' means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

"(b) This subchapter shall not apply to any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425).

" Sec. 4702. Research programs

" The Office of Personnel Management shall--,

"(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

"(2) evaluate the research programs established under paragraph (1) of this section;

"(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

"(4) carry out the preceding functions directly or through agreement or contract.

Sec. 4703. Demonstration projects

"(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organization, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action, including any law or regulation relating to--,

"(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

"(2) the methods of classifying positions and compensating employees;

"(3) the methods of assigning, reassgning, or promoting employees;

"(4) the methods of disciplining employees;

"(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

"(6) the hours of work per day or per week;

"(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

"(8) the methods of reducing overall agency staff and grade levels.

"(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office shall--,

"(1) develop a plan for such project which identifies--,

"(A) the purposes of the project;

"(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

"(C) the number of employees or eligibles to be included, in the aggregate and by category;

"(D) the methodology;

"(E) the duration;

"(F) the training to be provided;

"(G) the anticipated costs;

"(H) the methodology and criteria for evaluation;

"(I) a specific description of any aspect of the project for which there is a lack of specific authority;
and

"(J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed;

"(2) publish the plan in the Federal Register;

"(3) submit the plan so published to public hearing;

"(4) provide notification of the proposed project, at least 180 days in advance of the date any project proposed under this section is to take effect--,

"(A) to employees who are likely to be affected by the project; and

"(B) to each House of the Congress;

"(5) obtain approval from each agency involved of the final version of the plan; and

"(6) provide each House of the Congress with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.

"(c) No demonstration project under this section may provide for a waiver of--,

"(1) any provision of chapter 63 or subpart G of this title;

"(2) (A) any provision of law referred to in section 2302(b) (1) of this title; or

"(B) any provision of law implementing any provision of law referred to in section 2302(b) (1) of this title by--,

"(i) providing for equal employment opportunity through affirmative action; or

"(ii) providing any right or remedy available to any employee or applicant for employment in the civil service;

"(3) any provision of chapter 15 or subchapter III of chapter 73 of this title;

"(4) any rule or regulation prescribed under any provision of law referred to in paragraph (1), (2), or (3) of this subsection; or

"(5) any provision of chapter 23 of this title, or any rule or regulation prescribed under this title, if such waiver is inconsistent with any merit system principle or any provision thereof relating to prohibited personnel practices.

"(d) (1) Each demonstration project shall--,

"(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

"(B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

"(2) Not more than 10 active demonstration projects may be in effect at any time.

"(e) Subject to the terms of any written agreement or contract between the Office and an agency, a demonstration project involving the agency may be terminated by the Office, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

"(f) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section--,

"(1) if the project would violate a collective bargaining agreement (as defined in section 7103 (8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

"(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

"(g) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under Chapter 71 of this title shall not be included within any project under subsection (a) of this section unless there has been agency consultation regarding the project with the employees in the unit.

"(h) The Office shall provide for an evaluation of the results of each demonstration project and its impact on improving public management.

"(i) Upon request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (h) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

" Sec. 4704. Allocation of funds

" Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office to any agency conducting demonstration projects or assisting the Office in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

" Sec. 4705. Reports

"The Office of Personnel Management shall include in the annual report required by section 1308(a) of this title a summary of research programs and demonstration projects conducted during the year covered by the report, the effect of the programs and projects on improving public management and increasing Government efficiency, and recommendations of policies and procedures which will improve such management and efficiency.

" Sec. 4706. Regulations

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter."

(b) The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 45 the following new item: "47. Personnel Research Programs and Demonstration Projects..... 4701".

INTERGOVERNMENTAL PERSONNEL ACT AMENDMENTS

Sec. 602. (a) Section 208 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728) is amended--,

(1) by striking out the section heading and inserting in lieu thereof the following:

"TRANSFER OF FUNCTIONS AND ADMINISTRATION OF MERIT POLICIES";

(2) by redesignating subsections (b), (c), (d), (e), and (f) as subsections (c), (d), (e), (f), and (g), respectively, and by inserting after subsection (a) the following new subsection:

"(b) In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office for positions engaged in carrying out such programs. The standards shall--,

"(1) include the merit principles in section 2 of this Act;

"(2) be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration."; and

(3) by striking out the last subsection and inserting in lieu thereof the following new subsection:

"(h) Effective one year after the date of the enactment of the Civil Service Reform Act of 1978, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except--,

"(1) requirements prescribed under laws and regulations referred to in subsection (a) of this section;

"(2) requirements that generally prohibit discrimination in employment or require equal employment opportunity;

"(3) the Davis-Bacon Act (40 U.S.C. 276 et seq.);

and

"(4) chapter 15 of title 5, United States Code relating to political activities of certain State and local employees

(b) Section 401 of such Act (84 Stat. 1920) is amended by striking out "governments and institutions of higher education" and inserting in lieu thereof "governments, institutions of higher education, and other organizations".

(c) Section 403 of such Act (84 Stat. 1925) is amended by inserting "(a)" after "403.", and by adding at the end thereof the following new subsection:

"(b) Effective beginning on the effective date of the Civil Service Reform Act of 1978, the provisions of section 314(f) of the Public Health Service Act (42 U.S.C. 246(f)) applicable to commissioned officers of the Public Health Service Act are hereby repealed."

(d) Section 502 of such Act (42 U.S.C. 4762) is amended in paragraph (3) by inserting "the Trust Territory of the Pacific Islands," before "and a territory or possession of the United States,".

(e) Section 506 of such Act (42 U.S.C. 4766) is amended--,

(1) in subsection (b) (2), by striking out " District of Columbia" and inserting in lieu thereof "District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands"; and

(2) in subsection (b) (5), by striking out "and the District of Columbia" and inserting in lieu thereof ", the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands".

AMENDMENTS TO THE MOBILITY PROGRAM

Sec. 603. (a) Section 3371 of title 5, United States Code, is amended--,

(1) by inserting "the Trust Territory of the Pacific Islands," after "Puerto Rico," in paragraph (1) (A); and

(2) by striking out "and" at the end of paragraph (1), by striking

out the period at the end of paragraph (2) and inserting a semicolon in lieu thereof, and by adding at the end thereof the following:

"(3) ' Federal agency' means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

"(4) 'other organization' means--,

"(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

"(B) an association of State or local public officials; or

"(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management."

(b) Sections 3372 through 3375 of title 5, United States Code, are amended by striking out "executive agency" and "an executive agency" each place they appear and inserting in lieu thereof " Federal agency" and "a Federal agency", respectively.

(c) Section 3372 of title 5, United States Code, is further amended--,

(1) in subsection (a)(1), by inserting after "agency" the following: ", other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy determining, policy-making, or policy-advocating character,";

(2) in subsection (b)(1), by striking out "and";

(3) in subsection (b)(2), by striking out the period after "agency" and inserting in lieu thereof a semicolon;

(4) by adding at the end of subsection (b) the following:

"(3) an employee of a Federal agency to any other organization;

and

"(4) an employee of an other organization to a Federal agency."; and

(5) by adding at the end thereof (as amended in paragraph (4) of this subsection) the following new subsection:

"(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

"(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States."

(d) Section 3374 of title 5, United States Code, is further amended--,

(1) by adding at the end of subsection (b) the following new sentence:

" The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.";

(2) in subsection (c)(1), by striking out the semicolon at the end thereof and by inserting in lieu thereof the following: ", except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;"; and

(3) by striking out the period at the end of subsection (c) and inserting in lieu thereof the following:", or for the contribution of the State or local government, or a part thereof, to employee benefit systems."

(e) Section 3375(a) of title 5, United States Code, is further amended by striking out "and" at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following;

"(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and".

TITLE VII--FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Sec. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

"Subpart F--Labor-Management and Employee Relations

" CHAPTER 71--LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER I--GENERAL PROVISIONS

" Sec. "7101. Findings and purpose. "7102. Employees' rights. "7103. Definitions; application. "7104. Federal Labor Relations Authority. "7105. Powers and duties of the Authority. "7106. Management rights.

" SUBCHAPTER II--RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

" Sec. "7111. Exclusive recognition of labor organizations. "7112. Determination of appropriate units for labor organization representation. "7113. National consultation rights. "7114. Representation rights and duties. "7115. Allotments to representatives. "7116. Unfair labor

practices. "7117. Duty to bargain in good faith; compelling need; duty to consult. "7118. Prevention of unfair labor practices. "7119. Negotiation impasses; Federal Service Impasses Panel. "7120. Standards of conduct for labor organizations.

" SUBCHAPTER III--GRIEVANCES, APPEALS, AND REVIEW

" Sec. "7121. Grievance procedures. "7122. Exceptions to arbitral awards. "7123. Judicial review; enforcement.

" SUBCHAPTER IV--ADMINISTRATIVE AND OTHER PROVISIONS

" Sec. "7131. Official time. "7132. Subpenas. "7133. Compilation and publication of data. "7134. Regulations. "7135. Continuation of existing laws, recognitions, agreements, and procedures.

" SUBCHAPTER I--GENERAL PROVISIONS

Section 7101. Findings and purpose

"(a) The Congress finds that--,

"(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them--,

"(A) safeguards the public interest,

"(B) contributes to the effective conduct of public business, and

"(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

"(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special

requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

Section. 7102. Employees' rights

" Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--,

"(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

Section. 7103. Definitions; application

"(a) For the purpose of this chapter--,

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual--,

"(A) employed in an agency; or

"(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include--,

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official;

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the international Communication Agency; or

"(v) any person who participates in a strike in violation of section 7311 of this title;

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include--,

"(A) the General Accounting Office;

"(B) the Federal Bureau of Investigation;

"(C) the Central Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Labor Relations Authority; or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include--,

"(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

"(C) an organization sponsored by an agency; or

"(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

"(5) 'dues' means dues, fees, and assessments;

"(6) ' Authority' means the Federal Labor Relations Authority described in section 7104(a) of this title;

"(7) ' Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint--,

"(A) by any employee concerning any matter relating to the employment of the employee;

"(B) by any labor organization concerning any matter relating to the employment of any employee; or

"(C) by any employee, labor organization, or agency concerning--,

"(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement

reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--,

"(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

"(B) relating to the classification of any position; or

"(C) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means--,

"(A) an employee engaged in the performance of work--,

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which--,

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit--,

"(i) on the basis of an election, or

"(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter;

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

"(18) ' United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that--,

"(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

"(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

"(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

Section 7104. Federal labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three member, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and

only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of --,

"(A) the date on which the member's successor takes office, or

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

"(e) The authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

"(2) The General Counsel may--,

"(A) investigate alleged unfair labor practices under this chapter,

"(B) file and prosecute complaints under this chapter, and

"(C) exercise such other powers of the Authority as the authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

Section 7105. Powers and duties of the Authority

"(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority--,

"(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

"(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

"(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

"(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

"(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

"(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

"(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

"(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

"(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

"(b) The Authority shall adopt an official seal which shall be judicially noticed.

"(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry

shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

"(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

"(e) (1) The Authority may delegate to any regional director its authority under this chapter--,

"(A) to determine whether a group of employees is an appropriate unit;

"(B) to conduct investigations and to provide for hearings;

"(C) to determine whether a question of representation exists and to direct an election; and

"(D) to supervise or conduct secret ballot elections and certify the results thereof.

"(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

"(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of--,

"(1) the date of the action; or

"(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

"(g) In order to carry out its functions under this chapter, the Authority may--,

"(1) hold hearings;

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

"(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

"(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

"(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

" Sec. 7106. Management rights

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--,

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

"(2) in accordance with applicable laws--,

"(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

"(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

"(C) with respect to filling positions, to make selections for appointments from--,

"(i) among properly ranked and certified candidates for promotion; or

"(ii) any other appropriate source; and "(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating--,

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

" SUBCHAPTER II-- RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

Sec. 7111. Exclusive recognition of labor organizations

"(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

"(b) If a petition is filed with the Authority--,

"(1) by any person alleging--,

"(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

"(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

"(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

"(c) A labor organization which--,

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose--,

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

"(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

"(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

"(f) Exclusive recognition shall not be accorded to a labor organization--,

"(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

"(2) in the case of a petition filed pursuant to subsection (b) (1) (A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

"(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless--,

"(A) the collective bargaining agreement has been in effect for more than 3 years, or

"(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

"(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

"(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

" Sec. 7112. Determination of appropriate units for labor organization representation

"(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.

"(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes--,

"(1) except as provided under section 7135(a) (2) of this title, any management official or supervisor;

"(2) a confidential employee;

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

"(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization--,

"(1) which represents other individuals to whom such provision applies; or

"(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

"(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

" Sec. 7113. National consultation rights

"(a) (1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

"(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall--,

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) be permitted reasonable time to present its views and recommendations regarding the changes.

"(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization--,

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

" Sec. 7114 Representation rights and duties

"(a) (1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

"(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--,

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

"(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if--,

"(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

"(ii) the employee requests representation.

"(3) Each agency shall annually inform its employees of their rights under paragraph (2) (B) of this subsection.

"(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

"(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from--,

"(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

"(B) exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--,

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--,

"(A) which is normally maintained by the agency in the regular course of business;

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

"(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

"(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

"(c) (1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

"(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

"(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

"(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency. " Sec. 7115. Allotments to representatives

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

"(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when--,

"(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

"(2) the employee is suspended or expelled from membership in the exclusive representative.

"(c) (1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

"(2) (A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

"(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

" Sec. 7116. Unfair labor practices

"(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--,

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization--,

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

"(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

"(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure--,

"(1) to meet reasonable occupational standards uniformly required for admission, or

"(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121 (e)

and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

"(e) The expression of any personal view, argument, opinion or the making of any statement which--,

"(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election.

"(2) corrects the record with respect to any false or misleading statement made by any person, or

"(3) informs employees of the Government's policy relating to labor- management relations and representation,

shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

" Sec. 7117. Duty to bargain in good faith; compelling need; duty to consult

"(a) (1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

"(b) (1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a) (3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if--

"(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines that a compelling need for a rule or regulation does not exist.

"(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

"(c) (1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

"(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by--

"(A) filing a petition with the Authority; and

"(B) furnishing a copy of the petition to the head of the agency.

"(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2) (B) of this subsection, the agency shall--

"(A) file with the Authority a statement--

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

"(B) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3) (B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

"(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

"(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall--,

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization--,

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

" Sec. 7118. Prevention of unfair labor practices

"(a) (1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice--,

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4) (A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of--,

"(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

"(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

"(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order--,

"(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

"(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

"(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

"(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

"(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the

Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

" Sec. 7119. Negotiation impasses; Federal Service Impasses Panel

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

"(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse--,

"(1) either party may request the Federal Service Impasses Panel to consider the matter, or

"(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

"(c) (1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

"(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor- management relations.

"(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

"(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

"(5) (A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either--,

"(i) recommend to the parties procedures for the resolution of the impasse; or

"(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

"(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may--,

"(i) hold hearings;

"(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

"(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

"(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

" Section 7120. Standards of conduct for labor organizations

"(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for--,

"(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

"(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

"(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

"(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

"(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that--,

"(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

"(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

"(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

"(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

"(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

"(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation--,

"(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

"(2) take any other appropriate disciplinary action.

" SUBCHAPTER III-- GRIEVANCES

" Section 7121. Grievance procedures

"(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d) and (e) of this section, the procedures shall be the exclusive procedures for resolving grievances which fall within its coverage.

"(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

"(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall--,

"(1) be fair and simple,

"(2) provide for expeditious processing, and

"(3) include procedures that--,

"(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

"(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

"(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

"(c) The preceding subsections of this section shall not apply with respect to any grievance concerning--,

"(1) any claimed violation of subchapter III of chapter 73 of this title

(relating to prohibited political activities);

"(2) retirement, life insurance, or health insurance;

"(3) a suspension or removal under section 7532 of this title;

"(4) any examination, certification, or appointment; or

"(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

"(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

"(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

"(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

"(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

" Section 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient--,

"(1) because it is contrary to any law, rule, or regulation; or

"(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

"(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

" Section 7123. Judicial review; enforcement

"(a) Any person aggrieved by any final order of the Authority other than an order under--,

"(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

"(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

"(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

"(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate

temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

" SUBCHAPTER IV-- ADMINISTRATIVE AND OTHER PROVISIONS

" Section 7131. Official time

"(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

"(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

"(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

"(d) Except as provided in the preceding subsections of this section--,

"(1) any employee representing an exclusive representative, or

"(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

" Section 7132. Subpenas

"(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may--,

"(1) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

"(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

"(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

" Section 7133. Compilation and publication of data

"(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

"(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

" Section 7134. Regulations

" The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

" Section 7135. Continuation of existing laws, recognitions, agreements, and procedures

"(a) Nothing contained in this chapter shall preclude--,

"(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

"(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

"(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter."

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

Sec. 702. Section 5596(b) of title 5, United States Code is amended to read as follows:

"(b)(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee--,

"(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect--,

"(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

"(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7701(g) of this title; and

"(B) for all purposes, is deemed to have performed service for the agency during that period, except that--,

"(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

"(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title

but may not be retained to the credit of the employee under section 5552(2) of this title.

"(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

"(3) For the purpose of this subsection, 'grievance' and 'collective bargaining agreement' have the meanings set forth in section 7103 of this title, 'unfair labor practice' means an unfair labor practice described in section 7116 of this title, and 'personnel action' includes the omission or failure to take an action or confer a benefit."

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended--,

(1) by redesignating sections 7151 (as amended by section 310 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204,

respectively;

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

" CHAPTER 72--ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

"SUBCHAPTER I--ANTIDISCRIMINATION IN EMPLOYMENT

" Sec. "7201. Antidiscrimination policy; minority recruitment program. "7202. Marital status. "7203. Handicapping condition. "7204. Other prohibitions.

" SUBCHAPTER II-- EMPLOYEES' RIGHT TO PETITION CONGRESS

"7211. Employees' right to petition Congress.";

and (3) by adding at the end thereof the following new subchapter:

" SUBCHAPTER II-- EMPLOYEES' RIGHT TO PETITION CONGRESS

"Section 7211. Employees' right to petition Congress

" The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."

(b) The analysis for part III of title 5, United States Code, is amended by striking out--,

"Subpart F--Employee Relations

"71. Policies 7101"; and inserting in lieu thereof--,

" Subpart F--Labor-Management and Employee Relations

"71. Labor-Management Relations 7101 "72. Antidiscrimination; Right to Petition Congress 7201".

(c)(1) Section 2105(c)(1) of title 5, United States Code, is amended by striking out "7152, 7153" and inserting in lieu thereof "7202, 7203".

(2) Section 3302(2) of title 5, United States Code, is amended by striking out "and 7154" and inserting in lieu thereof "and 7204".

(3) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out "7154 of title 5" and inserting in lieu thereof "7204 of title 5".

(4) Section 410(b)(1) of title 39, United States Code, is amended by striking out "chapters 71 (employee policies)" and inserting in lieu thereof the following: "chapters 72 (antidiscrimination; right to petition Congress)".

(5) Section 1002(g) of title 39, United States Code, is amended by striking out "section 7102 of title 5" and inserting in lieu thereof "section 7211 of title 5".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

"(124) Chairman, Federal Labor Relations Authority.".

(e) Section 5316 of such title is amended by adding at the end thereof the following clause:

"(145) Members, Federal Labor Relations Authority (2) and its General Counsel."

MISCELLANEOUS PROVISIONS

Sec. 704. (a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92--392 applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act in accordance with the provisions of section 9(b) of Public Law 92--392 without regard to any provision of chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph.

(b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection shall be negotiated in accordance with prevailing rates and pay practices without regard to any provision of--,

(A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;

(B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code;

or

(C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code.

TITLE VIII-- GRADE AND PAY RETENTION

GRADE AND PAY RETENTION

Sec. 801. (a)(1) Chapter 53 of title 5, United States Code, relating to pay rates and systems, is amended by inserting after subchapter V thereof the following new subchapter:

" SUBCHAPTER VI-- GRADE AND PAY RETENTION

"Section 5361. Definitions

" For the purpose of this subchapter--,

"(1) 'employee' means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title,

whose employment is other than on a temporary or term basis;

"(2) 'agency' has the meaning given it by section 5102 of this title;

"(3) 'retained grade' means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;

"(4) 'rate of basic pay' means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

"(5) 'covered pay schedule' means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;

"(6) 'position subject to this subchapter' means any position under a covered pay schedule; and

"(7) 'reduction-in-force procedures' means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

" Section 5362. Grade retention following a change of positions or reclassification

"(a) Any employee--,

"(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

"(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2- year period beginning on the date of such placement.

"(b)(1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

"(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

"(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except--,

"(1) for purposes of subsection (a) of this section,

"(2) for purposes of applying any reduction-in-force procedures,

"(3) for purposes of determining whether the employee is covered by the merit pay system established under section 5402 of this title, or

"(4) for such other purposes as the Office of Personnel Management may provide by regulation.

"(d) The foregoing provisions of this section shall cease to apply to an employee who--,

"(1) has a break in service of one workday or more;

"(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

"(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

"(4) elects in writing to have the benefits of this section terminate.

" Section 5363. Pay retention

"(a) Any employee--,

"(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

"(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title;

or

"(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

"(b) For the purpose of subsection (a) of this section, 'allowable former rate of basic pay' means the lower of--

"(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

"(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

"(c) The preceding provisions of this section shall cease to apply to an employee who--

"(1) has a break in service of one workday or more;

"(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title

to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

"(3) is demoted for personal cause or at the employee's request.

" Section 5364. Remedial actions

" Under regulations prescribed by the Office of Personnel Management, the Office may require any agency--

"(1) to report to the Office information with respect to vacancies (including impending vacancies);

"(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362 or 5363 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

"(3) to establish a program under which employees receiving benefits under section 5362 or 5363 of this title are given priority in the consideration for or placement in positions which are equal to their retained grade or pay; and

"(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

" Section 5365. Regulations

"(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

"(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter--,

"(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

"(2) to individuals to whom such provisions do not otherwise apply; and

"(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

" Section 5366. Appeals

"(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

"(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal--,

"(A) under section 5112(b) or 5346(c) of this title, or otherwise, any reclassification of a position;
or

"(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

"(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section) or any grievance procedure negotiated under the provisions of chapter 71 of this title--,

"(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

"(2) any termination of any such benefits under this subchapter,

shall not be treated as appealable under such appeals procedures or grievable under such grievance procedure."

(2) Section 5334(d), 5337, and 5345 of title 5, United States Code, are hereby repealed.

(3)(A) Chapter 53 of title 5, United States Code, is amended--,

(i) by redesignating subchapter VI as subchapter VII, and

(ii) by redesignating sections 5361 through 5365 as sections 5371 through 5375, respectively.

(B)(i) The analysis of chapter 53 of title 5, United States Code, is amended by striking out the items relating to subchapter VI thereof and inserting in lieu thereof the following: " SUBCHAPTER VI-- GRADE AND PAY RETENTION

" Sec. "5361. Definitions. "5362. Grade retention following a change of positions or reclassification. "5363. Pay retention. "5364. Remedial actions. "5365. Regulations. "5366. Appeals. " SUBCHAPTER VII-- MISCELLANEOUS PROVISIONS

" Sec. "5371. Scientific and professional positions. "5372. Administrative law judges. "5373. Limitation on pay fixed by administrative action. "5374. Miscellaneous positions in the executive branch. "5375. Police force of National Zoological Park."

(ii) The analysis of such chapter is further amended by striking out the items relating to sections 5337 and 5345, respectively.

(iii) Sections 559 and 1305 of title 5, United States Code, are each amended by striking out "5362," each place it appears and inserting "5372," in lieu thereof.

(C) Section 3104(b) of title 5, United States Code, as redesignated by this Act, is amended by striking out "section 5361" and inserting "section 5371" in lieu thereof.

(D) Section 5102(c)(5) of title 5, United States Code, is amended by striking out "section 5365" and inserting "section 5375" in lieu thereof.

(E) Sections 5107 and 8704(d)(1) of title 5, United States Code, are each amended by striking out "section 5337" and inserting in lieu thereof "subchapter VI of chapter 53".

(F) Section 5334(b) of title 5, United States Code, is amended by striking out "section 5337 of this title" each place it appears and inserting in lieu thereof "subchapter VI of this chapter".

(G) Section 5334 of title 5, United States Code, is amended by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(H) Section 5349(a) of title 5, United States Code, is amended--,

(i) by striking out "section 5345, relating to retention of pay," and inserting in lieu thereof "subchapter VI of this chapter, relating to grade and pay retention,";

(ii) by striking out "section 5345 of this title" and inserting in lieu thereof "subchapter VI of this chapter"; and

(iii) by striking out "paragraph (2) of section 5345(a)" and inserting in lieu thereof "section 5361(1)".

(I) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by inserting after "of title 5" the following: "and subchapter VI of chapter 53 of such title 5".

(J) Section 1416(a) of the Act of August 1, 1968 (Public Law 90--448; 15 U.S.C. 1715(a)), and section 808(c) of the Act of April 11, 1968 (Public Law 90--284; 42 U.S.C. 3608(b)), are each amended by striking out "5362," and inserting in lieu thereof "5372,".

(4)(A) The amendments made by this subsection shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act.

(B) An employee who was receiving pay under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).

(b)(1) Under regulations prescribed by the Office of Personnel Management, any employee--,

(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section under circumstances which would have entitled the employee to coverage under the provisions of section 5362 of title 5, United States

Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and

(B) who has remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more;

shall be entitled--,

(i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and

(ii) to have the amendments made by subsection (a) of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

(2) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

(3)(A) For purposes of this subsection, the requirements under paragraph (1)(B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee--,

(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code,

or under another retirement system for Federal employees; or

(ii) who died.

(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

(4) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has under section 5365 of title 5, United States Code, with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section.

TITLE IX-- MISCELLANEOUS

STUDY ON DECENTRALIZATION OF GOVERNMENTAL FUNCTIONS

Sec. 901. (a) As soon as practicable after the effective date of this Act, the Director of the Office of Management and Budget shall conduct a detailed study concerning the decentralization of Federal governmental functions.

(b) The study to be conducted under subsection (a) of this section shall include--,

(1) a review of the existing geographical distribution of Federal governmental functions throughout the United States, including the extent to which such functions are concentrated in the District of Columbia; and

(2) a review of the possibilities of distributing some of the functions of the various Federal agencies currently concentrated in the District of Columbia to field offices located at points throughout the United States.

Interested parties, including heads of agencies, other Federal employees, and Federal employee organizations, shall be allowed to submit views, arguments, and data in connection with such study.

(c) Upon completion of the study under subsection (a) of this section, and in any event not later than one year after the effective date of this Act, the Director of the Office of Management and Budget shall submit to the President and to the Congress a report on the results of such study together with his recommendations. Any recommendation which involves the amending of existing statutes shall include draft legislation.

SAVINGS PROVISIONS

Sec. 902. (a) Except as otherwise provided in this Act, all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

(b) No provision of this Act shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official

duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

AUTHORIZATION OF APPROPRIATIONS

Sec. 903. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

Sec. 904. Except as otherwise expressly provided in this Act, no provision of this Act shall be construed to--,

(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act; or

(2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions.

REORGANIZATION PLANS

Sec. 905. Any provision in either Reorganization Plan Numbered 1 or 2 of 1978 inconsistent with any provision in this Act is hereby superseded.

TECHNICAL AND CONFORMING AMENDMENTS

Sec. 906. (a) Title 5, United States Code, is amended--,

(1) in section 5347, 8713, and 8911, by striking out "Chairman of the Civil Service Commission" and inserting in lieu thereof "Director of the Office of Personnel Management";

Approved October 13, 1978.

PL 95-454, 1978 S 2640

Introduction Narration

While the history of the Federal civil service can be traced from the founding of the country to the present day, the watershed date is 1883 the year the Civil Service Act became law and the United States Civil Service Commission was established

President Chester A. Arthur signed the Civil Service Act into law on January 16, and the President's three appointees to the Commission took office less than two months later, on March 9, 1883.

The Commission was led by Dorman B. Eaton of New York, a reform advocate and the principal author of the Act. Eaton's staff of seven administered the Act and performed the daily duties of regulating positions in the new competitive service.

Originally, the Commission handled about 1400 positions, mostly minor clerkships. The clerkships were about ten percent of the total 1883 Federal workforce.

The changes that have occurred over the past 120 years are tremendous, to the organization once called "the Commission," the activities it performed, and to all government operations as well.

The Civil Service Reform Act of 1978 created the Office of Personnel Management and gave it jurisdiction over more than a million employees. Other functions of the former Civil Service Commission were assumed by the Merit System Protection Board, the Office of Special Counsel, and the Federal Labor Relations Board.

There are now almost two million Federal employees, more than 90 percent of whom work under a merit system. And while these statistics are impressive, the work performed by federal employees is even more impressive.

In 1883, the Commission recruited and regulated minor clerkships. Today's civil service system includes information technology personnel, scientific researchers, social workers, accountants, and a wide array of other professions and occupations.

The history of the civil service, the Biography of an Ideal, mirrors the history of the country that it serves. This website allows you to explore this rich history. By understanding our past, we are better able to meet challenges of this century.

Ninety-six Premerit Years: 1789-1883

Four Calm Decades

Any history of public service in the United States will unquestionably put major emphasis on the spoils system versus the merit system and uphold the superiority of the latter. This superiority is one main theme, one big point, of the civil service story.

The merit system became official when, on January 16, 1883, President Chester A. Arthur signed the Civil Service Act, which marked the beginning of the end for the spoils system that immediately preceded it.

At the beginning of our Republic, however, there was no spoils system. There existed during the first six presidencies of the United States a system of making appointments, by and large on merit, that worked well.

Power of Appointment

The Constitution made clear, in Article II, Section 2, paragraph 2, the method for appointment of higher officials, namely “Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States whose Appointments are not herein otherwise provided for.” The President nominates these officials by and with the advice and consent of the Senate, which thereby holds a veto over the President’s choices.

The Constitution was more indefinite about the method of appointment of “inferior officers”—the somewhat unfortunate term used by the document’s drafters to designate the vitally important corps of employees responsible for the operating work of the Government—namely the Government workforce.

Congress was given the authority to designate the appointing authority for these employees, in these words:

“ . . . the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”

For more than 80 years, however, Congress made comparatively little use of this power.

The first report to President Grant by the so-called “Grant Civil Service Commission” (see pp. 13, 35–36) was dated December 18, 1871. It discussed the earliest days of public service:

During the early administrations, appointments [to public office] were made from considerations of character and fitness, and removals took place for cause. This practice, as it was the wisest and most reasonable, was also to be expected, because Washington, having been unanimously elected to the Presidency, party divisions, as we know them, developed only toward the close of his administration. He required of applicants proof of ability, integrity, and fitness. "Beyond this," he said, "nothing with me is necessary, or will be of any avail to them, in my decision." John Adams made few removals and those for cause. Jefferson said the pressure [on him] to remove was like a torrent. But he resisted it. Madison, Monroe, and John Quincy Adams followed him so faithfully that the Joint Congressional Committee on Retrenchment reported in 1868 that, having consulted all accessible means of information, it had not learned of a single removal of a subordinate officer, except for cause, from the beginning of Washington's administration to the close of that of John Quincy Adams.

Actually, the above-quoted portion of the report of the "Grant Commission" is not entirely accurate. Presidents Washington, John Adams, and Jefferson did not espouse pure merit as unqualifiedly as the report makes it appear.

Washington's "Fitness Test"

Washington, twice chosen President by unanimous vote of the Electoral College, enjoyed high prestige and great popularity. A lesser man might have attempted to use this secure position and patronage* power for his own advantage. Instead, Washington set a high standard, selecting his nominees carefully, after investigating their capabilities and reputations. Honesty and efficiency were his paramount considerations, and he also took into account such matters as pre-Revolutionary adherence to the cause of the colonies. His "fitness test" included, in addition to the requirement for genuine ability, the unstated question: "Is he a Federalist?"

(* "Patronage: In politics, the right, or control, of nomination to political officer; also the offices, contracts, honors, etc. which a public official may bestow by favor." Webster's Unabridged Dictionary.)

Furthermore, he occasionally gave preference to officers of the Revolutionary Army (if they passed his "fitness test"); he selected the principal Federal officers from different regions of the country; he staffed field establishments with local residents; and he sought the opinions of Congress in making local appointments.

From the very first days of our infant Republic, public service was an important concern of both the executive and legislative branches. During the first 2 weeks after Washington's inauguration, the First Congress debated for 6 days whether the power of removal (and hence the control) of executive officials belonged to the President, the Senate, or both. The Senate, after a tie broken by the vote of Vice President John Adams, took the position that the President held both the

appointing and removal power, but that only the appointing power was limited by the requirement for Senate confirmation.

It was during this debate that Representative James Madison struck a strong blow in favor of a merit system by declaring, “wanton removal of a meritorious officer is an impeachable offense.” (After he became President, Madison acted strictly in accordance with this belief.)

The making of minor appointments was, as Washington prophesied in his pre-inauguration writings, “the most difficult and delicate part” of his work.

Adams’ “Midnight Appointments”

President John Adams continued, in general, the policies of his predecessor, adhering to Washington’s policy of demanding demonstrable ability in a candidate for public office. However, he allowed personal prejudice and partisan politics to influence him more than they had influenced Washington.

And, at the end of his term, Adams, in making his so-called “midnight appointments,” tarnished the reputation he had earned by the moderation and high standards with which he had made the great majority of appointments.

Knowing that he would be succeeded by a President of the opposition (Democratic-Republican) party, Adams yielded to party feeling and attempted to obtain some control of the judicial branch of the new administration. This he did by appointing some Federalists to circuit court judgeships, others to justice of the peace positions in the District of Columbia. At the State Department, late on the night before Jefferson’s inauguration, signatures and seals were still being placed on these commissions. Suddenly the new Attorney General appeared and ordered the proceedings stopped.

Pendulum Begins To Swing

Thomas Jefferson and his party were greatly embittered by Adams’ action, and sought means of retaliation.

Ability was an important consideration in Washington’s “fitness test” and even in Adams’ “midnight appointments”; thus these were benign examples of partisanship, rather than the malignant form that came later. Still the pattern for much of the subsequent shabby history of the spoils system was set in those early days.

The growth of political parties in America, and their struggles for supremacy, soon showed that it would be very difficult to keep the public service outside the sphere of party politics.

Each party endeavored to place in office as many as possible of its members. Then its successor took revenge by removing as many as possible of the defeated party. Thus changes were constantly taking place among Government personnel, and continuity of administrative programs was impossible. Once this pendulum started swinging, it became increasingly difficult to stop. As years went by, politics became less a contest of issues and more a partisan struggle for appointment to public office. These struggles sometimes provided a dramatic spectacle, but one for which the public paid a high price.

Jefferson “Redresses the Balance”

In contravention of statements in the “Grant Commission” report (see p. 8), during Thomas Jefferson’s first term the political factor became, for a time, openly more important than true fitness in the making of both appointments and removals.

Jefferson found most Government positions occupied by Federalists, as a result of Washington’s “fitness test” and Adams’ policies. Democratic-Republican Jefferson therefore felt compelled to “redress the balance”—i.e., appoint only Democratic-Republicans until a balance between his party and the Federalist Party was attained.

However, Jefferson wrote that when this had been accomplished, he would “return with joy to that state of things when the only questions concerning a candidate shall be: Is he honest? Is he capable? Is he faithful to the Constitution?”

Jefferson, one of our “strong” Presidents and also one of our most skillful politicians, moved cautiously in removing Federalists. He attempted to establish justification in each case, on legal or moral grounds, and he tested the public reaction to each step before taking the next. His removals were not sudden and wholesale but cautious and gradual. His appointments were not rewards for partisan political activity, as such, nor did they imply increased partisan activity in the future.

He required that the fitness of new appointees be considered, and he stressed that civil servants were “trustees” of the people, not an elite self-perpetuating group and not representatives of one political party.

By these means, he accomplished one of the cleverest feats in early American politics: He more than “redressed the balance” while at the same time maintaining a high quality of appointees, avoiding censure from a public sensitive to administrative abuse, keeping his friends in his own party, and not alienating the mass of Federalist adherents he was attempting to woo from their leaders.

His opponents had felt certain that an angry public reaction to his purge of Federalists would work his political ruin—and this would probably have happened, had he been less adroit politically.

Not True Spoils System

Jefferson has been frequently and unjustifiably called the first President to introduce partisan political considerations as a factor in removals and appointments.

Since his election marked the first change of party in the young Republic, the people Jefferson removed were Federalists because Washington and Adams had staffed the service with Federalists. And Jefferson wrote Monroe that his removals would be “as few as possible, done gradually, and bottomed on some malversation or inherent disqualification.” Most of his removals were in fact carried out on this principle; incumbents were given advance notice of their removal, and were treated courteously. This was in sharp contrast to the policies of certain administrations later, at the height of the spoils system.

Jefferson regarded those who held Adams-manipulated “midnight appointments” as being illegally in office, and his party took its revenge by repealing the act authorizing circuit court judgeships, thus abolishing the lifetime positions to which the “midnight judges” had been appointed.

Politics certainly entered into Jefferson’s policy toward public service more deeply than it had with Washington and Adams, but he was not the first to introduce this factor. Nor did his policy remotely resemble the full-blown spoils system which, already rampant in some States, would later blight the Federal Government.

As a matter of fact, Jefferson issued what is probably the earliest order directed at stopping political activities on the part of Government employees. This order, issued in 1801, proclaimed the principle that the Civil Service Act put into effect 82 years later:

The right of any officer [i.e., officeholder] to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice; but it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it.

Stability Despite Mounting Pressure

The 1871 report of the “Grant Civil Service Commission” went on to say:

During all this time [the administrations of Madison, Monroe, and John Quincy Adams], party pressure for removals was not unknown. When an auditorship of the Treasury became vacant under Monroe, among the applicants were five United States Senators and thirty Representatives! In 1828, the Chief Justice of [New York] State was a candidate for a place in the Treasury Department to which none but third-rate men would aspire. The party pressure was already “tormenting” and, as the number of offices increased, and the power of patronage developed, it was to be expected that an attempt would be made to control the whole civil service for the benefit of a party. This practice was virtually declared a rule of action in the year 1832 [third year of the administration of Andrew Jackson].

Madison and Monroe, being of the same political party as Jefferson, saw no reason to disturb the wholly satisfactory “redressed-balance” civil service that they inherited.

Madison and the War of 1812

War has always caused an abnormally sharp and sudden increase in the number of civilian as well as military personnel. Prior to 1883, the whole of such increases was added to the patronage enjoyed by the President and other officials with the power to appoint.

The War of 1812, during Madison’s administration, was no exception. Madison, however, did not take advantage of this increased patronage for the benefit of his party, but gave opposition members a share in civilian appointments. This was not only in accord with his principles, but also had the practical advantage of securing him united support in the crisis of the war, when defeat looked uncomfortably near and large areas of American territory, including the Capital, suffered invasion.

Monroe and the Tenure of Office Act

James Monroe took office in the so-called “Era of Good Feeling.” Strife between political parties was at a minimum during his two administrations. And he furthered the good feeling of that period by adopting what he called an “amalgamation policy,” under which selections for appointments were made irrespective of party.

This peaceful era was a deceptive calm before the storm.

The most significant event of Monroe’s administration—as the stable public service of that period plunged on, all unknowingly, toward the chaos that lay ahead—was passage of the Tenure of Office Act of 1820, which opened the door to the spoils system. This act and the rotation-in-office policy (aggressively

espoused by Andrew Jackson) formed, in fact, the twin cornerstones of the spoils system.

Under the provisions of the Tenure of Office Act, the terms of many officials were limited to 4 years, to correspond with that of the President. Ostensibly, the purpose of the act was to compel a regular submission of accounts, at the end of each term of office, from officials handling public funds. Supporters of the law claimed that most officials would be reappointed, but that a convenient means would also be provided for removing, by failure to reappoint, unsatisfactory officials without damaging their reputations.

Jefferson and Madison warned against intrigue and corruption that would result from this legislation, which changed the earlier Federal practice of permitting administrative and executive officials, except Cabinet officers, to serve during good behavior, as distinct from elective officers who served fixed terms. Jefferson wrote to Madison: "It will keep all the hungry cormorants for office in constant excitement." Madison agreed, and protested to Monroe, who nevertheless signed the bill.

Calm Under John Quincy Adams

The Tenure of Office Act made removal of all incumbents, whether satisfactory or not, easy and (eventually) customary. But neither Monroe nor John Quincy Adams took advantage of the immense power the act put in the hands of the Chief Executive. They both consistently reappointed to public office all those who had performed their work meritoriously.

Adams, as a matter of principle, refused to disturb the civil service after he came into office, although his political views were not the same as those of his three predecessors and he was under considerable pressure from his party for patronage. Carrying out his policy of "no changes for political reasons," he removed only 12 Presidential officers in 4 years. He was the last to make conservative use of the powers of appointment and removal.

Public service's four calm decades ended when his term expired in 1829.

An Evaluation

The first six Presidents were among the great men who helped formulate the Constitution. They hoped to make it work by giving the country both a sound Federal Government and wide liberty for the individual citizen. The spoils system would have been unthinkable to them as a system for staffing the civil service.

During those early years, of course, political parties had not yet become powerful, and the need for patronage was not felt strongly, either as a weapon in political warfare or as financial support for party treasuries and party workers.

The number of Federal jobs was small in those days, and Government expenditures, for payrolls or contracts, were not temptingly high.

In addition, there was still fairly general acceptance of the theory that Federal jobs were the property of the Government, not of the victorious political party.

Thus these Presidents were able to develop a civil service which, while not perfect, was of high quality. The civil servants of that day had both ability and integrity. It was a good civil service for its time.

It was also one to which the country could never return, even after the spoils system had been killed and buried, for the work of civil servants in that era was largely clerical and administrative routine. No distinction was then made between policymaking and policy-executing jobs. Little authority was delegated below Cabinet level. And, despite Jefferson's influences in the other direction, appointments were made largely from the more well-to-do families—the educated class—to the exclusion of the largest part of our population: the farmers, the workers, the small shopkeepers, and the frontiersmen.

The fact that it was not a democratic civil service was its greatest defect, and played a part in bringing on the evils of the spoils system—evils that are described vividly in the following three quotations.

“It Is a Detestable System”

It is a detestable system, drawn from the worst period of the Roman Republic. And if it were to be perpetuated—if the offices, honors, and dignities of the people were to be put up to public scramble, to be decided by the result of every presidential election—our Government and institutions, becoming intolerable, would finally end in despotism as inexorable as that at Constantinople.

—Henry Clay, U.S. Senator, on the Senate Floor: 1832

Every four years, the whole machinery of the Government is pulled to pieces. The country presents a most ridiculous, revolting, and disheartening spectacle. The business of the nation and the legislation of Congress are subordinated to the distribution of plunder among eager partisans. Presidents, secretaries [of departments], senators, representatives are dogged, hunted, besieged, besought, denounced, and they become mere office brokers. The country seethes with intrigue and corruption. Economy, patriotism, honesty, honor, seem to have become words of no meaning.

—George William Curtis, leader in the fight for civil service reform: 1870

The spoils system was more fruitful of degradation in our political life than any other that could possibly have been invented. The spoils-monger, the man who

peddled patronage, inevitably bred the vote-buyer, the vote-seller, and the man guilty of misfeasance in office.

—Theodore Roosevelt, Civil Service Commissioner, in a letter dated February 8, 1895

The “four calm decades” discussed earlier encompassed the administrations of our first six Presidents. Now we move on to the administrations of the next 15: the span of more than five decades from Andrew Jackson to Chester A. Arthur. That was the notorious “spoils era.”

Plague of Locusts

At the height of the spoils era, each change in national administration was the signal for wholesale removal of Government employees to provide jobs for the supporters of the new President, his party and party leaders, and sometimes for the leaders of a faction within the party. This occurred even on the death in office of a President and the succession of a Vice President. It became routine for the incoming President, his Cabinet, and the heads of agencies to put aside all other business for the month following the inauguration, in order to concentrate on settling the aggressive and conflicting claims of the hordes of officeseekers who descended like locusts on Washington.

The struggle for jobs caused much bitterness, and jobs were openly bought and sold.

Particularly under weaker Presidents, appointments under the spoils system were often made not by the President or the department heads but by Congressmen and political leaders. This was, for most of the better-paying jobs and the positions of influence and importance, largely a matter of rewarding the friends and punishing the foes of the leaders of the dominant faction of the victorious party.

However, for many positions of the clerical type, the pressures for patronage were more often to find jobs for certain constituents who could not otherwise find employment, as, for example, a widow who needed a job and went to her Congressman for help. The result of this type of patronage was to load the Federal payroll with persons who were hired not for their ability to do a job but because of their inability to find a job elsewhere.

Once appointed, the worries of a successful officeseeker were not necessarily ended until the next election. To keep his job, he might have to fight off disappointed but still hungry jobseekers, grant favors in his official capacity to party leaders, and contribute a portion of his pay to the party treasury.

Bestowing public office on individuals as a reward for political activity resulted, of course, in lack of continuity and experience, appointment of unfit incumbents, and encouragement of low moral standards, including the temptation of employees to seek, from public funds, reimbursement for the expense of getting and keeping jobs. Not only incompetence, but also graft, corruption, and outright theft were common.

Jackson Overvilified

Andrew Jackson, who became President in 1829, is rather widely identified in the public mind as the strongest supporter and the most extreme practitioner of the spoils system. This, however, is not in accord with the facts, although he did adhere to it on a more calculated and open basis than any previous President. Jackson did not originate either of the two major aspects of the spoils system: the application of the “rotation theory” to appointive officers or the use of patronage for practical political advantage.

It must also be borne in mind that well before Jackson took office, “spoils patronage” was solidly established in some States. This was especially true of several Northern and Western States, in particular New York, whose leaders (Aaron Burr, Martin Van Buren, William L. Marcy, and others) were hardheaded, practical politicians. These members of the so-called “Albany Regency”—all of them influential in the Jackson administration—had built up New York State’s strong political machine by cynical use of spoils patronage as a weapon in campaigns and in party warfare, and to build and maintain party strength.

The Presidential campaign of 1828 was one of the bitterest America had ever seen. The triumphant party was bent on revenge, and also on whatever incidental profit its members could secure. It was the Jacksonians whose battle cry against the supporters of John Quincy Adams was: “Turn the rascals out!” And it was Marcy, at that time a U.S. Senator, who coined a phrase destined to become well known in civil service history: “They see nothing wrong in the rule that to the victor belong the spoils of the enemy.”

That was in 1832, in a debate with Senator Henry Clay over Jackson’s nomination of Martin Van Buren as Minister to Great Britain. In that debate, Clay charged that “to this gentleman [Van Buren] is principally to be ascribed the introduction of the [spoils system] in the Government of the United States.”

Spoils System Triumphs

The professional politicians who rode into power behind the immense popularity of “Old Hickory” demanded that the system be introduced into the Federal Government—and the majority of the population supported them. There was a strong feeling on the part of many Americans that there was now a real need to “democratize” the civil service by bringing into it people from all strata of the

country, and not restricting it, as our first six Presidents had, to the better-educated classes.

Jackson, as party leader and as political leader, therefore had little choice, if he was to lead his party and its supporters. However, all indications point to Jackson as being quite ready to make Government jobs the spoils of political war. He removed many appointees solely to make room for his supporters and to provide patronage for the leaders of his party. He leaned heavily on patronage to strengthen his party and to gain support for his programs.

Fitness for office was given far less consideration under Jackson than under Jefferson, and the quality of public service was seriously affected for the first time. And, under Jackson, political sympathy and partisan activity were required as a condition of appointment—and so was an understanding, or sometimes an outright promise, of future partisan activity.

Jackson's Inauguration

An unprecedented horde of jobseekers flooded into Washington at the time of Jackson's inauguration. The aggressive and unruly manner in which they pressed their claims—in the Government departments, in the White House, in the Capitol—shocked a city accustomed to the dignified behavior of the Federalists.

The job-hungry mobs pushed and shoved into the White House on Jackson's Inaugural Day, and there snatched the cakes and other refreshments as greedily as they clamored for post office, customs house, and Treasury Department appointments. The new President was never free from their solicitations; his Cabinet officers were similarly besieged. They searched for job pickings in every nook and cranny of the Federal service.

Jackson attempted to justify his patronage policies on much the same grounds as those advanced by Jefferson when he “redressed the balance”—i.e., “better government,” “conformance to republican ideals and to the ‘high principle of rotation in office.’”

A Dangerous Bureaucracy

Jackson stated that the trained officials in Washington constituted a dangerous bureaucracy, and that continuance in an office would lead to the establishment of a proprietary right to that office.

He also believed, and so stated in his first annual message, that the “duties of all public offices are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance.” He added: “I cannot but believe that more is lost by the long continuance of men in office than is generally gained by their experience.” Washington and Jefferson had

taken the opposite view, recognizing the value to the Government of employees trained in administrative methods.

By Jackson's time, Government service had become relatively complex. Population had grown. Wealth had increased. New territories had to be administered, public lands sold, imported goods appraised for customs rulings, patents granted, etc. The rotation system, however, placed in these specialized positions men who had little or no training for them, and whose terms of office were too short and too uncertain to encourage them to undertake what today we call on-the-job training.

Professional politicians and greedy jobseekers weren't interested in efficiency, principles, or careers in Government service. They were interested only in what they could grab for personal profit. "Whether I shall get anything in the general scramble for plunder, remains to be proved," wrote one prominent jobseeker to a friend. "I think I shall, however, if it be only the Bergen lighthouse. I recommend you to push like the devil if you expect anything."

Campaign Promises

The wide discrepancy between Jackson's stated theories and his actions relative to the public service is notable. The party platform on which he ran for reelection in 1832, with Martin Van Buren as his running mate, contained a ringing condemnation of the spoils system, written by the party convention barely 3 months after Senator Marcy's "To the victor belong the spoils" speech. This was its wording:

The indiscriminate removal of public officers for a mere difference of political opinion is a gross abuse of power, and the doctrine lately boldly preached in the United States Senate, that to the victors belong the spoils of the vanquished, is detrimental to the interests, corrupting to the morals, and dangerous to the liberties of the country.

Lowest Ebb

As the rot of the spoils system increased following Jackson's administration, advertisements such as these became commonplace in Washington newspapers. They caused no comment—not even raised eyebrows. Everybody knew that Government jobs were handed out as rewards for political services or sold to the highest bidders.

Following William Henry Harrison's victory over Martin Van Buren, an Ohio Whig wrote to a friend, a Democrat who had a job in the U.S. Pension Office: "I want your place. I will come to Washington to look after the matter, and I will stay at your house until I get it through."

As much as \$5,000 was paid, in some cases, for the influence that would obtain a position paying only \$1,500 a year. Payment of a year's salary for a 4-year appointment was not uncommon. The public treasury supplied the means by which appointees repaid themselves.

Now that the spoils system had taken firm root in the Federal Government, it seemed almost impossible to eradicate, although committees investigating the conduct of appointees during Jackson's incumbency uncovered startling evidences of fraud, inefficiency, and disloyalty to the interests of the Government.

Van Buren: Heir Apparent

Jackson handpicked Martin Van Buren as his successor, and his opponents dubbed him "the heir apparent." Educated in the spoils-oiled political machine that controlled New York State, Van Buren proved himself a master at building a political machine at the Federal level. With Jackson's influence, and with the support of the officeholders whom he had indebted to himself during Jackson's administration, Van Buren was elected. His election was an outstanding example of success won through the spoils system.

After his inauguration in 1837, Van Buren closely followed Jackson's politically motivated method of removals and appointments. For this the Whig press castigated him roundly, although the Whigs were soon to be back in office and enthusiastically doing the same thing.

The results of Jackson's wide-open spoils system operations caught up with Van Buren. Defaulters in public office were discovered in dismaying profusion, including the notorious Samuel Swartwout, Collector of the Port of New York, whose funds had been found \$210,000 short during his first term of office under Jackson. He had nevertheless been reappointed and then, under Van Buren, he decamped to Europe with over \$1,250,000 of Government money. A series of bank failures began, with accompanying loss of Federal funds which the Government had deposited in them for political rather than for sound financial reasons. The panic of 1837 caused a countrywide economic depression.

And now, for the first time, the cry for reform of the spoils system arose. It came, significantly, not from the politicians, but from the people. Unfortunately, reform was a futile hope at that time.

Tippecanoe . . .

Indignant though they had been over Jackson's and Van Buren's use of the removal and appointing authority, the Whigs lost no time in making use of the same tactics when William Henry Harrison became President in 1841.

Van Buren had sought reelection as the “Champion of the People,” but Harrison, an elderly military hero, won by his spectacular “Log Cabin” campaign, on his past glory as a general (the public never forgot his victory over the Indians at the Tippecanoe River in 1811), and on his promise of reform of Government administration. His running mate was John Tyler. Unfortunately, the spoils virus had by this time so thoroughly infected the body politic that “reform,” to the mass of Harrison’s followers, meant only one thing: the chance to get someone else’s job.

This time some 40,000 officeseekers swarmed into Washington for the inauguration. Armed with letters, claims, and gall, they took up their stations in Cabinet members’ offices and in the White House. Some brought bedding and slept in the White House corridors.

Harrison was in favor of one part of the spoils system but not another. While in favor of rewarding his political adherents by giving them public jobs, he planned to remove large numbers of officeholders because of political activity while in office and called for a revival of Jefferson’s prohibition against it. On March 20, 1841, Daniel Webster, Secretary of State, issued, at Harrison’s direction, an order prohibiting political activity by Federal employees.

Harrison, who was nearly 70 when elected, was worn out when he took office, by both the strain of the campaign and the importunate demands and counterdemands of the jobseekers. He became ill during the third week of his term and died during the fourth. The official certificate gave pneumonia and general weakness as causes of death, but the opinion of many historians is that the real cause was the spoils system, which 40 years later was to cause the death of another President.

. . . and Tyler Too

John Tyler, who succeeded Harrison, was not really a member of the Whig Party, but he considered himself bound to carry out Harrison’s intentions as to removals and appointments. However, it is generally considered by historians that he proceeded with more moderation than Harrison had planned to use.

Now that the spoils system had achieved bipartisan approval at the national level, there could no longer be any hope that it would be merely a temporary phenomenon on the American political scene. The United States was entrapped by a pernicious personnel system which had no real future and an inglorious past, but which knew well how to make the most of the present.

Spoils System at Its Height

During the 1845–65 period, the spoils system functioned at its most unrestrained. The grossly corrupted Federal service had become a national scandal.

Wholesale dismissals and replacements followed when James Polk was inaugurated in 1845; when the Whigs came in again with Zachary Taylor in 1849; when Millard Fillmore succeeded Taylor on the latter's death in 1850; when the Democrat, Franklin Pierce, took office in 1853; when the Democrat, James Buchanan, succeeded Pierce in 1857; and when the Republican, Abraham Lincoln, became President in 1861.

Polk, in his inaugural speech, promised the removal of dishonest officers, but was silent as to retention of those who had performed meritoriously. The usual multitude of officeseekers, encouraged by his attitude, descended on Washington, and Polk removed more incumbents than any of the 10 Presidents who preceded him.

The vicious effects of the spoils system became increasingly apparent. General Winfield Scott found himself seriously hampered in the Mexican War by insubordinate volunteer officers who had been appointed for political reasons. The spoils system having been extended into the Army and Navy, it impaired the effectiveness of our forces not only in 1848, but also in many Civil War campaigns.

W.H. Seward (later Secretary of State under Lincoln) wrote of Taylor's inauguration in 1849: "The world seems almost divided into two classes: those who are going to California in search of gold, and those going to Washington in quest of office."

During Taylor's administration, one-third of the total of Government employees resigned or were removed. By this time the political opinions even of applicants for the position of doorkeeper were being carefully examined.

A Gesture Toward Reform

In 1851—while Fillmore was President—Congress passed a resolution requesting the Cabinet officers to formulate:

. . . some plan of classifying the clerks in the several departments; for apportioning their salaries according to their services; also, some plan to provide for a fair and impartial examination of the qualifications of clerks and for promoting them from one grade to another, upon due regard to their qualifications and services.

This was a significant straw in the wind in an era of general degradation in the public service. The resolution was obviously designed to remedy some of the worst defects of the spoils-system civil service.

As to salaries, the resultant 1853 legislation merely set a salary scale for four “grades” of clerks in the Washington offices of the Treasury, War, Navy, and Interior: from \$900 to \$1,800 annually.

Pass Examinations

The 1853 legislation, however, contained a provision that is historically significant: It was the first Federal attempt to secure the appointment of qualified employees in the public service. The major departments were required to establish examining boards to hold “pass examinations” for applicants in the four clerical grades in the Washington service.

Pass examinations were not the solution, and they were often cynically applied. A pass examination was restricted to one person and he usually secured this privilege through political pull. Requirements for identical positions were varied according to the person taking the examination. Questions were often farcical, such as “What did you have for breakfast this morning?” Often the examination, though required by law, was omitted entirely.

However, the grotesque pass examination was the ancestor of the democratic “competitive examination” which, introduced in 1872, was established on a permanent basis by the Civil Service Act in 1883.

Pierce and Buchanan

Attempts at reform seemed useless. The 1853 act was considered to be as much as Congress had either the desire or the power to accomplish.

By the time Franklin Pierce was inaugurated in 1853, the spoils system had become the accepted means of conducting the public business. Now different factions of the incoming political party began to quarrel over the division of the “spoils of the enemy.”

Even Senator Marcy, originator of the spoils-system slogan, attempted, as Secretary of State, to bring a measure of reform into his department. He failed.

Buchanan entered the Presidency in 1857, in a period of gathering political storms. The country was seething with conflict which in 4 years would burst into a bloody civil war.

Buchanan, however, busied himself with spoils-system operations as though no crisis impended. He removed all officeholders who had supported Pierce, his rival for nomination, although they were nominally members of the same political party. This marked a culminating development of the spoils system: thereafter, Government employees were to be removed not only for affiliation with the defeated party but for supporting an unsuccessful nominee of the victor’s own

party. The bitterness caused by this policy was no aid in uniting the Democrats to combat the rising power of the new Republican Party.

And Buchanan issued what was probably the most extreme statement on spoils ever made in the United States when he announced that, in carrying out the policy of rotation, the civil service should be completely remanned and that he would reappoint no person whose term of office had expired, except under the most unusual circumstances. Thus the breaking-in of an entirely new set of officials every 4 years, or oftener, appeared to have been made compulsory by Buchanan's interpretation of "rotation."

This was the somber stage setting that greeted Abraham Lincoln in 1861.

Reaction Against Spoils

During Lincoln's first term, the spoils current was running strongly, but a countercurrent now began to make itself felt. The population of the country was growing, the demands on our Government increasing. The need for a trained civil service, stable yet responsive to changing policies, became more and more important, and public calls for reform grew.

Lincoln: Idealist and Realist

Abraham Lincoln was an idealist, as amply proved by his words and deeds. He was also a political realist.

Trained in the hard realities of pioneer life, educated in the rough-and-tumble State and National legislatures of the time, he knew the political game. In spite of a profound dislike of the spoils system and a clear realization of its dangers, he made in 1861 the cleanest sweep of office-holders yet seen. He accepted conditions as they were, and turned the spoils system into an instrument to gain and keep the political support he needed in the emergency he faced. He used patronage to combine the diverse, hostile elements of the new Republican Party, and to obtain the cooperation he needed from Congress during the Civil War.

At Lincoln's inaugural, not all minds were occupied with thoughts of war and the perilous days ahead. This was the first victory of a party which had conducted its first campaign only 4 years before, and its politicians were eager to profit. Crowds of victorious party workers flocked to the Capital to present, in terms payable in Federal positions, their bills for party service.

Lincoln made over 1,400 removals of incumbents of positions which had been filled by Buchanan. That was more than twice as many removals as Pierce had made—and Pierce up to then had held the record.

Mobs of Officeseekers

All day long, in his first weeks as President, Lincoln heard the restless tramp of jobseekers up and down the White House corridors. When he left his office, he had to pass through a mob whose members pushed and shoved about him and tried to thrust papers and petitions into his hand. He could hardly snatch the time to attend to the grave issues facing the country, because of constant interruptions from jobseekers.

Although he made political capital out of the spoils system, his exasperation with it is well documented.

Schuyler Colfax, Vice President of the United States from 1869 to 1873, wrote:

Lincoln was annoyed from the very opening of his administration by persistent officeseekers engrossing nearly all his time. He used to exclaim: "I am like a man so busy letting rooms at one end of his house that he has no time left to put out a fire that is blazing and destroying at the other end."

On another occasion, pointing out to a friend the swarming, eager multitude of jobseekers thronging the White House, Lincoln said: "There you see something which will in the course of time become a greater danger to the Republic than the Rebellion itself."

And once, when he was ill with smallpox in the White House, he said to his attendants: "Tell all the officeseekers to come in at once, for now I have something I can give to all of them."

Lincoln found spoils a distinct hindrance in both civil and military administration. Civilians who were influential politicians received commissions ranking them ahead of experienced soldiers, and the humorist Artemus Ward laid the blame for the Union's loss of the first Battle of Bull Run on the news of three vacancies in the New York customhouse.

It is possible that the Civil War would have been ended much sooner than it did if Government appointments had been made on the basis of ability.

New Attempts at Reform

Even during the stress of the Civil War, a new movement was begun to increase the efficiency of the Federal service by changing the method of appointments. Earlier attempts had ended in failure, and the Civil War attempts at reform made little more impact. Yet during the next 20 years, scarcely a session of Congress went by without the introduction of at least one civil service reform bill. The work, individual and cumulative, of many forward-looking statesmen was to be needed

before a practical, permanent instrument of reform, the Civil Service Act of 1883, was enacted.

In 1863, John Bigelow, American Consul General in Paris, at the request of Secretary of State Seward, submitted a report on the French customs service, which described and recommended a system of appointment by competitive examinations. In 1864, Senator Charles Sumner introduced a bill requiring that civil service appointments be made by competitive examination.

Lincoln himself, although he had made such extensive use of patronage, dealt a blow to the influence of the rotation theory when, at the beginning of his second term, he rejected proposals that he remove officials appointed during his first administration to make room for a new set of supporters as yet unrewarded. He felt that the time had now come when he could discard the cumbersome and disagreeable spoils system, and he refused to turn out experienced workers and undertake the labor and worry of replacing them. From the date of his refusal, the slow death of the rotation theory began, although it was still to continue through many administrations.

Had Lincoln Lived

Had Lincoln lived, not only might the reconstruction of the South have been accomplished without causing long-lingering bitterness, but reform of the Federal civil service might have been achieved much sooner. Instead, the contest between Congress and the President for control of the spoils of office was renewed after Lincoln's tragic death in a struggle more bitter and persistent than before.

Johnson's Succession

Andrew Johnson, Lincoln's successor, was a "Jacksonian Democrat" who had been nominated as Vice President by the Republicans in an attempt to conciliate all factions and gain unified support for the war. For many years, as Congressman and as Senator, Johnson had been an advocate of the Jacksonian spoils theory, and, in his bitter fight with Congress for control of the Reconstruction, he used patronage to strengthen his position.

The impeachment proceedings finally brought against him were caused by a controversy between him and Congress over the removal power: Congress passed the Tenure of Office Act of March 2, 1867, over his veto, extending the requirement of Senate concurrence even to removals of Cabinet members. Johnson considered the act unconstitutional, summarily removed Secretary of War Edwin M. Stanton, and the resultant impeachment proceedings lacked only one vote of the two-thirds majority necessary for conviction.

Reform Movement Gains

By this time the public was becoming increasingly disenchanted with the spoils system. The expense and scandals it caused in the Federal service were attracting attention and causing disgust. The cost of the Federal service had been much increased by the creation of many useless positions, in attempts to satisfy as many jobseekers as possible. Some positions were held by absentees who rendered no services at all or hired substitutes to do their "work" at lower salaries.

A climate favorable to reform was developing rapidly. Reformers, convinced that the United States was being sold short for the benefit of the political parties and bosses, had been for decades an uninfluential minority. Now they began to be heard.

A Major Milestone

Still another unsuccessful step toward civil service reform was attempted by the Joint Select Committee on Retrenchment, which had been directed to inquire into, among other things, the question of examinations for appointments to Federal jobs. Congressman Thomas A. Jenckes of Rhode Island, the first of the great names in civil service reform, was an important member of this committee.

In 1868 its final report, a major milestone on the road to reform, contained a thorough discussion of the evils of the existing system, together with detailed analyses of the public-service systems in Great Britain, France, Prussia, and China. It recommended the introduction of competitive examinations. The novelty and sweeping nature of this recommendation are probably what caused its defeat.

But this defeat could not stem the rising tide of reform sentiment.

Nor were the studies, reports, and bills of Jenckes and the Retrenchment Committee wasted. They provided valuable information, and ammunition, for such later reform leaders as George William Curtis, Dorman B. Eaton, Carl Schurz, William Dudley Foulke, Everett P. Wheeler, and Silas W. Burt; and their influence was important when the Pendleton Act, which established the merit system in 1883, was under consideration.

Spoils on the Defensive

By 1870, the reform movement had begun to pick up steam.

But the reformers had no easy task. Although the spoils system was no longer gaining strength, and even had gone somewhat on the defensive, its adherents were prepared to fight it out from strongly entrenched positions with skilled

leadership and overwhelming numerical superiority. And the professional politicians still did not feel too worried about the efforts of the reformers, whom they had long contemptuously regarded as idealistic and naive amateurs.

It is interesting to note how the dominant power over patronage shifted from era to era. Carl Russell Fish, in his book, "The Civil Service and the Patronage," stated that Washington controlled appointments more than any other President; that under Monroe, Cabinet members possessed their greatest power; that under Pierce, the congressional State delegations were most dictatorial in patronage matters; and that senatorial courtesy became preeminent later and Senators the principal patronage dispensers.

Grant Elected on Reform Platform

Gen. Ulysses Grant was elected on a reform platform, which included a promise of civil service reform. However, he did not mention civil service reform in either his inaugural address or his first annual message. This omission surprised and disappointed proponents of improvement in the Federal service.

But Grant did appoint Jacob D. Cox as his Secretary of the Interior, and Cox introduced the merit system into the Interior Department by a departmental order dated July 1870, under which appointments in the Patent Office, the Census Bureau, and the Indian Office were to be made on the basis of competitive examinations. But the pressure on Cox from spoils politicians was too great, and in November of the same year he resigned.

Also in July 1870, George S. Boutwell, Secretary of the Treasury, issued a departmental order setting up a system of competitive examinations from which appointments to lower-grade Treasury positions were to be made. These were described in the order as "written examinations adapted to a moderate standard of attainment."

"Abuse of Long Standing"

Although Grant's two administrations were marked by corruption on the part of many of his appointees, it is nevertheless true that he came out strongly for civil service reform.

In his second annual message in December 1870, he asked Congress for a law "to govern not the tenure but the manner of making appointments." "Always favoring practical reforms," his message continued, "I respectfully call your attention to one abuse of long standing, which I would like to see remedied by this Congress by means of a reform in the civil service of this country . . . The present system does not secure the best men, and often not even fit men, for public place."

A number of bills were introduced in response to Grant's plea, but none met with success. Finally, however, on the closing day of the session, March 3, 1871, a rider was attached to the last appropriation bill, reading:

The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and to ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability . . . and for this purpose [the President] may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

Twenty-five thousand dollars was appropriated for this purpose.

Modest Launching

Senator Lyman Trumbull of Illinois, who introduced this law, said: "It goes a very little way but it is a beginning in the right direction, and I should hope that good would grow out of its adoption." With this modest introduction, the first Federal merit system was launched.

This law is codified in sections 3301 and 7301 of title 5, United States Code; under its authority, and that of the Civil Service Act of 1883 (codified in title 5, United States Code), the President issues Executive orders governing the civil service.

First Civil Service Commission

Under the 1871 act, President Grant appointed an "Advisory Board of the Civil Service," later called the "Civil Service Commission." It consisted of seven members: three from within the Government service, four from outside. George William Curtis, noted writer and one of the great leaders in civil service reform, was chairman.

The "Grant Commission" died in 1873 when Congress, influenced by the still-strong forces favoring patronage, refused to appropriate further funds for it. However, its 1871 report is an interesting and significant document in any study of America's progress toward the merit system.

Among other things, it wisely advised that no attempt be made to control the President's power of removal, and by this recommendation it effected a long-needed separation of the civil service reform movement from the Senate's struggle for superiority over the President with respect to removals.

The rules recommended by this early Commission provided for:

- Classification of all positions into groups according to the duties to be performed, and into grades for purposes of promotion.
- Competitive examinations for appointment to all positions within the lowest grade of each group.
- Competitive promotion examinations to fill positions in grades above the lowest.
- A 6-month probationary period following appointment.
- Boards of examiners in each department to do the actual work of examining candidates and maintaining lists of qualified applicants.

In April 1872, competitive examinations under the Commission's rules were held for appointments to civil service positions in the cities of New York and Washington.

Appropriations Cut Off

This was a tentative first step toward establishment of a merit system, but no second step was taken at that time. After Congress cut off the Commission's funds in 1873, Grant declared in his 1874 annual message that, unless positive support was forthcoming from Congress, he would drop the experiment. When Congress adjourned without making any appropriation for the Civil Service Commission, Grant, in March 1875, formally abandoned the first trial of competitive examinations in this country.

This 3-year trial of the merit system, though it ended in a setback, was valuable to those who advocated measures that were put into effect by the Civil Service Act of 1883. Grant's Commission was perhaps too ambitious. Its members attempted to solve, in addition to the problem of competitive examinations for entrance, such thorny problems as position classification, competitive promotion, and efficiency ratings.

But that first Civil Service Commission did accomplish enough to prove that the merit system was both beneficial and practical, and that its reintroduction was a worthwhile aim.

Hayes Backs Reform

Rutherford B. Hayes entered the Presidency in 1877 without the full support even of his own party (no candidate had an undisputed electoral majority).

But Hayes took seriously his campaign promise of civil service reform, and endeavored throughout his administration to gain legislative cooperation. In his first annual message, he asked for money to administer the act of 1871, calling attention to the fact that Grant's Commission, although inactive because of lack of funds, was still in existence. Hayes did not get the money, but he appointed Carl Schurz, another great name in the reform movement, as Secretary of the Interior. Schurz revived the merit system, which had been initiated in his department by Cox in the Grant administration.

The civil service reformers were encouraged by Hayes' attitude, and his administration became in fact a period of rapid growth both in the activity of the reformers and their support by the public. A number of reform associations were formed, which later combined as the National Civil Service Reform League.

Congress, however, remained unresponsive, and the only gains made by Hayes were those which he could accomplish by use of his executive authority.

He issued a number of Executive orders reviving and extending competitive examinations for appointments, and prohibiting political activity by Government employees. He instituted competitive examinations in the New York City customhouse in 1879, and in the New York City post office in 1880.

In his last annual message—December 1880—Hayes stated:

In the city of New York during the past 2 years, over 2,000 positions in the civil service have been subject, in their appointments and tenure of place, to the operation of the published rules for this purpose. The results of these practical trials have been very satisfactory, and have confirmed my opinion in favor of this system of selection.

Assassination of Garfield

James A. Garfield, taking office in 1881 as a fourth consecutive Republican President, was inaugurated at a time when, although the spoils system was still in massive use, the executive branch was pushing moderately hard for civil service reform, public opinion was moderately favorable toward it, and the Congress was moderately rather than violently opposing it. This moderate political action and reaction might have gone on indefinitely, accomplishing little or nothing, had a shocking event not acted as a sudden catalyst.

Garfield, like his immediate predecessors, had the preelection support of the reform element. On the basis of his record, he was strong for reform. As a Congressman, his first speech in 1870 had attacked political influence in appointments. He had also supported measures to continue appropriations to Grant's Civil Service Commission. However, Garfield's inaugural address

mentioned only regulation of removals and omitted all reference to the competitive examinations his party platform had endorsed.

Then followed a patronage dispute between the President and Senator Chester A. Conkling over the collectorship of the Port of New York, a dispute which attracted much attention and especially interested the eccentric Charles J. Guiteau, who, along with the hordes of other officeseekers, had been visiting the White House daily to press his claim to a job.

On the morning of July 2, 1881, as the President was waiting in the old Baltimore and Potomac railroad station in Washington for a train to take him on a vacation trip, Guiteau, using a 44-caliber British "Bulldog" revolver, fired two shots at him. The first cut across the President's arm. The second entered his back and, 2 and a half months later, on September 19, proved fatal.

"That cruel shot," wrote historians Charles A. and Mary R. Beard, in "The Rise of American Civilization," "rang throughout the land, driving into the heads of the most hardened political henchmen the idea that there was something disgraceful in reducing the Chief Executive of the United States to the level of a petty job broker."

Public Reaction

The country's profound reaction was mirrored in Harper's Weekly, the influential magazine which was edited by George William Curtis, one of the most noted of civil service reformers. In a special issue dated July 8, 1881, and devoted entirely to the shooting, an editorial by Curtis, "The Tragedy at Washington," began: "No Fourth of July in our history was ever so mournful as that which has just passed."

In Harper's issue of September 24, the leading editorial was lined in mourning black, and began: "At last the blow so long apprehended has fallen. He is dead."

The October 1 issue contained an editorial, "The Significance of Guiteau's Crime," in which the spoils system was eloquently condemned by Curtis. Following is an excerpt:

But for the practice which we have tolerated in this country for half a century, and which has become constantly more threatening and perilous, Guiteau would not have felt that working for the party gave him a claim to reward, or a right to demand such a reward as his due and to feel wronged if he did not get it. This dire calamity is part of the penalty we pay for permitting a practice for which as a public benefit not a solitary word can be urged, and which, while stimulating the deadliest passions, degrades our politics and corrupts our national character. The spoils system is a vast public evil.

Letter to Garfield

Guiteau was executed on June 30, 1882.

Although insanity was raised as a defense at Guiteau's trial, the general consensus that Garfield was literally slain by the spoils system is borne out by a letter Guiteau wrote to the President a little over 3 months before the shooting.

In the fall of 1880, Guiteau had been a Garfield campaign worker and had written a leaflet advocating his election. The leaflet was incoherent and full of factual errors, but Guiteau maintained that it swung the election to Garfield.

After Garfield took office, Guiteau decided that he was entitled to be appointed United States consul in Paris. In addition to visiting the White House daily, he bombarded Garfield with letters, which Garfield never answered. On March 26, 1881, he wrote a letter that read (emphasis added):

Gen. Garfield:

I understand from Col. Hooker of the Nat'l committee that I am to have a consulship. I hope it is the consulship at Paris, as that is the only one I care to take. Wish you would send in my name for the consulship at Paris. Mr. Walker, the present consul, has no claim on you for the office, I think, as the men that did the business last fall are the ones to be remembered.

Very respectfully,

Charles Guiteau.

No more revealing description of the spoils system had ever been penned.

The Merit System Is Born: 1883

Birthday: January 16, 1883

President Garfield's death aroused more public indignation than the reformers had been able to stir up over the previous two decades. Impatience now became anger. The spoils system was denounced by the press and from pulpits, but Congress, apparently underestimating the strength of the popular feeling, still dragged its feet on civil service legislation.

Reformers Win Victory

On December 6, 1881, 2 and a half months after Garfield's death, Senator George H. Pendleton of Ohio, chairman of the Senate committee on Civil Service Reform, introduced a bill. This bill had been drafted by Dorman B. Batton, assisted by George William Curtis and other members of the National Civil Service Reform League.

The National Civil Service Reform League was one of the most powerful forces backing the merit system. It was founded in 1881, a month after the assassination of Garfield, by a consolidation of a number of local civil service reform groups. The new league made the passage of a national civil service law its first project.

The Pendleton bill was reported to the Senate on May 15, 1882. It aroused little enthusiasm in Congress, although petitions for civil service reform, signed by thousands of names, had been received throughout the session.

In a report of May 1882, the Senate Committee on Civil Service and Retrenchment published a blistering report on the spoils system. Following are its four key paragraphs:

The President is compelled to give daily audience to those who personally seek places, or to the army of those who back them. He has to do what some predecessor of his has left undone, or undo what others before him have done; to put this man up and that man down, as the system of political rewards and punishments shall seem to him to demand. Instead of the study of great questions of statesmanship, of broad and comprehensive administrative policy, either as it may concern this particular country at home or the relations of this great nation to the other nations of the earth, he must devote himself to the petty business of weighing in the balance the political considerations that shall determine the claim of this friend, or that political supporter, to the possession of some office of profit or honor under him.

The office of the Chief Magistrate has undergone a radical change. The President of the republic created by the Constitution in the beginning, and the

Chief Magistrate of today, are two entirely different public functionaries. There has grown up such a perversion of the duties of that high office, such a prostitution of it to ends unworthy of the great idea of its creation, imposing burdens so grievous and so degrading of all the faculties and functions becoming its occupant, that a change has already come in the character of the Government itself, which, if not corrected, will be permanent and disastrous. Thus hampered and beset, the Chief Magistrate of this nation wears out his term and his life in the petty services of party and in the bestowal of the favors its ascendancy commands. He gives daily audience to beggars for place and sits in judgment upon the party claims of contestants.

The Executive Mansion is besieged, if not sacked, and its corridors and chambers are crowded each day with the ever-changing but never-ending throng. Every Chief Magistrate since the evil has grown to its present proportions has cried out for deliverance. Physical endurance, even, is taxed beyond its power. More than one President is believed to have lost his life from this cause. The spectacle exhibited of the Chief Magistrate of this great nation feeding, like a keeper of his flock, the hungry, clamorous, crowding, jostling multitude which daily gathers around the dispenser of patronage is humiliating to the patriotic citizen interested alone in national progress. Each President, whatever may be his political associations, however strong may be his personal characteristics, steps into a current, the force of which is constantly increasing. He can neither stem nor control it, much less direct his own course, as he is buffeted and driven hither and thither by its uncertain and unmanageable forces.

The necessity of good administration imperatively demands a change. The Executive must be lifted out of this current, or be carried away with it.

Voters Act

The fall elections of 1882 demonstrated beyond any doubt that the people wanted the Civil Service Act to become law. Newspapers and magazines continued printing articles blasting the spoils system, and ministers continued preaching sermons calling for reform. No action having been forthcoming from Congress, the enraged voters took advantage of the 1882 elections to show unmistakably that they meant business. In a number of congressional districts, the issue of civil service reform decided the election. In the important State of New York, Grover Cleveland, reformist mayor of Buffalo, was elected Governor.

When Congress met again, its mood was positive toward reform. Some of its members having been soundly defeated on the reform issue, the legislators were at last convinced.

Powerful help came when Chester A. Arthur, President since Garfield's death, who had been considered a spoilsman, declared that he would give his "earnest support" to whatever civil service legislation Congress should enact, and that,

failing enactment of legislation, he would recommend an appropriation to restore Grant's Civil Service Commission. He urged Congress to act immediately—and Congress did.

On the first day of the new session, December 12, 1882, 7 months after the bill had been reported to the Senate, debate began on it and continued almost daily until December 27.

The final debate was largely concerned with the effect the bill, if enacted into law, would have on the two major political parties. The basic issue involved was that the Republicans had been in office for 20 years but the Democrats anticipated victory in the Presidential elections in 1884. The Democrats, of course, hoped to do some vigorous “redressing of the balance.”

Those Opposed

Many Democrats therefore opposed the bill because they believed it would retain Republican appointees in office and give Democrats a chance to compete only for new vacancies that might be created. Taking the position that the Pendleton bill did not go far enough, they called for more thoroughgoing legislation, which would throw all positions open to competitive examination, including those held by Republican appointees.

Opponents scoffed at the bill, with humorous reference to the “Chinese origin” of the competitive examinations, the “unsophisticated character” of the reformers, and the “preferable procedure” of playing poker or tossing coins for Government jobs.

More serious objections spoke of the alleged un-American and monarchical nature of the system, the danger of Government workers becoming an aristocratic class.

Opponents further claimed that the bill was British, not American; that business firms did not use competitive examinations; that only college graduates would have a chance; that examinations would favor younger persons at the expense of older applicants; and that political parties could not exist unless they could reward their workers from the public treasury.

How much these objections represented real fears and how much they cloaked more practical objections is difficult to determine.

There was extended argument about the power of removal, many Senators feeling that limitations on the President's power of removal would be necessary to insure adequate reform.

Those in Favor

On the removal issue, the bill's supporters took the view that there would be no temptation to remove employees for political reasons if the replacements could not be selected politically. This approach avoided problems that had arisen in earlier attempts to reform the civil service by legislation. Earlier bills had been strongly objected to on the grounds that they impinged on the President's constitutional powers of removal. The Pendleton bill, following the lead of the Grant Commission, avoided this issue.

Advocates of the bill stressed the evils of the spoils system and pointed out the efficiency, economy, and democracy of the merit system. They backed their statements with facts and figures about those parts of the service where open competitive examinations had already been tried. In the New York City post office, for example, the volume of business had increased severalfold since the introduction of competitive examinations, but the cost of personnel had increased by only 2 percent.

Another argument for the bill was the relief the President and Members of Congress would obtain from the burdensome demands of officeseekers.

The Vote

In the Senate, the vote was 38 to 5 in favor of the bill, with 33 Senators absent. As a result of the Senate debate, the bill had been amended in a number of respects.

In the House, where there had been almost no debate, the vote was 155 for and 47 against, with 85 not voting.

The vote on the bill did not follow party lines, but cut across them.

Passage was a dramatic example of the impact that an aroused citizenry can have on governmental processes in the United States.

The Signing

And then, at long last, the epoch-making bill, marking the beginning of the merit system in Federal service, came up for signature. It had been introduced by a Democratic Senator, George H. Pendleton, and it arrived on the desk of a Republican President, Chester A. Arthur, on January 16, 1883.

The Cabinet met with the President that morning, at his request, specifically to discuss Senator Pendleton's bill. The meeting was front-paged not only by Washington's leading newspapers—Star, Post, and National Republican—but

also by New York's Tribune and Sun. This coverage indicated the high importance of the occasion, for it had to compete with many other items of news.

General Grant was in town, and drew admiring crowds as he strolled down Pennsylvania Avenue.

Red Cloud, the Sioux Indian Chief who had once terrorized the frontier, was also in town, bitter and very vocal about losing the peace.

There was considerable comment about the new Ambassador who had just arrived from the Kingdom of Hawaii.

Congress was debating bigger pensions for veterans of the Mexican War.

The cause of the merit system was helped in the news that day by reports of a fanatic who, calling himself "Charles Guiteau, the Second," had threatened to murder the Governor of Massachusetts because of a grudge involving a patronage job.

The Cabinet meeting lasted several hours. At its conclusion, President Arthur signed the Civil Service Act into law.

The First Fifty-five Years: 1883–1938

The body of law and practice designed to prevent the entrance of political and other improper considerations into the process of selection [for Federal jobs] were, in the main, products of a great popular movement in the '70s and '80s. The force behind that support was the more remarkable because it represented the economic and social aspirations of no particular group. It may be said of it, as of few other forces in our political history, that it sprang from a moral or idealistic revolt, on the part of citizens of all such groups, against a system that debauched and degraded political life.

—Lewis Mayers in “The Federal Service”

The immensely important new Civil Service Act was designated: “An Act to Regulate and Improve the Civil Service of the United States.”

It was, and is, a blueprint for a civil service America could respect and trust. Its basic principles, which have not changed in 120 years, have stood both the test of time and the transition of the United States from a pioneer society to one of the most complex in the world.

It provided for a Civil Service Commission of three members (appointed by the President with the advice and consent of the Senate), not more than two of whom could be adherents of the same political party. Recommendation of applicants for career jobs by Members of Congress on matters other than character and residence could not be considered. Veteran preference provisions already on the statute books were reaffirmed by the act, and employees were protected from political removals, demotions, and assessments. Appointments were to be made from those graded highest in practical examinations.

The Civil Service Act gave this country, for the jobs it covered, a completely democratic hiring system: first, because it required that these Federal positions be filled through competitive examinations which were open to all citizens; second, because it required selection of the best-qualified applicants without regard to political considerations. Merit, as a basis for hiring, was now guaranteed by law.

To the citizen who applies for a Federal job and for the one who is a Federal career worker, the merit system established by the Civil Service Act is, to this day, a guarantee that he may qualify for a job on the basis of ability to do the work, without discrimination with regard to race, religion, national origin, sex, politics, or any other nonmerit factor. It entitles him to consideration for promotion on the same basis, and it provides protection from arbitrary dismissal and from being obligated to render any political service or tribute.

To the citizen who is not a Federal employee and who does not seek such employment, the merit system guarantees selection of the best-qualified people available for the public service. It requires of public servants high standards of conduct and competence in their employment.

To all citizens, it means a stable Government service capable of preserving the continuity of essential Government programs required by the American people. It means freedom from the upheavals of the old spoils system, which, with each change of administration, saw such mass removals of Government workers that the Government machinery was frequently brought to a complete standstill.

It is important to remember that merit selection had important goals in addition to that of eliminating the spoils system, namely: obtaining the best-qualified people available; giving all citizens an equal chance to compete for jobs or careers in the public service; serving the cause of good government; and raising the prestige of the public service.

At the outset only some 13,900 positions—clerkships ranging in salary from \$900 to \$1,800 a year—were placed in the competitive civil service system. These positions—all of them in the Washington departments or in field post offices and customs houses—represented only 10.5 percent of the 132,800 positions in the civil service of the time. The remaining 89.5 percent were still staffed under the spoils system, which was obviously far from dead, even after the passage of the act.

Two main threads are evident in the developing civil service story: the gradual extension of the act's coverage plus the establishment of parallel merit systems to accommodate unique conditions in such Government agencies as the Tennessee Valley Authority and the Atomic Energy Commission; and the transformation of the civil service into a modern, responsive instrument to perform the will of the people in an increasingly complex society.

Arthur Appoints First Commission

The first Civil Service Commission took office on March 9, 1883. The establishment of the Commission provided a permanent central agency responsible for transforming into reality the ideals of the civil service reform movement.

This movement did not cease when the act was passed. It continued as a potent political factor, but henceforth with a twofold goal: the strict enforcement of the act and the extension of the competitive service.

First Rules

The first Commissioners worked day and night prior to the date—July 16, 1883—when the provisions of the act were to go into effect. Their first task was to draft civil service rules. At the little table now on display [in the main lobby of the Theodore Roosevelt Building], they drafted the original rules.

These first rules—promulgated by President Arthur on May 7, 1883—divided the competitive service into three branches: the departmental service in Washington; the postal service; and the customs service. Minimum-maximum age limits for postal service candidates were set at 16 and 35, in the other services at 18 and 45. Four names to be considered for each vacancy by appointing officers were to be certified from the top of the register of eligibles. In 1888, this was changed to three.

Appropriations were not large enough to enable the Commission to hire the necessary number of people to do its work. The three commissioners' first staff consisted of four employees.

To augment its scanty resources, it was forced to borrow employees, office space, and even stationery from other Government departments. Significant light is thrown on the scope of the Commission's earliest activities by the fact that when it moved from temporary quarters in a private dwelling to the Agriculture Department Annex, Mr. Doyle, the stenographer, and Mr. Halloran, the messenger, moved all the Commission's belongings in a pushcart.

Boards of Examiners

The Commission prepared application forms, established registers of eligibles, and toured the country setting up local boards of examiners at post offices and customs houses. A central examining board and three special boards for, respectively, the State Department, the Patent Office, and the Pension Bureau, were established in Washington. Boards were also set up at 23 post offices and at 11 customs houses in the field.

The board of examiner concept was an important one. These boards, operating under the supervision of the Civil Service Commission and acting as agents of the Commission within Federal agencies, were responsible for the actual work involved in examining applicants. They consisted of groups of three or more agency officials authorized by the Commission to run the competitive examining program, or a part of this program, for an agency installation or a group of installations.

The Civil Service Act itself provided for delegating to agencies, through boards of examiners, the authority to recruit and examine personnel seeking Federal employment.

When boards of examiners were used, the Commission did not directly conduct examinations or mark or grade those examined. However, it experienced considerable difficulty with those early boards of examiners, and concluded that a better job could be done by persons who were regular Commission employees. The most serious complaint against the boards was that a department would frequently nominate its less efficient employees to serve as board members, and the Commission had to accept such nominations or the work would not be done.

First Two Appointees

The first person appointed under the merit law was Ovington E. Weller of Maryland. On August 29, 1883, he was appointed to a post office clerkship at a salary of \$1,000 a year. Mr. Weller, a lawyer by profession, was later elected U.S. Senator from Maryland.

Miss Mary F. Hoyt of Connecticut was the second appointee and the first woman appointee. On September 5, 1883, she was appointed to the Treasury Department as a \$900-a-year clerk in the Bank Redemption Agency.

Cleveland's First Term

By the time the 1884 campaign rolled around, all political parties—Republican, Democratic, and Prohibitionist—supported the new law. (As one historian put it: “By this time, being against the spoils system was like being against sin.”) Next to tariff revision, civil service reform was the chief issue. The fact that Grover Cleveland was regarded as a more thorough reformer than James Blaine was partly responsible for his election.

But when Cleveland, a Democrat, took office, he found himself in a difficult position.

He hated the spoils system. On May 18, 1883—4 months after the Pendleton bill became law—he, then Governor of New York State, had signed the first State civil service law to be enacted. It resulted from a bill introduced into the State legislature by Assemblyman Theodore Roosevelt, then 25 years old and beginning his public career.

But pressure on Cleveland was heavy, owing to the fact that the Republicans had been in power for 24 years. The regulars of his party were shouting for the 88 percent of Federal jobs still unprotected by the Civil Service Act. Cleveland yielded to the extent of making sweeping removals in this “excepted” civil service. Within 16 months, he removed 68 percent of the excepted Interior Department employees, and 31,000 out of the 55,000 postmasters. However, he removed only 61 percent of the officials and employees under the competitive system.

Even though the Civil Service Act had been passed, jobseekers monopolized the President's time almost as though the spoils system were still in full control. Neither waking nor sleeping was he free of their petty problems. He wrote to a friend: "I have fallen into the habit, lately, of wrestling with this cursed office-filling even in my dreams."

Despite his partial surrender to spoils, Cleveland in general stood behind the new Commission, frequently consulted with it, and made suggestions looking toward strengthening its rules.

On the whole, however, Cleveland did little to justify the hopes and support of the civil service reformers—until he was defeated for reelection in 1888.

Then he made a large extension of the classified service. The Railway Mail Service had been the subject of a number of scandals centering about patronage appointments. On December 31, 1888, Cleveland "blanketed in"* these 5,320 positions, thus increasing by one-third the number of positions in the classified service.

(*"Blanketing in" is the popular term for placing Federal positions under civil service rules. It is the principal method of adding positions to competitive system. Although the practice represents a deviation from the merit principles, it makes future appointments to the "blanketed-in" positions subject to merit rules. Though the years since 1883, it has been done by both the executive and legislative branches, and by both Republican and Democratic administrations.)

New Problems

An interesting aspect of civil service history is the frequency with which new problems arose:

Jefferson was the first to find supporters of the opposition party in most offices.

Jackson had to meet the popular demand for a more democratic civil service at a major turning point in America's political history.

Lincoln used the patronage he cordially disliked in fighting a great war and solidifying a new political party.

Cleveland was the first to enter office under the combined conditions of a long period of opposition power and the recent establishment of the merit system.

And Benjamin Harrison, when he became President in 1889, was confronted with a new dilemma.

Harrison's Dilemma

Cleveland, during his first term, had blanketed in to the competitive service an entire organization staffed with Democrats. It seemed to many observers that Cleveland had deliberately extended the competitive service to protect his party friends. Carl Russell Fish, in "The Civil Service and the Patronage," wrote of this problem:

When the opposition party comes to power and finds its opponents securely lodged in offices which had been patronage, and from which its own members may have been but recently expelled, a severe strain is put upon belief in the morality of civil service reform: it seems like saying that to the vanquished belong the spoils.

When Harrison was inaugurated, Cleveland's order to include Railway Mail Service jobs under the competitive system had not yet been completely carried out. Harrison decided to postpone for 3 months application of the order to the still-unconverted jobs. He then made more removals in this branch of the service than Cleveland had made in his entire first term. Very few Democrats escaped Harrison's ax.

Although by 1890 Harrison had made 38,500 removals—15,000 more than had been made by Cleveland—he nevertheless acted during his term to strengthen civil service:

He announced that he would firmly adhere to civil service rules.

He appointed the vigorous Theodore Roosevelt as Civil Service Commissioner.

He was responsible, in 1891, for the innovation of keeping efficiency records on employees, to be used as a basis for making promotions.

He blanketed in the Indian Service (where reform was needed more than perhaps anywhere else), the Fish Commission, and the Weather Bureau.

His Secretary of the Navy took steps to improve the employment system for navy yard laborers and to keep them out of politics.

And it was in 1890 that the Civil Service Commission, long dissatisfied with the work of the boards of examiners, began to ask for appropriations for a larger staff of its own. After that, Congress annually appropriated funds to the Commission for examining work.

After his defeat for reelection, Harrison, in an action paralleling that of Cleveland, blanketed in the employees of all free delivery post offices not previously classified.

Cleveland's Second Term

On taking office again in 1893, Cleveland extended the competitive system to a number of agencies and positions, including lighthouse keepers and clerks in the Pension Office. Eventually, he doubled the size of the merit civil service.

In 1896, by one order alone he increased the size of the competitive civil service by one-third, adding 32,000 positions. This resulted in a total of 87,000 competitive positions out of a total civil service of 205,000 (as compared to 13,900 out of 132,800 in 1883).

An effort was made by some of Cleveland's supporters to persuade him to delay the date of Harrison's order classifying employees of free delivery post offices, in order that these positions might first be treated as political spoils—as Harrison had done in the case of the Railway Mail Service. Cleveland refused to retaliate in this manner.

Through the efforts of Cleveland and the Commission, the merit system was considerably improved by the end of his second administration. The Commission made a number of improvements in the type and scope of its written test, and also developed and adopted a method of rating work experience.

In May 1896, Cleveland promulgated unified civil service rules to replace the separate ones that had been growing up in each agency. The new rules also increased by 32,000 positions the size of the classified service; this was accomplished by numerous additions to the list of departments, agencies, and types of positions to which competitive appointments, under Cleveland's new rules, were required.

By this single Executive order, Cleveland increased the classified service by more than one-third: proof not only of the sincerity of Cleveland's praise of the merit system, but also of the general approval which the system had already gained.

Cleveland continued Theodore Roosevelt and Charles Lyman as Civil Service Commissioners, even though it meant having only one Commissioner of his party.

McKinley Takes Office

Under President William McKinley, the merit system underwent considerable strain. This strain, however, must be kept in perspective: It was merely the first, and one of the lesser, of the strains the system was to undergo.

McKinley came into office in 1897 with an excellent record on civil service matters. As a Congressman, he had voted for the Civil Service Act and had always supported appropriations for the Civil Service Commission, but the merit system made few gains during his administration. In fact, to McKinley belongs the dubious distinction of having been the first President to take, in his handling of the merit system, a backward step.

One positive contribution made by him was an Executive order that he issued early in his administration—on July 27, 1897—providing that classified employees should not be removed without being given a written statement of the charges against them and an opportunity to answer the charges in writing. Also, a merit system for the Philippines was established during his administration, and Puerto Rico was encouraged to establish one.

A Backward Step

The story of McKinley's backward step is as follows: Cleveland, during his second administration, had brought a large number of jobs under the competitive service, thereby removing them from the grasp of spoils-minded politicians. These politicians, as a result, brought heavy pressure to bear on McKinley. The pressure was only temporarily relieved by the Spanish-American War, which made possible the temporary appointment of party supporters without regard to civil service rules.

When the 6 months' war ended, the pressure was increased—this time looking toward conversion of the temporary wartime appointments into permanent appointments. About 3,500 persons had been appointed without examination, although the Civil Service Commission had on its registers thousands of applicants who had qualified, by examination, for the positions. About half of those appointed without examination were, by Executive order, given permanent classified appointments.

Further inroads on the classified service were made when, on May 29, 1899, McKinley's revision on the civil service rules excepted over 5,000 positions from the competitive service, including deputy collectors of customs.

Owing to the growth of civil service brought about by the war, and owing further to the administration of the new territories placed under the protection of the United States after the war, a large increase took place in the classified as well as unclassified civil service positions. Therefore, despite McKinley's Executive order of May 29, 1899, the classified service increased from 1898 to 1901 to a total of 106,000—or 41.5 percent of the entire executive civil service.

Theodore Roosevelt's Administrations

McKinley was assassinated 6 months after the beginning of his second term, and Theodore Roosevelt became President on September 14, 1901.

The vigorous personality of the new President made itself felt almost immediately. Expansion, modernization, and reform crackled like electricity in the national atmosphere.

The merit system now had a strong supporter in the White House. Roosevelt's aggressive tour as a Civil Service Commissioner (1889–95) gave him as great a name in the civil service reform movement as those of Jenckes, Curtis, Eaton, and Schurz before him. William Dudley Foulke, who served as a Civil Service Commissioner under Roosevelt, wrote in his biography of the President: "His 6 years' experience as a Civil Service Commissioner gave him a better knowledge of the service than any other President had ever had."

Unlike the Presidents who preceded him, Roosevelt:

Brought many jobs into the competitive service early in his administration.

Defined the "just causes" for which an employee could be dismissed.

Sharpened and required stricter compliance with the restrictions against political activity.

Forbade disbursing officers to pay the salaries of persons illegally appointed to civil service positions.

Little Pressure for Removals

Because the Republicans had been in power for the preceding 4 years, Roosevelt was one of the fortunate few Presidents who—like John Adams, Madison, and Monroe in the earliest days—were under little pressure for widespread removals. (Of all the Presidents who experienced strong political pressure for large-scale removals, only John Quincy Adams had refused to bow to it.)

On the other hand, some of Roosevelt's decisions ran directly counter to subsequent public policy:

He vigorously opposed Government-employee unions, recognition of which first became a prominent issue during his administration. In Executive orders in 1902 and 1904, he forbade employees, on pain of dismissal, either as individuals or as members of organizations, to seek any pay increases or to attempt to influence legislation before Congress, except through the heads of their departments.

In 1907, he revoked the requirement (which McKinley had established) that an employee being removed be given a written copy of the charges against him and a chance to reply. (This important employee protection was restored by Taft.)

Roosevelt's labor policies, insofar as Government-employee unions were concerned, were conservative. The time had not yet arrived for the two strong currents—civil service reform and employee unionism—to flow freely together.

Administration of Examining

On the administrative side, the number of civil service field examining boards had increased, by 1904, from the original 34 established in 1883 to an unwieldy 1,250. In 1883, the civil service rules had been applied outside Washington to only 23 post offices and 11 customs houses, but by 1904, four-fifths of all competitive positions in the Government were in the field. The central office of the Commission could no longer effectively supervise the work of this great number of boards and the many actions involving field employees.

Roosevelt issued in 1904 an Executive order establishing 13 United States Civil Service districts and consolidating the local boards under district boards. District offices were set up to function as miniature United States Civil Service Commissions, performing locally the mission of the central office under whose supervision they worked.

For some time after 1890, the year Congress first appropriated funds to the Civil Service Commission for examining work, the Commission continued to request agencies to detail employees as members of boards of examiners to supplement the Commission's staff. In 1906, Congress stopped this practice by placing a restriction in the Commission's appropriations for that year, providing "that no detail of clerks or other employees to the Commission for the performance of duty in the District of Columbia shall be made during fiscal year 1906."

As a result of this restriction on appropriations, examining work for the departmental service was largely centralized in the Washington headquarters of the Commission. Examining in the field, however, continued primarily through boards of examiners until 1924.

Foundations of Modern Government

During Roosevelt's 7 years as President, the foundations of the modern Federal Government were laid. Many new agencies were created to perform functions for which the need had long existed. It was a period of major governmental expansion. A Reclamation Act, establishing irrigation projects, was passed in 1902. A Department of Commerce and Labor was created in 1903. A Pure Food and Drugs Act and a Federal Meat Inspection Act were passed in 1906, and Roosevelt added almost 150,000,000 acres of public lands to the 45,000,000

acres set aside as public conservation areas by his three predecessors. This expansion increased the necessity of obtaining more efficient organization and administration of functions of the executive branch.

Roosevelt's Committee on Departmental Methods, established in 1907, made the first modern job survey in the Federal service, and devised a position-classification plan based on duties.

Of the new positions created by Federal expansion during Roosevelt's administrations, over 90,000 were placed in the competitive service. In addition, 35,000 formerly excepted positions were made competitive by Roosevelt: 6,000 free delivery carriers, 15,000 fourth-class postmasters, the permanent staff of the Census Bureau, and the field services of the War Department.

The competitive service was thus increased from 110,000 to 235,000 positions, and the percentage of competitive positions increased from 41.5 percent to 63.9 percent of the whole executive civil service. This was a tremendous expansion from the 13,900 competitive jobs in 1883, and the 10.5 percent of the civil service that was originally under competitive rules.

For the first time, the merit system passed the spoils system in numbers of jobs in the executive service.

Conference of Civil Service Commissions

Growing modernization of the merit system was aided in 1906 by the calling of a conference in Washington of the various Civil Service Commissions of the States and cities. This conference formed a permanent organization first called the Civil Service Assembly of the United States and Canada. Still in existence, it was known as the Public Personnel Association from 1956 to 1972, and since then as the International Personnel Management Association.

By 1906, only two States—New York and Massachusetts—had had civil service laws for any length of time (1883 and 1884, respectively), but in 1905 Wisconsin and Illinois passed merit system laws. These were patterned on the Federal civil service law and administered by bipartisan, three-member civil service commissions.

In New York all cities were under the State civil service law, while in Massachusetts 24 cities were brought under the law in 1885.

Chicago and Evanston, IL, were the first cities in the Middle West to have civil service laws, both adopted in 1895. San Francisco (1900) and Los Angeles (1903) were among the first Far Western cities to adopt merit systems.

Taft Continues T.R.'s Policies

William Howard Taft, taking office in 1909, in general continued Roosevelt's civil service policies, including defense against the attacks of spoilsmen, support of attempts to modernize personnel practices, and (until the latter part of his administration) opposition to Government-workers' unions.

Training for Federal employees was begun by Taft when he directed the Patent Office, the Bureau of Standards, and the Forest Service to institute courses to increase the efficiency of their employees and to prepare them for more responsible work.

In 1909, in an Executive order similar to those issued by Roosevelt in 1902 and 1904, Taft directed that all petitions from employees to Congress must come through the heads of their departments—and that no information could be given Congress except by department heads. In 1912, just before passage of the “antigag law,” Taft modified this Executive order to require that department heads must forward such petitions without delay. This modification, however, did not prevent passage of the antigag law.

Lloyd-LaFollette Act

The “antigag law” is the name given to the Lloyd-LaFollette Act, which, as a result of injustices to postal service employees which came to light during Taft's administration, was enacted on August 24, 1912. It guarantees to civilian employees of the Government the right to petition Congress, either individually or through their organizations. It also forbids the removal or demotion of any employee for joining postal unions, other than those imposing an obligation to strike against the Government, and prescribes procedures which must be followed in discharging civil service employees. In practice, the permission granted postal employees by the Lloyd-LaFollette Act to join unions has been extended to all Federal employees.

Scientific Personnel Management

One of the most interesting developments throughout the Roosevelt and Taft administrations was the growing concern over administrative efficiency in Government. The Federal organizational structure and procedures were unplanned and chaotic. There were numerous independent agencies, overlapping and uncoordinated. Lines of responsibility were often unclear.

In reaction to this confusion, a trend toward establishing “scientific management” developed in several governmental areas, including the important one of personnel management.

The Civil Service Commission kept pace with the new demands made on it. During Taft's administration, the Commission made studies of areas to which it had not, until then, given much attention: the problems of retirement; the need for a position-classification system; and the level of Government salaries. The Commission also established a Division of Efficiency to set up a system of uniform efficiency ratings for the departmental service, for use as a basis for promotions, demotions, and dismissals.

Taft extended the competitive service to cover the 36,000 fourth-class postmasterships not previously blanketed in by Roosevelt, and also added 3,000 assistant postmasters and clerks.

Wilson Faces Patronage Pressures

When Woodrow Wilson took office in 1913, 16 years had elapsed since the last Democratic administration, and a clamor for Government jobs was immediately set up by politicians and party workers. Washington again swarmed with officeseekers.

Although most of the new positions created by the expanding Government of that period were placed within the competitive service, the pressure on Wilson for patronage led him to make some important exceptions from merit-system appointment.

Wartime Expansion

From 1914 on, World War I caused a steady expansion in the work and the size of the Federal civil service. The entry of the United States into the war in April 1917 brought about a vast increase in the work of the existing agencies and the creation of many new agencies.

Appointments from civil service examinations increased tremendously: the number of persons appointed during the year ending June 30, 1917, was more than twice that of 1916, and the number appointed in 1918 was two and a half times that of 1917.

This vast step-up in appointments was achieved without lapsing from established qualification standards, and was greatly aided by an intensive countrywide recruiting campaign carried out by the Commission with the cooperation of numerous other agencies, public and private.

The theme of this campaign was: "Enter Government service as a patriotic duty." For certain temporary positions, minimum age limits were lowered from 18 to 16. Examinations were held by day and by night. In occupations in which trained workers in the needed quantity were scarce—such as typing, stenography,

statistics, and naval architecture—colleges and schools cooperated with the Civil Service Commission by inaugurating intensive training courses.

The Commission assisted in many ways in the staffing of the defense agencies. For example, the navy yards sent daily telegrams to the Commission regarding their needs for skilled workers who could not be recruited from local eligibles. The Commission immediately recruited qualified eligibles from other parts of the country, and provided transportation at Government expense to those who signed 6-month work contracts. As a result of such cooperation, the number of skilled workers in navy yards increased from 20,000 at the beginning of the war to over 100,000 by the time the armistice was signed.

“Bonus” Salaries Paid

Wilson met the problems of labor shortages and increased cost of living in much the same way Lincoln had met them during the Civil War, half a century earlier. “Bonus” legislation was enacted again, adding percentages (later flat sums) to the lower classes of the 1853 salary schedule. The 1917 “Bonus Act” affected salaries up to \$1,300 per annum, the 1918 act up to \$2,620, and the 1919 act up to \$2,740.

The Federal workforce almost doubled during World War I, to a total of nearly 1,000,000. The Commission estimated that more than 950,000 applicants were examined during the 19 months of American participation in the war, and that about 400,000 of those who met the requirements of the test were appointed.

Generally speaking, Wilson held off the spoils-seekers and placed most of the new jobs in the competitive service, with the result that 70 percent of the total civil service was under the merit system when the war ended in 1918. World War I was the biggest crisis the merit system had yet had to meet, and the fact that it served the country so efficiently added to the esteem in which, by now, the country held the principles and procedures established by the Civil Service Act.

Retirement Act Passed

On May 22, 1920, the first civil service retirement law was enacted. This act largely solved the problem of superannuation in the Federal service, which had received attention as early as the administration of Monroe.

Federal officials had always been reluctant to dismiss employees of long service solely because of their age or infirmities, and as the years passed, the problems of superannuation became increasingly acute. On a number of occasions Congress investigated superannuation, but passed no legislation. The Civil Service Commission, beginning in 1899, recommended each year the adoption of a retirement plan financed in whole or in part by deductions from employees' salaries.

Prejudice against pensions for civilian Government workers was strong, and was based largely on the great expense of the military pensions that, from Revolutionary days, had been awarded to war veterans and to their wives and children. Also, there prevailed in some quarters the belief that workers, no matter how small their salaries, should rely on their own savings to provide for their old age.

Influencing final passage of the Retirement Act was the United States Civil Service Retirement Association, an organization of Government employees, which had been founded in 1900 with the purpose of working toward a formal retirement plan.

The immediate effect of the 1920 Retirement Act was that within 2 months over 5,000 aged employees, some more than 90 years old, were retired.

The act provided (1) for the compulsory retirement, on annuity, of employees who had reached the retirement age and who had had at least 15 years of Government service, and (2) for annuities to employees who became disabled after at least 15 years of service. Employee contributions to the fund were 2.5 percent of basic salary.

The age of retirement depended on the employee's occupation: age 70, for example, for clerical, supervisory, professional, and similar groups; age 65 for mechanics and city and rural letter carriers; age 62 for railway mail clerks.

When an employee reached retirement age, he was automatically separated. If he was not entitled to an annuity (at least 15 years of service), his contributions were refunded at 4 percent interest.

Wilson Administration Trends

The most important civil service events during Wilson's terms of office may be summed up as follows:

The demonstrated ability of the Commission to recruit the great numbers of workers needed during World War I.

The maintenance of merit system standards throughout the war.

The growth of Government-employee unions.

An increase in veteran preference benefits.

The passage of the Civil Service Retirement Act.

The beginning of “modern” spoils system methods, as typified by the 2-year exception made of new Internal Revenue Bureau jobs, and the excepting of deputy collectors of internal revenue.

It is from about this time that we can begin to see clearly the interplay of six of the major forces which were, in the future, to shape personnel management in the civil service: “modern” spoils methods; merit principles; “scientific” personnel management; union-management relations; veteran preference; and “human relations.”

Constitutional Amendments

To complete the picture of the Wilson era, reference should also be made to two 1920 constitutional amendments which affected the Federal service to some extent:

The Prohibition Amendment provided that prohibition agents and others charged with the enforcement of the new law might be appointed without regard to the civil service laws. When, more than 7 years later, the Bureau of Prohibition was made subject to the Civil Service Act, character investigations revealed that a number of those appointed “without regard to the civil service laws,” particularly in law-enforcement positions, were of a type unsuitable for Government employment.

The Women’s Suffrage Amendment was followed by the appointment of a number of women to Presidential offices. One of the first to be appointed to a major office was Mrs. Helen H. Gardener, U.S. Civil Service Commissioner from 1920 until her death in 1925. (In 1919, the Civil Service Commission had opened all examinations to women.)

Events Under Harding

The election of Warren G. Harding marked another change of party and, consequently, another clamor for patronage.

Harding, finding himself in this familiar and unpleasant situation when he took office in 1921, was less able than Wilson to hold his supporters in check. He modified the Executive order governing the appointment of postmasters in order to create some patronage, and a number of politically motivated dismissals were made in various parts of the Federal service.

During Harding’s administration, which lasted only 2 years and 3 months, the Federal service was still undergoing reduction after the World War I expansion. The opportunities for spoils were therefore not as great as they might otherwise have been—but this only made Harding’s position more difficult.

All in all, the competitive civil service, during Harding's term, was probably fortunate to be able to hold most of the ground it had previously gained.

Classification Act Bridges Administrations

During the Harding administration, a very important reform—the Classification Act of 1923—was achieved. This reform, establishing the principle of equal pay for equal work, had been urged for years by the Civil Service Commission and by many other organizations and individuals interested in the civil service and in public administration.

The act authorized the classification of positions in accordance with their duties and responsibilities, and assigned salaries to such positions. It covered only positions in the agencies in Washington, certain divisions of the District of Columbia municipal government, and certain branches of the legislative service, such as the Library of Congress, the Botanical Garden, and the office of the Architect of the Capitol. It did not apply to the field service.

Although the act was signed on March 4, 1923—while Harding was in office—the classification plan which it authorized did not go into effect until July 1, 1924, by which time Calvin Coolidge was President. Coolidge had succeeded to the Presidency following Harding's death on August 2, 1923.

Growth Under Coolidge and Hoover

The Coolidge and Hoover administrations were primarily periods of consolidation and growth of the civil service.

The most important advance in the merit system under Coolidge was the reorganization of the State Department's Diplomatic and Consular Service into the Foreign Service by act of Congress in 1924. The act had two objectives: to establish a career system of promotion which would make the foreign service attractive to all brilliant young people, and not just to those of wealthy families; and to set up a retirement system for the Service, to be administered by the State Department.

Although the Foreign Service is not part of the classified service, its entrance examination was one of the most difficult given by the Federal Government. The Civil Service Commission, as a courtesy to the State Department, conducted the written examination at its various examination points throughout the country. The Chairman of the Commission was a member of the Board of the Foreign Service, which advises the Secretary of State on Foreign Service personnel matters.

Increased Appropriations for Field Force

Until 1924, examining in the field for appointment to Federal positions continued through boards of examiners. However, the Commission had the same difficulties with some field boards as it had had before in Washington (see p. 55).

The Commission in 1924 asked Congress for larger appropriations, so that its field service could be adequately staffed. The Commission then received a more than fivefold increase in its appropriation for the field force—and at the same time the restriction, in the appropriation act, on detailing agency employees to the Commission was extended to cover the field offices.

Era Comparatively Uneventful

The Coolidge-Hoover era was comparatively uneventful insofar as important legislative or Presidential action affecting the Civil Service Act itself, or its coverage, was concerned.

The principal extensions of the competitive service during this period were the “blanketing in” of the Bureau of Prohibition in 1927 and the granting of status without examination to about 2,000 Government employees who had been appointed during World War I.

All in all, about 13,000 previously excepted positions were placed in the competitive service by act of Congress or by Executive order, while only a little over 100 positions were withdrawn. Few of the positions created during these administrations were excepted from the provisions of the Civil Service Act. This fact, together with the normal growth of the classified service accompanying the growth of population, was the principal factor in the increase in the proportion of the classified service. By the end of Hoover’s administration in 1932, 80 percent of the executive branch civilian positions were in the classified service.

Retirement Act Changes

Some important changes in the provisions of the Retirement Act were made during the 1920–30 decade:

The act of September 22, 1922, provided annuities for employees involuntarily separated after serving 15 years and reaching the age of 55.

The act of July 3, 1926, provided for increasing the amount of annuities, permitted employees reaching retirement age to continue in employment until they acquired 15 years of service, and increased retirement deductions to 3.5 percent.

The Retirement Act was completely revised by the act of May 29, 1930, which provided the following major improvements: two new plans for computing annuities, introducing the “high 5-year average salary” concept; reduction to 5

years in the amount of service required for eligibility for disability retirement; and authorizing, for employees with 30 years or more of service, optional retirement 2 years before reaching automatic retirement age.

Depression of the 1930s

Although the classified service percentage increased by the end of Hoover's term of office, the Great Depression, occurring during the latter part of his administration, caused severe economies and retrenchments in Government to be ordered.

Many employees were dismissed or given indefinite furloughs. To aid these employees in finding new jobs, the Commission was directed by an Executive order of September 20, 1932, to establish a reemployment list of furloughed or dismissed employees—primarily those with permanent civil service status.

A number of economy and reorganization measures were authorized in a series of so-called "Economy Acts," the first of which was enacted on June 30, 1932. This act established payless furloughs of 1 month in each year for all Government employees earning \$1,000 a year or more. Actually, the employees affected were usually required to remain at work during the payless month, and even to put in overtime.

Other provisions of the Economy Acts included: reduction of a annual (vacation) leave and per diem travel allowances; elimination of salary increases even in the Postal, Customs, and Immigration Services, where automatic promotion had been required by law; and prohibition of the filling of vacancies except by special executive permission. The last two provisions, particularly, caused a lowering of morale in the service.

The best known and most disliked of the Economy Act provisions was the one that became nationally famous as "Section 213." Under its provisions, employees whose wives or husbands were in the service of the United States or District of Columbia were ordered dismissed first in reductions in force. All others were given preference over such persons. Since it was ruled that "in the service of the United States" included persons on pensions and enlisted personnel in the Armed Forces, this law often caused severe personal hardships. Although "Section 213" was difficult and expensive to administer, and although it set up criteria other than ability and fitness in the selection and retention of public employees—in violation of the spirit of the Civil Service Act—it was not repealed until July 26, 1937, when the Civil Service Act was amended to forbid discrimination on the grounds of marital status.

On a more positive note, a Council of Personnel Administration was established under the chairmanship of the President of the United States Civil Service Commission by Executive Order No. 5612, issued in 1931.

This order recognized the Commission's role of leadership in Federal personnel administration and established a method for cooperation in personnel administration among the various Government agencies.

Roosevelt's First Term

The situation of the Civil Service Commission at the beginning of Franklin D. Roosevelt's first term in 1933 was not propitious for the health of the merit system. The lack of private employment opportunities during the depression caused a large increase in the number of applications filed for each examination that was held. Decreasing appropriations and increasing workload made it very difficult, as the reins of Government passed from Hoover to Roosevelt, for the Commission to carry out its mission promptly and efficiently. The pressures were particularly severe in 1933 because of the millions of unemployed workers in the country.

During Roosevelt's first term, many emergency governmental activities were set up to administer public relief, public works, agricultural aid, financial assistance, economic controls, and conservation. The large majority of the new agencies were excepted from the Civil Service Act, and in many cases from the Classification Act as well, on the grounds that they were temporary emergency agencies.

Roosevelt was thus enabled to meet, by means of appointments to these agencies, some of the demands for patronage; however, the Civil Service Commission of that period protested vigorously as the years went on against this practice, which by 1936 had caused the proportion of jobs under civil service to fall to 60.5 percent.

In 1933, Roosevelt substituted a 15 percent salary cut without furlough for the payless furlough established by the Economy Act of June 30, 1932. This cut was reduced to 10 percent on February 1, 1934; to 5 percent on June 30, 1934; and finally—on March 1, 1935—was abolished.

In fact, most of the measures established by the three Economy Acts were repealed in the years immediately following 1933. However, the full amount of leave—30 days of annual leave and 30 days of sick leave—that had been granted before the first Economy Act became effective was not restored.

The Beginning of Modern Personnel Administration: 1938–58

The year 1938 marks the beginning of the era of modern personnel administration, the third phase of our history.

During the long first phase, from the founding of the Republic until 1883, the worsening spectacle of public service under the spoils system was seen to culminate finally in basic reform.

From 1883 to 1938 the central theme was the firm establishment, extension, and success of the merit principle in Federal employment. There were setbacks during that period, and there were still challenges to come, but in general the system had proved itself in the judgment of public and politicians alike.

The big test of the third phase was to be whether a system conceived for an essentially negative purpose (i.e., the control of patronage and corruption in appointment to public office) could be adapted to modern needs, discoveries, and requirements in personnel management. This task was very shortly to be complicated by growth of the Federal workforce to an undreamed-of size during World War II. Although very substantial contraction took place after the war, the Federal service leveled off to something over 2 million workers, and postwar scientific progress brought an absolutely staggering complexity and variety to Government work.

Some of the trends in personnel administration which became evident in the two decades from 1938 to 1958 were foreshadowed by earlier events. One such event was passage of the Retirement Act in 1920. The Civil Service Commission, which under the Civil Service Act of 1883 was concerned mainly with enrollments for Government service, then gained responsibility also for the mustering-out operation at the end of the line. Thus the career span had a well-defined beginning and a well-defined end, but little special attention was being paid to problems of the Federal employee during the whole time he was on the job.

One gap in the Government's employment policy had been filled in 1923 with passage of the Classification Act. This legislation established the principle in Government of equal pay for equal work, and helped lay a foundation for the comprehensive personnel programs that were to come. Dr. Warner W. Stockberger, in carrying out the provisions of the Classification Act at the Department of Agriculture, pioneered the broadening of personnel activities to deal with the problems of employee morale, human relations, and manpower utilization.

In addition, the Tennessee Valley Authority, under its personnel director Gordon Clapp, developed qualification standards and a program of labor-management relations; the Home Owners Loan Corporation, under R.R. Zimmerman as

personnel officer, established nonprofit medical services for its employees; the Farm Credit Administration, under G. Lyle Belsley as director of personnel, set up a comprehensive personnel program for its Federal offices and farm credit banks; and most significantly, the Social Security Board established a merit program using the Junior Civil Service Examiner register to employ college graduates, and began inservice training, placement and counseling services, and a personnel research program.

Citing the successful experience of the Department of Agriculture and the Social Security Board, Civil Service Commissioner Samuel H. Ordway, Jr., was influential in getting an Executive order from President Roosevelt in 1938 to require that all Federal departments establish divisions of personnel. This order can be said to have marked the beginning of comprehensive modern personnel administration in the Federal service generally, but it was many years before the Federal service acquired all of the components that comprise personnel programs of the present day.

The history of two decades, as told in this chapter, introduces many new and developing concepts in personnel administration.

Two Important Executive Orders

On June 24, 1938, President Roosevelt signed two important Executive orders. Among their principal provisions, they:

- Required the establishment of divisions of personnel management in the executive departments and in 13 of the largest agencies, each to be headed by a director of personnel.
- Extended the competitive service almost to the limit of the President's authority.
- Revitalized the Council of Personnel Administration (later the Federal Personnel Council and then the Interagency Advisory Group), which was later to become a strongly influential force for the improvement of Federal personnel management.
- Gave support to agency inservice training programs, and assigned to the Commission responsibility for cooperating with the agencies in this area.
- Completely revised and modernized the civil service rules for the first time since 1903.

These changes were in line with many of the personnel management recommendations made in 1937 by the President's Committee on Administrative Management. The Executive orders accomplished four basic things:

- They strengthened the merit principle.
- They gave support to positive personnel programs.
- They enhanced the positive leadership of the Civil Service Commission.
- They provided machinery, in the form of a personnel council and agency personnel divisions, for the President, the Commission, and agency heads to exercise leadership in personnel management.

The requirement of establishing divisions of personnel in the agencies can justly be said to have marked the beginning of modern personnel administration in the Federal Government.

Political Activity: Hatch Act I

On August 2, 1939, President Roosevelt signed the Hatch Act, which prohibited coercion of voters in Federal elections, and active participation in politics by employees and officials of the executive branch. The act was passed largely because of disregard of the civil service “political activity rule” during the 1938 elections. Excepted from the act’s provisions were the President, the Vice President, employees of the Office of the President, heads and assistant heads of executive departments, and officials appointed by the President and confirmed by the Senate who determine foreign policy, or policy in the nationwide administration of Federal laws.

Penalties included heavy fines and imprisonment for coercion in Federal elections, and removal from office for political activity on the part of Federal employees.

The act also prohibited payment of salary to an employee belonging to an organization advocating the overthrow of the Government of the United States.

Hatch Act II

The so-called “Second Hatch Act”—enacted July 19, 1940—extended the prohibition against political activity to employees of State and local agencies whose principal employment was in connection with activities financed in whole or in part by Federal loans or grants. Excepted from the provisions of the act were Governors, Lieutenant Governors, mayors, elected heads of departments whose positions were not under a merit system, and officers holding elective office.

The penalty for violation was removal from office and, if the removal was not made within 30 days after notice, the Civil Service Commission was required to

certify to the appropriate Federal agency an order to withhold from the State or local agency concerned an amount equal to twice the violator's annual salary.

Census of Merit Systems

During the 1930s, the expansion of the merit system in States and cities became a significant trend.

According to a census taken in 1940 by the Civil Service Assembly of the United States and Canada, more than 850 cities had at least a portion of their employees under some type of merit system. Progress at the municipal level was greater than in county jurisdictions, where only 173 of the 3,053 counties had civil service systems.

The census found that 16 States operated civil service systems for the selection and management of employees in all or almost all departments, and that a 17th was in the progress of installing such a system. Organization of limited State merit systems called for by a 1939 Social Security Act amendment was still in progress.

Social Security Act Amended

The national Social Security Act was amended, effective January 1, 1940, to require the States to place under a merit system all their employees in departments that received Federal grants-in-aid under the act. This change was considered desirable because experience over several years had led the Social Security Board, the vast majority of State administrators, and many concerned political leaders to conclude that provision for proper and efficient administration must necessarily include personnel administration.

The amendment affected State employees working in unemployment security, public assistance, and some highway departments. Thus, for the first time, some employees in all States were placed under merit systems.

Extension of Merit System

On November 26, 1940, President Roosevelt signed the Ramspeck Act. This act was sponsored by Representative Robert Ramspeck of Georgia, long an outstanding advocate of merit principles in the civil service and later (1951–52) Chairman of the Civil Service Commission.

The Ramspeck Act paved the way for an unprecedented extension of the merit system. It also provided for extension of the Classification Act to the field service of the Government, and established efficiency-rating boards of review.

The Ramspeck Act authorized the President to include within the competitive service any offices or positions in the executive branch, with the exception of (1) those in the Tennessee Valley Authority and the Work Projects Administration, (2) Presidential appointees confirmed by the Senate, and (3) assistant U.S. district attorneys.

In effect, the act authorized the extension of the competitive service to more than 182,000 permanent positions—almost all the non-policy-determining positions in the executive civil service. It thus authorized the President to sweep away virtually all the exceptions which had accumulated since the passage of the Civil Service Act in 1883, and even permitted the extension of the merit system to unskilled laborers, who had been excepted by the Civil Service Act itself.

The Executive orders issued by President Roosevelt under the authority of the Ramspeck Act brought merit system jurisdiction to an all-time high, covering not only routine positions but also most high-level professional and administrative positions. By means of Executive Order 8743 of April 23, 1941, and other orders, the President extended the competitive service to all previously excepted positions other than temporary positions, those excepted by the Civil Service Commission itself under Schedules A and B of the civil service rules, and those expressly excepted by the Ramspeck Act.

Adjusting to Emergency Conditions

World War II began in September 1939, and in the same month President Roosevelt authorized Federal agencies to make temporary appointments when the Commission had no eligibles available. This order—similar to one issued by Wilson in 1917—permitted numerous appointments to be made outside of the competitive system.

The Civil Service Commission met this challenge to the merit system by acting to give agencies the fastest and best possible recruiting and other services. It set new objectives for itself:

- To furnish all civilian personnel requested by national defense agencies immediately.
- To keep in constant touch with national defense agencies in order to meet their personnel needs efficiently.
- To undertake an intensive program of recruitment to meet prospective shortages.
- To encourage training programs.

- To ensure that all persons appointed as a result of Commission activities were loyal and of good character.
- To keep politics out of defense.

The Commission also set aside many of the usual requirements for examination and certification. The transfer system was modified: first it was tightened, as the older agencies sought to protect themselves against loss of employees; then it was progressively loosened, as the need of the emergency agencies for experienced Government personnel became imperative. Classification procedures were also modified to meet the new conditions.

Attempt To Bypass Commission

In 1940, the War Department, without consulting the Civil Service Commission, advised the House Military Affairs Committee that it needed authority to appoint emergency civilian personnel without reference to the Commission. The War Department argued that the Commission would not be able to operate rapidly enough, that the Commission's customary procedures were not suited to the tempo of an emergency, that War Department executives would do a better job of hiring, and that the Department's efficiency would be impaired unless it could pick its own officials and assistants.

The House committee seemed ready to go along with this request.

Flemming Appeals to Congress

Arthur S. Flemming, one of the outstanding Civil Service Commissioners, made a dramatic appeal to the Congress to retain the Commission as the Government's central personnel agency. He insisted on the need to retain such authority for the Commission in the interest of the war effort itself. He defended the Commission's ability to produce results and pointed out the confusion that would result if Government agencies were permitted to compete against each other in the tight labor market created by the emergency.

After conferences with the Commission, the War Department dropped its request, and Congress did not disturb the Commission's central authority. The issue was not seriously raised again during the emergency.

Flemming was in charge of the Commission's "war program activities" during the emergency, and he turned in one of the finest wartime jobs in official Washington.

Centralization Abandoned

From 1924 until World War II, the Commission maintained central and field office staffs to conduct competitive examinations for most positions—except skilled trades and semiskilled and laboring positions in agencies having boards of examiners.

A sharp change in policy occurred during the defense buildup before, and during, World War II, when the Commission's examining facilities were faced suddenly with an unprecedented demand for personnel. The executive civil service, which was about 800,000 strong in 1938, expanded to almost 4,000,000 by 1945. Although competitive examining was largely laid aside because of emergency needs, and new appointees were given war-service appointments that did not lead to permanent status, boards of examiners became a major recruiting facility in the field service. New boards were set up as new governmental facilities were established in the field, existing boards were substantially increased in size, and boards took on responsibility for recruiting in areas which for many years had been the province of the Commission's own staff.

Boards of examiners made a significant and important contribution to the staffing of our Government during this vital period.

Veterans' Preference Act

The most important personnel legislation enacted during the war period was the Veterans' Preference Act of 1944. This act redefined and consolidated into law certain benefits previously granted to veterans, either by law or regulation, and also added new benefits, some of which had the effect of amending the Civil Service Act. It provided for:

- Adding 5 to 10 points to examination scores of veteran-preference eligibles.
- Listing disabled veterans and others granted 10-point preference ahead of all other eligibles on many registers.
- Crediting veterans with time spent in the Armed Forces, in examinations in which experience was a factor.
- Waiving age, height, and weight requirements for veteran-preference eligibles in most examinations.
- Waiving, for veterans, the "members of family" rule and apportionment provisions of the Civil Service Act.
- Waiving physical requirements for veterans found to be physically able to do a job without endangering themselves or others.

- Establishing the requirement for review by the Commission of reasons given by an agency for passing over a veteran to appoint a nonveteran.
- Establishing the right of veterans to appeal to the Commission in removals and certain other adverse actions by the agency which had hired them.
- Requiring that, in reductions in force, veteran-preference employees with ratings of “Good” or better be retained in preference to any nonveterans in competition with them.

Evaluations of Wartime Performance

The World War II performances of the civil service system and the Civil Service Commission have been evaluated by several observers.

Leonard D. White, in his book, “Civil Service in Wartime,” stated that the magnitude of the job of finding enough qualified civilian Government employees was unparalleled in our history. He indicated that the assignment to the Civil Service Commission of central responsibility for securing civilian Government employees set a precedent of major significance for the future development of the public service. He stated:

My observation leads me to believe that, on the whole, the wartime record [of public service achievement] is one in which genuine satisfaction can be taken by all who place their faith in the capacity of democracies to organize themselves effectively for war or for peace.

Arthur S. Flemming, a member of both the Civil Service Commission and the War Manpower Commission, described the adaptability of the civil service system to emergency conditions in these terms:

In the future, those who want to have positions exempted from the civil service system will not be able to use the argument that the element of time makes it impossible to wait for the system to operate. If it can operate in a sufficiently flexible fashion to serve the Nation in the midst of war, it can serve the Nation under any other circumstances which may confront it.

Gladys M. Kammerer, in her book, “Impact of War on Federal Personnel Administration, 1939–45,” reviewed the wartime functioning of the civil service. She identified five major achievements and five major unsolved problem areas.

She listed as achievements: the survival of merit system principles through the adaptability and flexibility of the personnel system; success in recruitment for staffing the expanded Federal service; progress in the building of training programs; realization of the importance of employee relations in the public service; and a new recognition of personnel administration itself.

She listed unsolved problems: adequate control over transfer of employees between agencies; adequate control over the promotion of employees; inadequate Federal salary structure; need for an effective manpower-utilization program to control the size of the civilian workforce; and control of subversive elements in the public service.

To conclude the roundup of evaluations of civil service's World War II performance, the following major effects of the war period were listed in the 1945 Annual Report of the Civil Service Commission: emergence of the Commission as the Government's central personnel agency; preservation of the merit system; emphasis on positive recruitment; reliance on direct recruitment; emphasis on more efficient utilization of personnel; recognition of the need for improvement in supervision; extension of position-classification standards to the field service; extension of retirement coverage; development of better relationships with the agencies; and increased emphasis on internal management improvement.

Truman and End of Hostilities

Harry S. Truman became President on April 12, 1945, following the death of Franklin D. Roosevelt during his fourth term.

The same year brought the end of World War II hostilities, and the Civil Service Commission faced the task of drastically reducing the huge wartime civilian workforce. Regulations were established to permit an orderly reduction in force. An employment and advisory service was established to assist returning veterans. Applications for civil service positions were accepted only from persons with veteran preference entitled to have examinations reopened, and from certain persons separated in reductions in force.

The transition back to normal operations was provided for by an Executive order issued by President Truman in February 1946, which authorized Temporary Civil Service Regulations to supersede the War Service Regulations. The temporary regulations, which were in effect from March 7, 1946, to April 30, 1947, permitted Federal agencies to make temporary appointments, while the Commission devoted its resources to the establishment of registers leading to permanent appointment. During the period reductions in force continued, with war-service and temporary appointees being displaced.

New civil service rules, issued under Executive Order 9830 of February 24, 1947, replaced the temporary regulations on May 1, 1947. An attempt was made to continue, in the new rules, the best practices developed during the war. The policy of delegating authority to agencies to act in individual personnel matters without prior Commission approval—such as individual promotions, reassignments, and transfers—was confirmed and extended. These actions,

however, were subject to Commission standards, and to inspection and postaudit by the Commission for compliance with standards.

Executive Order 9830 also:

- Reaffirmed the Commission's role as the Government's central personnel agency.
- Outlined the general responsibilities of the Commission and of all Federal agencies in the field of personnel management.
- Established the Commission's new inspection program.

Huge Postwar Examining Program

Some competent observers have stated that conversion following World War II constituted the most difficult and complex problem ever faced by the Commission. The major reconversion project was to establish probational registers from which to fill vacancies and displace war-service and temporary appointees.

Appointments during the war had been made on a "war service indefinite" basis, for the duration of the emergency plus 6 months. Permanent status was withheld because millions of Americans were in the Armed Forces or in war work and for that reason could not compete for civil service positions.

Therefore it became necessary, after the war, to hold open competitive examinations for the positions occupied on an indefinite basis by employees without competitive status. This huge examining job was necessary even though reductions in force were going on at the same time, resulting in an overall drop in the size of the workforce of more than a million. At the end of the war, the number of employees in the competitive service with competitive status had dropped to a low of about 33 percent, so the job was a tremendous one.

The nonstatus incumbents of Federal jobs competed in the examinations on the same basis as members of the general public. If their scores earned them sufficiently high standing on the registers, their appointments were converted to probational. If not, they were replaced by eligibles on the top of the registers.

Between July 1946 and July 1949, the Commission announced 104,413 examinations and processed 4,769,735 applications, which resulted in 1,348,470 placements. This was a truly fantastic workload. It testified to the basic soundness of the civil service machinery and to the energy and ability of Commission personnel.

Boards of examiners received a new impetus, because the magnitude of this job was far beyond the resources of the Commission itself. Boards of examiners were responsible for over two-thirds of the examination announcements issued during the first 3 years after the war.

The proportion of employees with permanent status rose from 33 percent at the end of World War II hostilities to 84 percent in June 1949. During the same period, the proportion of employees in the continental United States with veteran preference rose from 16 percent to 47 percent.

Retirement Act Changes

The period between 1939 and 1948 saw changes in Retirement Act provisions. The following were the major ones:

- The act of August 4, 1939: Granted retirement status to classified postmasters; provided for joint and survivorship annuities; and allowed employees to make voluntary contributions to purchase additional annuities.
- The act of January 24, 1942: Ended, for purposes of retirement coverage, the distinction between classified and unclassified employees, and extended coverage to practically all officials and employees of the Federal Government; provided uniform compulsory retirement at or over age 70 with 15 years of service; provided optional retirement as early as age 55 with 30 years of service, and at age 62 with 15 years of service; provided a discontinued-service annuity beginning at age 62 for an employee separated after 5 or more years of service; and increased retirement deductions to 5 percent.
- The act of February 28, 1948: Liberalized the formula for computing annuities; liberalized immediate reduced annuity at age 55 with 30 years of service; provided automatic survivorship benefits to widows and children; and increased salary deductions to 6 percent.
- The act of July 2, 1948: Provided annuities at age 50 with 20 years of service for certain employees engaged in investigations and law enforcement (previously provided for FBI agents by the act of July 11, 1947).

New Inspection Program

In 1946, the Commission organized inspection divisions in its central and regional offices. This program was designed to provide advice and assistance to agencies in the administration of their personnel management responsibilities, as well as to provide the Commission with current and accurate information on the

manner in which specific delegations of authority from the Commission were exercised by the agencies.

Pay Raises

During this period, Congress adjusted the pay of Federal employees on several occasions. The Federal Employees' Pay Acts of 1945 and 1946 provided raises averaging, respectively, 15.9 percent and 14.2 percent. The Postal Rate Revision and Federal Employees' Salary Act of 1948 increased Classification Act salary rates, and certain other statutory salary rates, by \$330 annually, for an average pay raise of 11 percent. The Classification Act of 1949 brought an incidental adjustment in salaries that averaged 4.1 percent. Further pay raises were enacted in 1951 and 1955 without substantial modification of the pay system.

Fair Employment Board

In October 1948, the Commission established a seven-member Fair Employment Board, under authority of Executive Order 9980, to consider appeals from decisions of agencies on complaints of discrimination.

The Board functioned within the Civil Service Commission until it was abolished under the provisions of Executive Order 10590 of January 18, 1955, which established the President's Committee on Government Employment Policy. Executive Order 10590 reaffirmed the Government policy, with respect to all personnel actions in the executive branch, that there shall be no discrimination because of race, color, religion, or national origin. The order shifted responsibility in this area of personnel administration from the Civil Service Commission to the White House.

1949 Classification Act

The Classification Act of 1949, in addition to the salary adjustment mentioned above, contained many important features which had long been recommended by the Commission. Among other provisions, it established new and simplified schedules of grades and salaries; provided for three new grade levels at the top of the classification structure (the new "supergrades" were GS-16, 17, and 18); and delegated to each agency the authority to classify its own positions, below the three highest grades, in accordance with Civil Service Commission standards and subject to a postaudit review by the Commission. The new Classification Act provided for bringing about 20,000 additional positions under its provisions, and, all in all, covered about 885,000 positions in the departmental and field services of the Government.

Truman's Loyalty Program

One of the most publicized developments of the postwar period was the employees' loyalty program that was set up pursuant to President Truman's Executive Order 9835 of March 21, 1947. It called for investigations of all employees then on the Federal rolls and of applicants for Federal positions. Agency loyalty boards were appointed by agency heads, and regional boards and a central review board were set up under the Civil Service Commission. These boards held over 4,000 hearings in connection with individual cases.

From the beginning of the program until May 1953, loyalty checks were made of virtually all employees and prospective employees of the executive branch. In all, more than 4,700,000 forms on individuals were checked. The FBI made over 26,000 full field investigations of cases that involved questions of loyalty. In some 6,800 cases, loyalty proceedings were discontinued because the persons involved left the service or withdrew their applications. As a result of action by the various loyalty boards, 560 persons were removed or denied Federal employment on loyalty grounds, and 16,503 were cleared. The remaining cases (totaling about 2,300) were considered solely under security laws or under the successor security program.

Hiring of Physically Handicapped

Public Law 617, enacted in 1948, affirmed the Commission's war-developed policy of hiring the physically handicapped. It banned discrimination against physically handicapped persons in filling any positions whose duties they could perform efficiently without endangering themselves or others.

First Hoover Commission

Important personnel recommendations were made in the February 1949 report of the Commission on Organization of the Executive Branch of the Government (known as the "First Hoover Commission"). As a result of these recommendations:

- Reorganization Plan No. 5, effective in August 1949, changed the title of the head of the Civil Service Commission from "President" to "Chairman." It made the Chairman individually responsible for the administrative direction of the Commission's operations.
- The Commission issued, in the Federal Personnel Manual, "Guides for Determining the Nature and Scope of Agency Personnel Programs." This guide discussed the functions which should be included in each agency plan: position classification, recruitment and selection, inservice placement, promotion, employee-performance evaluation, employee relations and services, special incentives, retrenchment, disciplinary actions, and the processing and maintenance of personnel records.

Junior Personnel; Career Executives

During the reconversion period, the Commission took steps to attract competent junior personnel into the Federal service, and also announced a new program for the development of career executives. Through executive-development agreements with the Commission, agencies were given greater latitude to assign employees to various fields of administration in order to broaden their experience.

A program designed to attract into the Federal service bright, capable, well-trained young people had its inception some 20 years earlier. In the early days of civil service, no provision was made for young college graduates, without work experience, to enter the Government service in their field of specialization. Graduates lacked the experience required to take professional examinations, and were reluctant in many cases to enter the service as low-paid clerks with the hope of eventually managing to gravitate to the professions for which they had been trained.

Leonard D. White of the University of Chicago, a Civil Service commissioner from 1934 to 1937, was the first to give major attention to this problem. He wrote extensively on the subject and emphasized the usefulness to the Government of having a considerable number of college-trained people coming into the Government right from the campus.

The program, which was started at that time under the title "Junior Civil Service Examiner," was the forerunner of the Junior Professional Assistant examination of the 1940s and the Federal-Service Entrance Examination of today. All of these examinations emphasized the recruitment of college-caliber young people on the basis of their intelligence and potential, with the idea of providing an annual intake of talent for future leadership.

Executive development also was destined to assume an even more important role in personnel administration.

Promotion Program

In April 1950, the Commission took a step toward setting standards for promotion programs. The objective of a seven-point program for Federal agencies was to encourage systematic consideration of all qualified employees when vacancies occurred.

Early in 1958, selection for promotion from among the best-qualified employees was made a requirement. Under this program, agencies were required to set up and follow systematic procedures in making selections for promotion. The new program also required agencies (1) to publish agency guidelines (i.e., the general

promotion policy of the agency), (2) to consult with employees and employee organizations on merit promotion plans, (3) to inform employees about promotion procedures, and (4) to document promotion actions.

Korean War Begins

The Federal personnel system had barely been put on a peacetime basis when, in June 1950, the Korean War began.

The Commission, its World War II experience still fresh, immediately began to adapt its operations to cope with the new situation. It entered into agreements with the Army, Navy, Air Force, and other defense agencies, giving them the authority to make “emergency-indefinite” appointments not leading to permanent status. This gave the agencies concerned the flexibility they needed to create or expand staffs quickly, by authorizing them to hire employees who met the Commission’s qualification standards, if appropriate registers of eligibles were not immediately available.

The Commission also began to shape its policies in the direction of preventing the new emergency from causing a substantial increase in the permanent Federal civil service staff, but much of its discretionary authority was soon removed by congressional action.

Whitten and Other Amendments

In September 1950, Congress enacted the Whitten amendment to the Supplemental Appropriation Act of 1951. To carry out the provisions of this amendment, President Truman on November 13, 1950, issued Executive Order 10180—“Establishing Special Personnel Procedures in the Interest of the National Defense”—and on December 1, 1950, the Commission’s new regulations under the order became effective. They put new appointments to most positions on an “indefinite” basis; put transfers, promotions, and reinstatements also on an indefinite basis; and set up a system of reemployment rights to encourage transfers to defense agencies.

The Whitten amendment was revised and reenacted in 1951 as part of the Supplemental Appropriations Act of 1952, liberalizing transfer provisions but taking measures to ensure that Federal employees would not be promoted too rapidly. Another revision of the amendment was included in the third Supplemental Appropriations Act (also 1952), correcting some of the difficulties in administering the law and giving agencies wider hiring flexibility.

These amendments seemed to start a trend toward “personnel administration by rider.” Other riders to appropriation acts during this period included:

- The Thomas leave rider, which required forfeiture, each June 30, of unused leave earned during the preceding year.
- The Jensen-Ferguson amendment, restricting by arbitrary formula the filling of vacancies, in order to reduce agencies' personnel ceilings.
- The Byrd rider, cutting down, by a flat 25 percent for 3 successive years, the size of publicity and information staffs.
- Riders setting arbitrary ratios of personnel workers to total agency employment.

Examining by Boards Expanded

At the direction of the President, the Commission expanded its program for examinations conducted by boards of civil service examiners, and undertook to coordinate agencies' recruiting.

From a post-World War II low of 1,943,400 in January 1950, Federal employment reached, in July 1952, a peak of 2,604,300.

The work of boards of examiners after World War II showed that they provided an effective method of decentralized examining. More and more agencies realized that they had a sizable stake in the competitive recruiting system. Earlier complaints about the ineffectiveness of boards no longer held true.

When the Korean emergency began, the Federal service was again faced with urgent recruiting needs. To meet this need, the Commission instructed its operating offices to establish boards of examiners to the maximum practical extent. Boards of examiners demonstrated, during the emergency, that they could do a huge competitive recruiting job with speed and effectiveness.

New boards were created and existing boards were expanded. Many were given authority to announce examinations for types of positions which had previously been handled by Commission offices exclusively. For example, boards announced examinations for stenographers, typists, and other clerical jobs.

Largely through the expansion in board activity, a substantial proportion of recruitment during the Korean emergency was conducted through open competitive examinations. This was done during a time of acute need for fast recruitment as well as a restriction on the type of appointments available. Most appointments during this period were indefinite and did not confer competitive civil service status.

In 1951, the Commission invited agencies to establish boards of examiners in their headquarters offices to give them a greater opportunity to participate in the

selection of their own personnel and to get improved and faster recruiting services. Many agencies accepted this invitation. Although boards in Washington were responsible for a smaller proportion of the examining load than in the field service, the board program in the Washington area moved forward with steady progress.

After the armistice in Korea, there was a very substantial decrease in the size of the Federal workforce. However, the board of examiners program continued to play a large and vital role in the operations of the competitive civil service system.

Serious Manpower Shortages

Serious manpower shortages resulted in many occupational areas because the Korean conflict caused marked increases in defense activities, both within the Government and by contract with private firms. Unprecedented demands arose for engineers, physicists, metallurgists, electronic scientists, and highly skilled tradesmen.

To meet these extraordinary manpower needs, the Commission encouraged defense agencies to develop intensive training programs to address certain deficiencies in the education and experience of new employees. In some shortage areas, the Commission intensified recruiting and also revised examination standards to permit more applicants to qualify.

A special recruitment and placement unit in the Commission's central office was given primary responsibility for locating and placing career employees of proven ability in high-level positions in certain newly established defense agencies. A Federal Administrators examination was announced for employees who had served at least a year in grade GS-12 or higher, and the resultant registers were used for promotions within agencies and for filling high-level jobs by transfer to other agencies.

The Commission urged agencies to take measures for conservation and full utilization of manpower. Increased emphasis was given to the program to encourage agencies to make increased use of women, older workers, and physically handicapped workers.

Public Confidence

In 1952, public confidence in the civil service system was demonstrated again. Revelations of gross misuse of high appointive offices in the Bureau of Internal Revenue created a vigorous public demand for placing these positions under civil service, and this was done by means of a reorganization plan submitted by President Truman and approved by the Congress. The Civil Service

Commission then began conducting competitive examinations for nearly all high-level Internal Revenue positions which had hitherto been subject to patronage.

Also during this period, Robert Ramspeck, chairman of the Civil Service Commission, conducted a vigorous defense of the loyalty and dedication to their work of the vast bulk of civil service employees. In a series of speeches before influential national conferences and conventions, he urged that the highly publicized misdeeds of a few Federal employees, who had betrayed their trust, not be allowed to lead to blanket condemnation of Federal employees as a group.

Brief Recap: 1938–52

The period from 1938 to 1952 was a decade and a half of great fluctuations and changes for Federal personnel management and the civil service.

The period saw a significant increase in competitive coverage, from 66 percent of the total civil service in 1938 to 86 percent in 1952.

It also saw the reorganization of the Civil Service Commission and its continuing evolution from a “policing” agency to the central personnel arm of the executive branch of Government. The reorganized Commission assumed leadership in the conservation and efficient utilization of manpower, supervisory development, employee grievance procedures, fair promotion policies, streamlining of veterans’ appeals, and simplification of reduction-in-force procedures.

Personnel divisions were established in Federal agencies, and civil service examining work was increasingly decentralized to agency examining boards. Modern personnel management became increasingly significant in the handling of Federal personnel problems.

Great upheavals occurred during these 15 years—following the economic depression there was the pre-World War II defense emergency, then the war, a gigantic postwar reconversion program, and then Korea. Concurrently, many important changes took place directly affecting the Federal service: basic and comprehensive legislation was enacted in the areas of pay, grade structure, leave policy, veteran preference, and retirement. A fair-employment program was initiated, and the Hatch Act, dealing with political activity on the part of civil servants, was enacted.

Reorganization Plan No. 1 of 1952 put all jobs in the Bureau of Internal Revenue (except the Commissioner and Bureau attorneys) under the competitive service—a significant change involving 600 positions.

Federal employment fluctuated from 1,042,800 in June 1940, to 3,816,300 in June 1945, to 1,943,400 in January 1950, to 2,604,300 in July 1952.

Unquestionably, the recruiting and reduction-in-force problems resulting from this alternating expansion and contraction constituted the biggest and most complex personnel task ever successfully undertaken by any personnel agency.

Eisenhower Becomes President

The first change of party in the national Government in 20 years came when President Dwight D. Eisenhower took office in January 1953. The civil service, which had come out of the depression and World War II stronger than ever before, was to be tested by the return to power of a political party after long years out of office and dedicated to a complete overhaul of Government management. The new administration, which could not have been expected to accept without challenge all the directions in which Federal personnel management had been moving for so many years, moved swiftly to put its personnel philosophy into effect.

Schedule C

President Eisenhower issued an Executive order in March 1953 that established Schedule C to provide for a new category of positions to be excepted from the competitive service by the Civil Service Commission because of their confidential or policy-determining character. This was in addition to Schedules A and B, already in existence for a miscellaneous list of excepted positions.

The purpose of the new Schedule C was to draw a clearer distinction between the competitive service and the excepted service. During the long Democratic regime, many policy-determining positions, and positions in a confidential relationship to agency heads, had been brought into the competitive service. Also, many employees in excepted positions (who formerly had been in competitive jobs) had protection against summary removal which had been intended to apply only to the career civil service.

The Executive order directed the Civil Service Commission to review all positions that it had previously excepted for any reason to determine whether they should continue to be excepted (either remaining in Schedules A or B or being transferred to Schedule C) or be returned to the competitive service.

By December 31, 1953, a total of 848 jobs had been placed in Schedule C. Of these, 436 had previously been excepted, 225 were transferred from the competitive service, and 187 were new positions. Schedule C, which some had predicted might eventually include "many thousands" of jobs, later leveled off to a comparatively stable coverage of about 1,200 positions.

Protections against removal provided to persons in the competitive service were not provided to those serving in Schedule C. However, veterans holding

excepted positions continued to have the protections provided by the Veterans' Preference Act.

New Security Program

Another early action of the Eisenhower administration was the termination of the employee loyalty program of the previous administration. Executive Order 10450 of April 27, 1953, directed that the existing loyalty program (in operation since 1947) be superseded by a new and broader security program which would ensure that the employment of all present and future Federal employees be clearly consistent with the interests of the national security. The effective date of the new program was May 28, 1953, but the Civil Service Commission's regional loyalty boards and the Loyalty Review Board were authorized to continue operations for 120 days, in order to complete certain pending work.

Under the loyalty program, the highest body to which a civil service employee could appeal was the Commission's Loyalty Review Board. Under the new security program, the decision of the agency head, in any individual case, was final. However, an employee whose employment was considered to be inconsistent with the interests of national security (1) was informed of the charges against him, and (2) was given the opportunity to request a hearing before a board composed of employees of agencies other than the one which employed him. The decision of this board was advisory to the head of the agency for which the employee worked.

Civil Service Commission Reorganized

A general reorganization of the Civil Service Commission—to tighten its management control and to emphasize its Governmentwide planning and standard-setting responsibilities—was made in August 1953.

The reorganization took cognizance of changes in the Commission's functions which had been gradually taking place for years. The Commission, looking toward improvement in the Federal personnel program, had been developing steadily in the direction of research, planning, and leadership. It had moved toward delegating certain responsibilities to agencies and guiding them by the establishment of standards, issuance of regulations, inspection of agency personnel actions; taking corrective action when necessary, and generally giving advice and assistance.

As a result of the reorganization, a simplified and more efficient structure reduced the Executive Director's span of control from nearly 20 divisions and offices to 5 bureaus and 3 staff offices. The number of regional offices was reduced from 14 to 11.

The Independent Offices Appropriation Act of 1953 required the abolishment of the Federal Personnel Council and the transfer of its functions to the office of the Commission's Executive Director. In January 1954, the Commission established the Interagency Advisory Group to take over these functions.

Major Reduction in Force

Federal civilian employment was reduced by 212,700 between January and December 1953. About half of the reduction was accomplished by not filling vacancies caused by resignation, retirement, or death; the remainder was achieved through reduction in force and termination of temporary appointments.

The reduction in force required the separation of many career employees with long Government service. In fairness to them, and to protect the Government's investment in their experience, a program was set up to reemploy, wherever possible, these separated careerists. The separating agency was required to monitor every career worker about to be separated against all positions in the commuting area for which the worker was qualified and which were occupied by indefinite appointees.

If the separating agency failed to find a job held by an indefinite employee for which the career worker was qualified and available, it gave the separated employee a statement to that effect. The separated careerist then became eligible to displace indefinites in other agencies in the commuting area, at and below the highest grade he held on or before September 1, 1950.

By January 1954, over 3,100 separated career workers had been rehired in the Washington area alone.

Reduction-in-force procedures were revised and simplified in 1953. The old system recognized six tenure groups, each divided into veterans and nonveterans. In reductions in force, employees in higher groups had retention preference over those in lower groups. They also had the right of reassignment to a position in the same or lower grade if held by an employee in a lower group. These provisions led to extensive "chain reactions" (i.e., abolishing one job could lead to a whole series of personnel actions).

The new reduction-in-force procedure reduced the tenure groups to three, divided as before into veterans and nonveterans. However, veterans in the lower (indefinite) group were no longer given the privilege of replacing nonveterans in that group. And the right to replace an employee in a lower-tenure group was sharply limited.

Changes Made in Leave Law

The act of July 2, 1953, reflected the Civil Service Commission's recommendations for changes in the leave law, and repealed the rider to the Independent Offices Appropriation Act of 1953, which would have required forfeiture on each June 30 of all unused leave earned during the preceding year.

The new act also reduced maximum permissible accumulations of leave from 90 to 45 days for certain overseas employees and from 60 to 30 days for others. It limited lump-sum leave payments due on separation or death to 30 days, or to the amount of leave carried forward at the end of the previous leave year, whichever was larger. It removed from coverage under the Annual and Sick Leave Act of 1951 all Presidential appointees paid at a rate higher than the maximum allowed under the Classification Act (then \$14,800). And it provided that employees who transferred from one leave system to another could transfer, within certain limits, any annual leave they had accumulated.

Veterans' Preference Act Amended

The year 1953 brought enactment of a Veterans' Preference Act amendment which had long been sought by the Civil Service Commission and groups interested in public personnel administration.

It required that veterans must obtain passing grades in civil-service examinations before having 5- or 10-point preference added. It also provided that only veterans with a compensable service-connected disability of 10 percent or more could automatically go to the top of certain registers. Previously, the privilege of "floating to the top" of these registers was accorded to all 10-point preference eligibles.

The amendment further restricted agencies in passing over an eligible veteran to select a nonveteran.

Group Life Insurance Program

Low-cost group life insurance, a very important addition to the Federal personnel program, was provided when the Federal Employees' Group Life Insurance Act was signed on August 17, 1954. This law authorized the largest group life insurance program in the world. It was a key point in the Eisenhower administration's plans to revamp Federal personnel practices to accord better with practices of progressive private employers.

From the beginning, the program was administered to conform as nearly as possible to insurance practices in private industry. The law provided for the group life insurance to be underwritten by a large number of private insurance companies, and the formula for determining their participation was purposely weighted in favor of middle-sized and small companies.

The new program was designed to provide additional economic security for Government workers and their families, and to aid in minimizing employee turnover and in attracting new employees to the Government service. Employees' response to the program was overwhelmingly favorable. Although participation was optional, about 90 percent of the approximately 2 million eligible employees signed up for it.

Each participating employee was insured for the amount of his annual salary carried to the nearest upper thousand. Cost was shared, with the employee paying two-thirds through payroll deductions and the Government one-third. Originally, the employee's cost was 25 cents per \$1000 of insurance per pay period. Benefits were paid in case of death, and for accidental loss of limb or eyesight. The death benefit doubled if death was accidental.

By January 1958, approximately 2,100,000 Federal employees were covered and the insurance in force amounted to \$11 billion. The families of about 36,000 deceased Federal employees had received approximately \$175 million in benefits.

Incentive Awards Program

An act of September 1, 1954, authorized a liberalized, Governmentwide incentive awards program for Federal employees, with the purpose of encouraging all Federal employees to participate in improving the efficiency and economy of Government operations. Good ideas and superior performance were to be sought out, recognized when found, and rewarded.

The program, which became effective in November 1954, superseded several awards programs of limited scope which had been in effect for a number of years. It provided for three types of awards: cash for suggestions, cash for superior performance, and a variety of honorary awards. An agency could make a cash award up to \$5,000. With the approval of the Civil Service Commission, it could make an award up to \$25,000. Honorary awards, granted independently or in addition to cash awards, could be given for long and faithful service or for acts of personal heroism; they were not intended to serve as a substitute for cash awards.

Capping the awards program were Presidential awards. Presidential Awards for Distinguished Federal Civilian Service, the highest honor that can be bestowed on a Federal career employee, were presented for the first time to 5 persons on January 16, 1958, the 75th anniversary of the Civil Service Act.

In the first 31 months of operation of the incentive awards program, from November 30, 1954, to July 1, 1957, more than \$312 million in dollar value benefits accrued to the Government. Over 200,000 employee suggestions were adopted, and 68,000 individual superior achievements recognized. Cash awards

to employees during this period totaled over \$16 million, showing a return of nearly \$20 in tangible benefits for every dollar invested in the incentive awards program.

Career-Conditional Appointment System

One of the most complex problems facing the new administration was that of converting back to permanent appointments following the Korean emergency. The end of the conflict found hundreds of thousands of employees on the rolls with only indefinite appointments. Many indefinites left the Federal service during the reductions of 1953, but many thousands were needed for continuing work in their agencies. In general, nothing but indefinite appointments had been made in the Federal service since December 1950. The problem was how to do justice to the equities of these employees and the needs of their agencies, while at the same time reopening the career gateway to new applicants for employment.

In November 1954, an Executive order established a new career-conditional appointment system, made possible 2 months earlier by modification of the Whitten amendment. The career-conditional appointment had features designed to give flexibility to the Federal personnel system while assuring stability of the career service during expansions and contractions resulting from limited national emergencies. It should eliminate the need to suspend normal hiring procedures or to resort to extensive use of such expedients as the indefinite appointment system used during the Korea period.

The new system recognized that (1) not all persons who enter Government service intend to spend the rest of their working lives in that service, and (2) the Government may not have continuing jobs for all those who may be needed during an emergency.

Therefore the system required that appointees, after qualifying competitively, serve a 3-year conditional period before attaining full career standing. The conditional period of service was designed to enable employees who intend to make careers in public service to demonstrate this intention, and to enable the Government to provide reasonable assurances of continuing career opportunities.

Just before the career-conditional appointment system went into effect, 34 percent of the employees in the competitive service held indefinite appointments. By the close of fiscal year 1955, that percentage had been reduced to 6 percent. Many indefinite employees were able to qualify for regular appointment through the new system.

Strengthened College Recruiting Program

Even during the massive reductions in force of 1953, the Commission had clung firmly to the principle that a yearly intake of promising young men and women from the college campuses was essential to provide future leadership for Federal agencies. Evidence of the validity of the principle was the stature achieved in Government by a number of outstanding career executives who were the product of pioneering efforts made 15 or 20 years before to bring into the Federal service men and women of college caliber who gave early promise of executive potential.

When the reduction had run its course and the career-conditional appointment system had again opened the gate to permanent-type appointments in Government service, the Commission's college recruiting program was given new emphasis.

The additional fringe benefits authorized in 1954 put the Government in a better recruiting position, but something needed to be done to streamline examining procedures. More than 100 individual examinations were consolidated into one—known as the Federal Service Entrance Examination (FSEE)—and definite arrangements were made with Federal agencies to fill thousands of jobs with college graduates, where only hundreds had been filled in earlier years.

The new examination, covering practically every kind of professional entrance hiring done by the Government except for engineering and the physical sciences, was launched in the fall of 1955 as an intensive, Governmentwide effort under Commission leadership. More than 900 campus visits were made by Government recruiters representing mainly the various hiring agencies themselves, and between 7,000 and 8,000 Federal jobs were filled through the FSEE during the first years.

Manpower shortages in physical science and engineering fields continued, caused principally by the competition offered by private contractors engaged in defense work. To attract such personnel, the Commission made extensive use of authority Congress had granted in 1954 to set starting pay rates above the minimum for the grade in shortage occupations.

Retirement Act Revised

The Retirement Act was again completely revised by an act of July 31, 1956, which liberalized the benefit structure of the civil service retirement system. Among the most important changes were the following:

- A liberalized formula for annuity computation provided larger annuities.
- Liberalized provisions for survivor annuities provided greater benefits for widows and dependent children.

- Smaller reductions were made in annuities for nondisability retirement under age 60, or to provide survivor annuities.
- A minimum annuity was provided in the case of disability retirement.
- Annuities were provided for dependent widowers of female employees.
- Immediate reduced annuities were allowed employees involuntarily separated after reaching age 50 with 20 years of service.
- Employee contributions were increased to 6.5 percent.
- Employing agencies were required to contribute directly to the retirement fund an amount equaling their employees' contributions.

Evaluation of Retirement System

From a means for separating superannuated and disabled employees, the civil service retirement system evolved into a modern staff retirement plan providing protection to career employees and of great value to the Government in attracting and retaining able employees. By 1958, the system, 38 years after its establishment, had increased its coverage from 300,000 employees in 1920 to 2,100,000. Changes in the civil service retirement system also reflected the progress made in the United States in providing economic security to older citizens, and protection against the loss of family income because of death or disability.

Extension of Career Service Overseas

In 1956, the Federal civil service became a worldwide career system for the first time, when the Commission extended coverage to approximately 20,000 Department of Defense positions held by American citizens in foreign countries and island possessions. Taken together with the 10,000 jobs in Alaska which had been brought under civil service coverage the previous year, this was one of the large, historic extensions of the Federal merit system.

This action made possible the reassignment of employees to and from overseas positions without loss of their standing in the civil service. The loss of civil service rights and privileges by employees going overseas had been a serious obstacle to agencies trying to maintain an efficient workforce abroad.

Growth of Federal Employee Organizations

The Lloyd-LaFollette Act of 1912 specifically affirms the right of Federal employees to join or refrain from joining employee organizations. Although the postal service and skilled trades employees had strong unions even before the

administration of Theodore Roosevelt, unionization did not take place among the clerical and professional employees of the Government until 1916, when some local unions were formed. The immediate cause of the formation of a union of general Federal employee membership was an attempt to lengthen the working day by legislation introduced in Congress in February 1916. This legislation was never enacted.

An organization to protest against the proposed measure was formed among a few clerks in the War Department and spread rapidly throughout the departments and agencies. By September 1917, when the National Federation of Federal Employees, encouraged by the American Federation of Labor, was formally organized, it had over 6,000 members. In 1931 the NFFE broke away from the AFL following a dispute and became an independent organization. The following year, the American Federation of Government Employees, affiliated with the AFL, was formed.

Federal employee unions have had a significant effect upon the development of Federal personnel management, and their views are sought by both the legislative and executive branches of Government. The Post Office Department had always been the most highly organized agency; in 1958 approximately 90 percent of its employees belonged to postal employee unions.

Board of Examiners Program

In January 1958, there were 777 boards of examiners under the jurisdiction of Commission field offices and 57 boards of examiners in Washington, DC. These 834 boards were located in about 400 different labor markets throughout the United States.

State and Local Merit Systems

By 1958, 24 States had adopted formalized merit system laws providing for appointments after competitive examination, the latest being Florida in 1955. In most, the law applied only to State employees, but in some they included employees of local government jurisdictions.

In cases where municipalities applied their own merit systems, there was no pattern of uniformity in their provisions, but almost without exception they set the requirement of appointments on the basis of competitive examination. In many, however, the merit system embraced only appointments of policemen and firemen.

From Administration to Management: 1958-1977

Labor Market Competition

As the Cold War advanced and the Space Race began in the late 1950s, the Government experienced difficulty in attracting college graduates, particularly in science and engineering, because the starting salaries of the General Schedule pay system were considerably below the salaries that companies in the private sector—some of them Federal contractors—were offering to graduates. Under the pay rules of the time, new graduates with bachelor's degrees could enter the Government only at the first pay step of grade GS-5, while those with master's degrees could enter at the first step of grade GS-7. Because earlier legislation (the Fringe Benefits Act of 1954) permitted the Commission to set the pay of science and engineering graduates above step one of the grade, the Government was by that time bringing those graduates in at the top steps of grades GS-5 and GS-7. This was still insufficient to enable the Government to attract science and engineering graduates, because they could start at still higher rates in the private sector. The Commission sought to enable science and engineering graduates with bachelor's degrees who met the Commission's standards for academic achievement to enter at grade GS-7 (at the top step of the grade), and those with master's degrees to enter at grade GS-9, but it lacked the administrative authority to do so.

The Federal Employees Salary Increase Act of 1958 enabled the Commission to begin a program of recruiting for college graduates in science and engineering with the offer of higher starting salaries. In later years, this program of offering entry to the Government at grades GS-7 and GS-9 in recognition of superior academic achievement embraced college graduates in virtually all fields, not just science and engineering, and became an important tool in equal employment opportunity programs seeking to attract high-quality minority graduates.

Government Employees Training Act (1958)

The training of Federal employees has had a spotty history. Various laws, Executive orders, and Presidential directives relating to specific departments or agencies authorized training of specific employees in particular circumstances. Ultimately, the Civil Service Commission was directed to coordinate these efforts so training would be available across agency lines.

Before 1958, neither departments and agencies nor the Commission had clear statutory authority to train employees. That year, Congress enacted and the President signed the Government Employees Training Act. The act:

- Established fundamental principles for employee training in all Federal departments and agencies;

- Authorized many kinds of expenditures for employee training, such as tuition and matriculation fees, library and laboratory services, and the purchase or rental of books, materials, and supplies;
- Provided for centralized training programs under the sponsorship of the Civil Service Commission, authorized departmental and agency training, and allowed employees from any department or agency to attend training conducted in other departments or agencies; and
- Authorized the Government to purchase training from existing educational or professional institutions.

In addition to placing training on a firm footing throughout the Federal Government, the act recognized training and employee development as a new, strategic component of modern personnel management.

Federal Employees Health Benefits Act (1959)

Trailing other employers who established group health insurance programs for their employees—some as early as the 1930s—the Federal Government lacked a health insurance benefit until 1959. The Government was not competitive with other employers in terms of its employment benefits until the Congress added this component to the Federal offering. Although Federal employees in some locations could purchase health insurance at group rates from BlueCross BlueShield prior to 1959, the employees paid the entire premium, and had only one or two optional plans from which to choose their coverage.

Congress enacted and President Eisenhower signed the Federal Employees Health Benefits Act in 1959, and it went into effect in 1960. From then on, Federal employees (and those who retired after that date) could secure health insurance for themselves and their families at group rates, and the Government shared the cost of premiums. The Federal Employees Health Benefits Program (FEHBP) offered a variety of plans with different features and coverages, so employees in different health and family circumstances could select plans that best fit their needs.

Almost all Federal employees quickly signed up for health insurance coverage. The FEHBP became the largest employer-sponsored health insurance program in the Nation and a model for other employee health plans in the private sector. This placed new responsibilities on the Civil Service Commission in managing the health benefits program, contracting with insurance carriers who offered health care coverage under the program, overseeing their activities, and conducting open seasons for employees to sign up for or change insurance coverage.

In 1960, Congress enacted a separate health insurance program for those already retired and their dependents, and the Commission took on the job of managing an expanded health benefits program for a population that presented the different types of challenges inherent in an aging workforce. The health benefits program at that time covered nearly three million employees and their dependents and nearly a million retired employees and their dependents.

President Kennedy and the 1960s: A Busy Time

President's Commission on the Status of Women

In the first year of his administration, 1961, John F. Kennedy established the President's Commission on the Status of Women. In an Executive order 2 years later, the President declared that the Federal service would showcase the feasibility of combining genuine equality of opportunity on the basis of merit.

With its responsibility for ensuring nondiscrimination and equal opportunity in the largest employment system in the Nation, the Commission took a look at Federal personnel management policies and practices to make sure they did not place barriers in the path of employment for women. Since 1934, department heads had had the authority to restrict hiring for particular jobs to one sex or the other. The Commission greatly restricted the power of department heads to specify one sex as a requirement for qualification for Federal jobs. The Commission would, in the future, allow departments to impose gender requirements only in unusual situations, such as when the work required employees to occupy common sleeping or dressing facilities, or when the work posed special hazards to members of one sex or the other.

During the next two decades, the Commission and departments and agencies developed a more comprehensive Federal Women's Program designed not just to remove barriers to employment of qualified women, but to open employment and advancement opportunities throughout the Government for women. The expectation was that women would not only enter, but would advance to positions of prominence and authority in all areas of Federal employment. The programs were designed not just to enhance opportunities in a technical sense, but also to foster a societal transition that increasingly encouraged and supported women who were making the change from home to the workplace.

Job Examinations Centralized

The Commission in 1961 made sweeping changes in the administration of civil service job testing. From the beginning in 1883, the Commission had relied on boards of examiners funded and staffed locally by departments and agencies.

The Commission prescribed standards and procedures for testing and provided the examinations, but employees of the departments and agencies did the day-to-day examining work.

In 1961, the Commission took over examining from the existing boards in the departments and agencies. This decision put an end to 668 agency boards of examiners and set up 65 interagency boards with Commission employees to do the work. The abolition of these agency boards was followed by a continuing, gradual centralization of examining authority in the Commission, and later the evolution of interagency boards into Area Offices of the Commission. Eventually, the pendulum would move so far in the direction of centralization that mounting pressures from departments and agencies for a more responsive hiring process would dictate a shift in the opposite direction.

Pay Comparable to the Private Sector

During the postwar years of the 1940s and 1950s, as agencies were classifying most of their jobs in the General Schedule structure of occupations and grades, Presidents and Congresses had approached the question of how much pay should be assigned to the grades in a haphazard manner. From time to time, as wages and prices in the private sector increased, Congress provided pay raises for Federal civil service employees. In the typical case, Congress granted pay raises to the Postal Service and, almost as an afterthought, tacked on provisions to give the same increase to the General Schedule.

In 1962, Congress, at the urging of the Kennedy administration, took action to address the perpetual questions of (1) how much to pay Federal civil service employees and (2) on what basis this decision should be made. Based on the groundwork laid during the Eisenhower administration, Congress passed the Federal Salary Reform Act of 1962.

The new law established a principle for determining future adjustments to the General Schedule pay rates: Federal pay should be reasonably comparable to pay in the private sector for work at the same levels of difficulty and responsibility.

Congress adopted a methodology for making these adjustments on an annual basis. Each year the Bureau of Labor Statistics would make a nationwide survey of salaries in the private sector for work equivalent to General Schedule work at the various grade levels. The President's "Pay Agent"—the Chairman of the Civil Service Commission and the Director of the Bureau of the Budget—would review the survey results, consult with employee unions, and recommend to the President the amount of increase for the next year. The President would then send a legislative proposal to Congress embodying that increase. If Congress enacted the new salary schedule, or some version of it, the new rates would go into effect the next year. In addition, the act established automatic linkages

between the General Schedule and three other statutory pay systems of the Government: the Postal Field Service schedule, the Foreign Service schedule, and the Veterans Administration Medical Service schedule. Consequently, whenever Congress changed the General Schedule rates, the rates in these other systems would change by an equal amount.

The act also changed the way individual employees would advance within the pay range for their grade level. Over the years, concerns had developed about these more or less automatic increases and about rewarding exceptional performers. For the first time, advancement to the next step in the pay range required demonstration of an “acceptable level of competence,” and managers could accelerate advancement through the range by rewarding high-quality performance with an additional step increase, which came to be called a “quality step increase.”

The same act provided a solution to another problem of long standing in the Civil Service Retirement System: how to keep annuity rates in line with the rising cost of living for retired Federal employees. In the past, Congress had from time to time enacted specific increases in annuities when inflation had put severe strains on the fixed incomes of retired workers. The increases always came long after the cost of living had increased, and were subject to the uncertainties of the legislative process. Congress decided that annuity rates should be adjusted in the future by an amount equal to the change in the cost of living index and set up a procedure to make these adjustments automatically without having to enact special legislation on the matter. The annuities of retired Federal employees would be indexed to inflation, just as the Social Security benefits for other retired employees would be.

Labor-Management Relations

While Federal employee unions had been around for many years, the Government did not have consistent policies for dealing with them. With Executive Order 10988, President Kennedy in 1962 placed labor-management relations in the Federal civil service on a sound footing. The Executive order provided a set of uniform policies on labor-management relations applicable to all departments and agencies for the first time.

The order:

- Affirmed the value of employee participation in the development of personnel policies and declared that employees have the right to join labor organizations and the right not to join or participate (no closed shops in the Government);
- Required management to negotiate with unions and provided for written agreements based on collective bargaining, but it prohibited negotiations

on compensation and such management decisions as the work to be done, the budget, the organization, the staffing, and the internal security of organizational units;

- Prohibited strikes, work stoppages, slowdowns, or picketing; and provided standards of conduct for unions and fair labor practices for agencies;
- Designated an Assistant Secretary of Labor to determine union eligibility, elections, and units for representation;
- Established a Federal Service Impasses Panel to resolve issues when unions and agencies reach stalemates in negotiations; and
- Set up a Federal Labor Relations Council, chaired by the Chairman of the Civil Service Commission, to oversee labor-management relations policy in the Federal civil service.

The labor-management order and subsequent Executive orders on the same subject added labor-management relations as another component of modern personnel management in the Federal Government and as another responsibility of the Civil Service Commission.

The Kennedy administration recognized that there would be times when overriding national security interests must take precedence. President Kennedy's Executive order therefore included a national security exclusion, delegating to agency heads the sole and unreviewable authority to determine when union rights must yield to national security concerns.

Employee Appeals

Executive Order 10987, also issued in 1962, established for nonveteran employees of the Government the same appeal rights that the Veterans Preference Act of 1944 had established for veterans. The order directed departments and agencies to establish internal appeals procedures so employees could request a review and perhaps resolution of proposed adverse actions within their agencies before appealing to the Commission. After that time, all employees, not just veterans, could file appeals with the Civil Service Commission of proposed actions to suspend or remove them, ensuring an impartial outside review of the allegations against them and of the fairness of the disciplinary process. This order substantially increased the workload of the Commission in adjudicating employee appeals from departments and agencies.

LBJ: The Civil Rights Era and Federal Equal Employment Opportunity

Equal Employment Opportunity

An Executive order in 1961 had assigned to the Civil Service Commission responsibility for eliminating discrimination from the Federal civil service. In 1965, at the height of the national debate on civil rights, President Lyndon B. Johnson, by Executive Order 11246, assigned responsibility for equal employment opportunity in the Federal service to the Civil Service Commission and declared that “it is the policy of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency.” The Commission and the Bureau of the Budget had been making studies of the equal employment situation in selected metropolitan areas with concentrations of Federal operations for 2 years, identifying underrepresented people in local workforces and the factors that impeded their access to better jobs in the Government and the private sector. Assigned full equal employment opportunity responsibility by the President, the Commission went to work.

The Commission made it clear that agencies were responsible for equal employment opportunity in their personnel practices and required them to formulate and file with the Commission equal employment opportunity plans. To support agencies’ efforts, the Commission set up a training program for Federal managers and supervisors and an educational outreach program for minority communities to provide information about opportunities in the Federal service. The Commission sent its personnel program evaluation staffs to agencies, both to provide advice and to assess the state of equal employment opportunity in agency operations.

At the level of Governmentwide systems for which the Commission was responsible, the Commission reviewed the entire collection of its qualification standards and its civil service examinations to identify and remove any unintended obstacles to hiring minorities and women, without compromising the principles of merit in examining and selection. Beyond hiring was the issue of advancement, so the Commission established “Operation MUST—Maximum Utilization of Skills and Training.” The idea was that many of the Government’s minority and female employees were trapped in clerical occupations at lower grade levels, and these occupations did not offer the possibility of significant advancement within the General Schedule grade scale. The intent of the program was to identify these employees and to offer them training and reassignment opportunities to qualify for entry and advancement to work that offered better salaries and increased promotion opportunities.

The Commission’s classification standards program set about establishing new technician occupations in most of the administrative fields—personnel, budgeting and financial management, procurement, management analysis, logistics, transportation, and other areas where these positions had not existed previously. The Commission urged departments and agencies to review specialist jobs in

those fields to identify duties that did not require the full qualifications of the specialist, but which could be moved into new technician positions that would be opened to people who were previously limited to jobs in low-paying clerical occupations.

The model for this approach was the long-established technician work in engineering and science, where employees with practical experience in specialized fields assisted engineers and scientists by running experiments, recording data, making measurements, and setting up apparatus. These tasks utilized skills that could be learned on the job, and that did not require the full professional education offered at colleges and universities.

Later, Congress enacted the Equal Employment Opportunity Act of 1972, which gave the Civil Service Commission statutory authority for its actions and programs to bring the Federal civil service into line with the precepts of equal employment opportunity. Some advocates of civil rights at the time criticized the Commission's efforts as insufficient because they believed that the act and the President's reference to "affirmative action" meant the Government would establish hiring quotas for minorities and exclude all but minority applicants from employment until the quotas had been filled.

The Chairman of the Civil Service Commission declared that the Government's program was to take affirmative action to open employment opportunities within the framework of a long-established merit system of employment. The basic idea was hiring on the basis of individual qualifications for the work to be done and open competition to all citizens without regard to race, color, ethnicity, religion, or gender.

Executive Assignment System

Responding to Executive Order 11315, the Civil Service Commission and the departments and agencies created a new Executive Assignment System, embracing Federal executives in jobs at grades GS-16, GS-17, and GS-18—the "supergrades" of the General Schedule. The corps of top executives of the civil service included people of exceptional experience and ability who could fill executive-level positions anywhere in Government. At the executive levels of Government, a manager generally could move from position to position and agency to agency based on fundamental managerial qualifications, quickly acquiring whatever substantive program knowledge would be needed in the new post. The Commission and the departments and agencies made an inventory of executive talent throughout the Government and, when departments and agencies had executive positions to fill, the Commission would refer executives from other departments and agencies for them to consider along with their own executives.

From this basic executive assignment system, more advanced concepts evolved of a complete personnel system—based upon but separate from the established merit principles of the competitive service—for Federal executives throughout the Government. President Nixon in 1971 submitted a legislative proposal to Congress for a formal Federal Executive Service. The proposal included a highly controversial provision for Federal executives to work under 3-year contracts with the departments and agencies, which the departments and agencies could renew when they expired, based on the executive's record of achievement and performance in office. Congress did not enact the bill.

Coordinated Federal Wage System

Departments that employed hourly wage employees, such as shipyard and arsenal workers in skilled and unskilled trades, developed and maintained pay systems based on wage surveys of local private employers. The history of some of these pay systems went back as far as 1862. Over the decades, the number of these separate wage systems based on local wage surveys increased as more departments and agencies employed trades and labor workers. As a consequence, the Government had a highly confusing array of trades and labor occupations and a bewildering range of pay rates. Federal wage employees in local communities received different pay for the same work only because they worked for different agencies.

Beginning in 1956, the Civil Service Commission and the Bureau of the Budget had been studying this confusing picture and meeting with the agencies involved to attempt to bring order and consistency to the separate hourly wage systems. President Johnson instructed the Commission and the agencies to develop a single wage system beginning in 1965, when the number of trades, crafts, and labor employees of the Government was about 600,000. In 1967, when the developmental work was finished, the President established the Coordinated Federal Wage System. The key features of the system included:

- A single, unified occupational structure that greatly reduced the number and variety of blue-collar designations;
- A new system of grading hourly wage jobs by comparison with a set of job evaluation standards that the Commission would issue;
- A reduction in the number of local wage areas and the number of separate wage surveys;
- Centralized issuance of new wage schedules based on the surveys for each area; and
- The requirement that all Federal departments and agencies in a wage area would pay the same rates to their hourly employees.

In 1972, Congress gave this system a statutory basis. The Coordinated Federal Wage System then became the Federal Wage System.

Federal Executive Institute: Broadening Perspectives

The Civil Service Commission established three Executive Seminar Centers in different locations between 1963 and 1971. These centers offered a 2-week seminar for middle-level managers of the Government. The purpose of the seminars was to provide supervisors and managers an educational experience outside of the office setting that would expand their knowledge of basic management, supervisory skills, and broader aspects of the Government and society, and enable them to meet managers at about the same level from a variety of Federal, State, and local agencies, with whom they could share experiences.

The Commission added its premier program for senior managers, at the Federal Executive Institute, in 1968. The educational program there aimed at the top executives of the Government in supergrades GS-16, GS-17, GS-18, and, in some cases, grade GS-15. The core program extended over a period of 2 months. The executives resided at the Institute and participated in seminars, forums, small-group classes, field trips, and other educational activities that were designed to expand their understanding of themselves and of their role in the larger picture of the Government, the community, the Nation, and the world.

President Nixon: Personnel and Management Tools Personnel Evaluation Programs

New laws and Presidential directives assigned new personnel management responsibilities to departments and agencies during and after World War II, and provided for the Civil Service Commission to exercise oversight of the new functions to ensure consistency of personnel administration across the Government. Shortly after the war, in 1947, the Commission established its inspection program for the purpose of checking on the departments and agencies to ensure that they were applying the personnel management laws correctly in such areas as position classification, examining, and appointments to Federal jobs. At first, the focus of the inspection program was primarily on checking the records of the departments and agencies in detail to ensure that they were making correct decisions in classifying jobs, processing applications, making appointments, and keeping records of personnel transactions.

President Richard M. Nixon in 1969 changed the picture of personnel program evaluation. He informed the heads of departments and agencies that the responsibility for compliance with personnel laws was theirs and directed them to establish and maintain their own programs of personnel management evaluation to make self-assessments of the effectiveness of their personnel management

systems. The President directed the Commission to set standards for agency evaluation programs and gave the Commission overall Governmentwide responsibility for the evaluation process. The role of the Commission changed thereafter in relation to evaluating personnel management in the departments and agencies. The Commission decreased its regulatory and procedural inspections and increased its examination of the quality and effectiveness of personnel management in the departments and agencies.

Legislative Milestones of the Early Seventies

The beginning of the eighth decade of the 20th century brought major legislative developments to the Federal civil service.

Postal Reorganization Reshapes the Federal Civil Service

The Federal civil service underwent a significant reshaping when the Postal Reorganization Act of 1970 removed the entire Postal Service from the civil service system and from the jurisdiction of the Civil Service Commission. The act set up a complete but separate merit system of Postal Service employment, a system parallel to but apart from the system under the Civil Service Act of 1883 and its successors. The new Postal Service, however, was not the only merit system of employment in the Federal Government separate from the civil service system. Two other large-scale merit systems already existed in the Federal Government: the Foreign Service and the Medical Service of the Veterans Administration.

Merit Systems at the State and Local Levels

The Intergovernmental Personnel Act of 1970 substantially increased the role of the Federal Government in advancing merit systems of employment at the State and local levels. The Social Security Act amendments in 1940 required State and local governments to establish merit systems in their agencies that would receive Federal grants under social insurance, unemployment insurance, public assistance, and highway construction programs. Under this mandate, the Social Security Administration and, later, the Department of Health, Education, and Welfare had maintained a vigorous program of setting merit system standards for State and local departments receiving Federal grants-in-aid. Over time, the requirements for merit systems extended to additional grant programs of other Federal departments and agencies.

The 1970 act extended these requirements and programs much further and transferred administrative responsibility to the Civil Service Commission. The new program would cover all grants-in-aid to State and local governments from all Federal departments and agencies. The act required State and local departments and agencies to establish and maintain merit systems of employment that would meet standards that the Commission would issue and

enforce. The Commission would exercise its new responsibilities for State and local merit systems by providing advice, setting standards, examining State and local compliance, making grants and giving technical assistance, and exchanging employees and officials between levels of government. The Commission ultimately held the authority to block Federal grants of all kinds for all purposes to State and local agencies that refused to comply with the Commission's standards. In addition to its other features, the act stated—for the first time in statutory form—the fundamental merit principles underlying modern personnel management. The statement of principles in this act served as a model for principles later written into the Civil Service Reform Act of 1978.

The Classification System Under Attack

The Job Evaluation Policy Act of 1970 had a profound effect on job evaluation as described in the General Schedule under the Classification Act of 1949 and in the Coordinated Federal Wage System. Under the Classification Act of 1949, the departments and agencies had been classifying their jobs for more than two decades, and the Civil Service Commission had been developing classification standards for General Schedule jobs and evaluating the performance of departments and agencies in carrying out their classification responsibilities.

The Commission in the early 1950s had changed the form and format of the classification standards from tight class specifications to looser occupational standards in a narrative format. For each grade in an occupation, the standards described in words the characteristics of jobs that the departments and agencies should assign to the grade.

From the beginning of classification under the 1949 act, agencies and others had been accumulating complaints about position classification, including the structure and design of the classification plan embodied in the act, the form and style of classification standards and lagging production of standards, the Commission's administration and oversight of job evaluation under the system, and the amount of paperwork and staff time required to classify jobs. As complaints multiplied, the Commission adjusted features of the program and changed its methods in incremental ways, but the complaints did not subside.

In 1968, a subcommittee of the House Committee on Post Office and Civil Service, chaired by Representative James M. Hanley, studied the job evaluation systems of the Government—the General Schedule and several other systems that existed in the Government—and issued a highly critical report. In 1970, Congressman Hanley pushed through both Houses of Congress a bill calling for the Civil Service Commission to make a study of the Government's job evaluation systems with the objective of developing a comprehensive system that would embrace, in one way or another, all of the separate systems then existing in the civil service—the Postal Service, the Foreign Service, the Medical Service, the General Schedule, and the Coordinated Federal Wage System.

Responding to the act, the Commission set up a Job Evaluation and Pay Review Task Force and brought in a respected expert on job evaluation from outside the Government to head it. The Task Force filed its reports at the end of 1971 and then went out of existence. The Task Force recommended a “Coordinated Job Evaluation Plan,” a new classification system with six different job evaluation systems for various groupings of jobs: executive positions; supervisor and manager positions below the executive level; administrative and technological occupations; clerical and technician occupations; trades and labor jobs paid on an hourly basis; and special occupations (e.g., guards, police, firefighters, attorneys, doctors) that do not fit into any of the other groupings. For the bulk of Federal jobs subject to the General Schedule, the Task Force recommended two job evaluation systems, one for administrative and technological jobs and another for clerical and technician jobs. For both of these groups, the Task Force recommended a factor evaluation point-rating system of job evaluation, very different from the existing job evaluation system of the General Schedule based on narrative classification standards.

The Commission examined the report of the Task Force and in 1972 decided essentially to ignore it. Instead, the Commission planned to establish a factor evaluation point-rating scheme of job evaluation within the old framework of the General Schedule grade structure, without changing the structure created by the Classification Act of 1949 and unchanged since then. That is to say, a new way would be used to classify jobs already classified in the existing system. The Commission established a Test and Implementation Group to design, test, and validate this new system of evaluating jobs in the General Schedule. The production of classification standards in the narrative format was stopped, and the Test Group went to work. Over the next 3 years, the Test Group developed, field tested, and validated a new methodology of classifying jobs named the “Factor Evaluation System” and sold the idea to the Federal departments and agencies.

In December 1975, the Commission decided to implement the new Factor Evaluation System in the General Schedule and put its classification standards unit to work developing and testing the first standards in the new format. The Commission issued the first standards in the new format in 1977 and continued to develop additional standards, with the objective of replacing all of the standards in its collection with new ones as rapidly as possible. For the Commission and the departments and agencies, this changeover to the Factor Evaluation System constituted a massive commitment of resources to the task of creating new standards, training all classifiers in the new system, rewriting all position descriptions, and making fresh evaluations of all positions in the system, which numbered more than 2 million.

Making Federal Pay Comparable to Pay in the Private Sector: Act II

The Federal Pay Comparability Act of 1970 took the principle of setting pay for the General Schedule one step beyond the act of 1962, which had first established comparability with the private sector as the governing principle for determining the amount of pay for Government employees. The administrative machinery set up in the 1962 act involved annual surveys of salary levels in the private sector, review by the President's Pay Agent, consultation with Federal unions, advice from an independent panel of outside experts, and then a Presidential recommendation of a new pay schedule to Congress.

While Congress had reaffirmed its commitment to the principle of setting Federal pay rates at levels comparable to those in the private sector several times since 1962, the legislature had not, in fact, enacted the new pay rates in the amounts that the President recommended. By 1967, Federal pay rates had been increased by 23 percent over 1962 but still lagged substantially behind those in the private sector.

At the insistence of President Johnson, Congress that year enacted the Postal Revenue and Federal Salary Act of 1967. The act provided for closing the remaining gap between Federal pay rates and those of the private sector in three stages, with full comparability to be achieved by the final increase in 1969. The President and the Commission declared that the Government was quite close to having pay rates comparable to those in the private sector, and the adjustments in 1967, 1968, and 1969 would achieve the goal of full comparability.

Finally, Congress relinquished its role in setting Federal pay rates by legislation. The Act of 1970 affirmed again the principle of comparability, affirmed the methodology of surveying salary rates in the private sector, affirmed the President's authority to set new pay rates for the General Schedule and the other statutory pay systems, and then went one step further. The President would annually establish new pay schedules by Executive order and they would go into effect automatically, without the need for Congress to enact a separate law each year.

The new act provided that the President could, for reasons of national emergency or economic conditions affecting the general welfare, set the annual adjustment of pay rates at a rate lower than the surveys suggested. In that event, the President would send the proposed salary schedule to Congress. If neither House of Congress disapproved the President's plan within a set time period, the President's plan would go into effect. When the first pay schedule came up for approval under this new procedure, the Nation was in an economic crisis caused by runaway inflation, and President Nixon had imposed wage and price controls on the entire national economy. The President therefore set the initial pay adjustment under the new law below the level indicated by the surveys.

From then on, every President every year, with only a few exceptions, set the salary adjustment below the levels indicated by the annual surveys, and usually

gave as the reason economic conditions affecting the general welfare. Congress never disapproved the President's decisions on the pay adjustments, and the pay-setting methodology was almost never used.

Further Expansion of the Ideal of Merit

The effect of all of these developments during the 1960s and 1970s was to extend even further the scope of modern personnel management. The founders of the Federal merit system, who thought the competitive merit system they were creating concerned only the manner of hiring and firing civil service employees, had never contemplated the relevance of such things as equal pay for work of equal value and comparable pay to the ideal of merit.

Personnel Investigations

When President Truman's loyalty program ended, the Eisenhower employee security program took its place. The program had evolved over a period of many years as a mechanism to address issues of both employment suitability and security. After creating positions and classifying them for personnel management and pay purposes in the General Schedule or another job evaluation system, agencies classified them again as to sensitivity and security considerations. Many positions had very low levels of sensitivity. When the department or agency selected a person for a position of low sensitivity, the agency could appoint the person directly to the position. When the agency selected a person for a position rated sensitive as to the need for trustworthiness and reliability, before the agency could complete the appointment, the agency would have to conduct an investigation of the character and integrity of the person selected. Similarly, if the position were rated highly sensitive as to national security, the agency would have to make an investigation of the person's background relating to security before completing the appointment and granting the person a security clearance.

Usually, the Civil Service Commission or the Federal Bureau of Investigation, or one of a few other Federal agencies that have investigative authority, made these suitability and security investigations and submitted reports of findings to the appointing officers in the departments and agencies. If there was adverse information in the investigative report, the appointing officer had to weigh the importance of the findings in relation to the risk of hiring the individual and decide whether to go ahead with the appointment or withdraw the offer.

Over a period of decades, the investigative program of the Commission had built up a large amount of information about a very large number of people. The investigations and the information extended into areas of private and personal conduct related not just to the work or the employment of the individuals involved. Because different investigators were interpreting the scope of their inquiries differently, the Commission in 1968 issued comprehensive instructions

on investigations of suitability and fitness for employment. The instructions outlined the scope and coverage of investigations; the selection, training, and supervision of investigators; the rules for protecting privacy in investigations; and restrictions on the use of polygraphs in employment investigations.

The Courts Weigh In

At the same time that Congress was expanding the scope of the Commission's powers and responsibilities in other areas, courts were imposing new restrictions on employment investigations and decisions relating to appointments, especially in 1973. The courts limited the authority of investigators and selecting officials to consider behavior of consenting adults while off duty when it had no bearing on the individual's performance on the job or conduct of official business. In addition, in order for the Government to play a part in rehabilitation of former prisoners, the courts insisted that employment investigations should consider convictions and not just arrest records and that the Government should not automatically preclude employment of persons with prison records.

Validation of Examinations and Qualification Standards

During the decade of the 1970s, the validity of employee selection procedures came to the forefront of concern in Government and the private sector. The Civil Rights Act of 1964 first focused the attention of employers on the validity of their employment selection procedures, meaning that there should be a provable relationship between the selection device and the subsequent performance on the job of those selected. The 1972 amendments to the act, together with development of case law on the subject in the Federal courts, heightened this requirement. While Title VII of the Civil Rights Act of 1964 forbids discriminatory employment practices in the private sector and the public sector, it allows employers to use professionally developed ability tests in screening job applicants and in promoting or transferring employees, provided the tests are not designed, intended, or used to discriminate on the basis of race or other prohibited grounds.

The Civil Service Commission issued guidelines on the selection procedures for Federal jobs in 1972. The guidelines required that employment procedures in the Federal civil service be: (1) professionally developed; (2) objective; (3) reliable; (4) job related; (5) valid; (6) nondiscriminatory; (7) practical; and (8) administratively feasible. The guidelines further required that all applicant appraisal procedures have a rational or statistical relationship to job behavior, even if the procedures had no adverse effects on any applicant groups.

That same year, the Civil Service Commission reported on completion of a 6-year study, funded by the Ford Foundation, of racial bias in its written employment tests. The study began with the assumption that the Commission's written tests were biased, but the report declared that this was not the case. The

researchers found a high correlation between test scores and performance on the job: people who scored high on the tests performed well on the job; people who scored low on the tests didn't. The study concluded that properly designed tests predict job performance fairly for various ethnic groups.

The 1972 amendments to the Civil Rights Act created the Equal Employment Opportunity Coordinating Council (EEOCC), comprised of the Civil Service Commission, Equal Employment Opportunity Commission (EEOC), and the Departments of Labor and Justice. The Council took on the task of trying to create a single set of employment guidelines that would provide consistent guidance to employers, both private and public, as to what they could or could not do in designing and using various kinds of employment selection procedures. The basic premise of the guidelines was that employers could not use any employment selection procedure that had an adverse impact on any ethnic or racial group. The employer could continue to use an existing selection procedure with adverse impact only if the employer validated it and if there was no alternative; the employer was also expected to search for a different selection procedure at the same time.

In 1976, three of the four agencies—the Department of Justice, the Department of Labor, and the Civil Service Commission—adopted and published a common set of guidelines: the Federal Executive Agency Guidelines on Employee Selection Procedures. The EEOC was not in agreement with the guidelines and did not join in issuing them. Negotiations continued in the EEOCC, and 2 years later, the EEOC, the Civil Service Commission, and the Departments of Justice and Labor finally agreed on and published a set of Uniform Guidelines on Employee Selection Procedures, which replaced the earlier guidelines.

The Civil Service Commission then gave high priority to an effort to validate all of the selection procedures for which it was responsible—those used by the Commission in examining applicants for Federal jobs and those mandated by the Commission for departments and agencies to use. The Commission intended to validate all of its selection procedures, regardless of whether any of them had an adverse effect on any groups of applicants or employees.

1973: Major Effort To Undermine Merit System Discovered and Defeated

In the spring of 1973, Commission staff engaged in a regular inspection of personnel management at one Federal agency determined that a system had been created through which preferential treatment in appointments and promotions in civil service positions was given to persons having political approval. Very brief, sharply focused onsite reviews in three other agencies revealed that these serious violations of the merit system had been introduced recently in other departments and agencies. Later, it was learned that a manual, prepared in the White House and issued to specific political appointees in the agencies, introduced this organized effort to politicize the civil service.

With conclusive information from the inspection at one Federal agency, Bernard Rosen, the Executive Director of the Commission (a position established in the 1883 statute and filled by a career executive appointed by the Chairman), initiated action unprecedented in the Commission's history: eight high-level employees were charged with serious violations of civil service law and regulation and the agency was directed to remove four from the service and suspend the other four without pay for periods ranging from 30 to 90 days.

In the weeks and months that followed, increased emphasis was placed on regulatory compliance in the Commission's personnel management inspection program, and it became evident that these political intervention processes in the agencies had ended.

The Commission also had to deal with criticism of the Commissioners for a small number of letters to agencies that two Commissioners had written since 1969, in each of which an agency official was requested to consider the qualifications of an applicant named in the letter. Although referral of an applicant in this manner violated no law or regulation, to avoid any possible misunderstandings in the future, the Commissioners established a policy that prohibited any Commissioner or employee of the Commission from making referrals or recommendations that were not incident to their official duties.

During this period, the affected Federal agency and its eight employees challenged the authority of the Commission to, in effect, discharge or suspend another agency's employees for violating laws and/or regulations of the Commission. Decisions by an administrative law judge and the Board of Appeals and Review concluded that the Commission did not have authority to take these actions and, therefore, its directive was nullified. Nevertheless, the initiative to undermine the merit system had been identified and terminated.

1974 Recommendations of the National Academy of Public Administration Panel

At the request of the Senate Select Committee, the National Academy of Public Administration (NAPA) established a panel of distinguished public administration scholars and practitioners to study and make recommendations on the administrative areas of modern Federal Government, including personnel management.

In the panel's March 1974 report, "Watergate: Its Implications for Responsible Government," the segment on "The Public Service" states that "the recruitment and selection of political appointees, and their subsequent reassignment and advancement, deserve at least as much care and inquiry as attend the same actions for career personnel," and that the "interface between political and career officials should be made more constructive and tolerant through better

understanding by each of the roles and responsibilities of the other.” Specific recommendations applicable for each were included. For the civil service, the panel recommended that “the Senate Committee urge the Congress, the President, and the U.S. Civil Service Commission to require and superintend strict enforcement of the laws and regulations forbidding political considerations in career personnel actions,” and the report stated that the panel “supports in principle the basic features of the administration’s proposed Federal Executive Service and recommends Qualification Boards for political as well as career appointments.”

The panel also recommended “a comprehensive study of the Federal civil service including laws and rules governing political incursions on the merit system and the central organization for the management and protection of the career civil service.” Further, the panel stated that “it was not prepared to make specific recommendations about the reorganization of civil service administration but it urged that the study give serious consideration to establishing a new and separate agency for the monitoring, investigative, and adjudicatory functions.”

President Ford: Back on Track

Soon after Gerald Ford was sworn in as President in August 1974, the Commission’s concern about recent manipulation of the merit system was communicated to him, and on September 20, 1974, the new President issued a forthright statement to the heads of all departments and agencies. The President advised them not only of his strong commitment to merit principles and the civil service system, but also of his unequivocal expectation that top management throughout the executive branch would do whatever might be necessary to assure the integrity of the system. Commission Chairman Robert Hampton followed this with a message of his own, calling for a personal commitment to the integrity of day-to-day personnel operations of the Government.

Total Compensation Comparability

Since pay comparability had not been fully implemented following passage of the Federal Pay Comparability Act of 1970, the administration of President Gerald R. Ford turned its attention to additional refinement of the concept of pay comparability. President Ford established in June 1975 the President’s Panel on Federal Compensation. The Chairman was Vice President Nelson Rockefeller. The mission of the Panel was to reexamine and develop a number of ideas that had been under consideration in the personnel management field in previous years and recommend what the President should do about them.

The primary proposals of the Panel centered on the concept of “total compensation comparability.” The pay comparability system and procedure that had been established during the 1960s and early 1970s covered only the comparison of salary rates in the Federal service with those paid by employers in

the private sector. The central idea of total compensation comparability was that the whole compensation package of Federal employees—employment benefits as well as salaries—should be the basis for comparison with the entire compensation packages of employees in the private sector. Advocates of the concept believed that, while salary levels in the private sector were more generous than those in the Federal Government, the benefits package of Federal employees—retirement, health benefits, life insurance, paid leave time—was probably more generous than the benefits packages of private employers.

By the time the Panel concluded its work and made its report to the President in December 1975, the total compensation comparability heart of the proposals had picked up some additional reforms. The report on total compensation comparability included proposals to (1) split the monolithic General Schedule into three “services”: a Clerical-Technical Service with local pay rates, a Professional-Administrative-Managerial-Executive Service with national pay rates, and a Special Occupations Service for occupations that did not fit the other two services; (2) base within-grade pay increases in all of the services on merit (performance) instead of longevity in grade; and (3) include State and local governments in the annual salary surveys as well as private business firms.

President Ford endorsed all of these ideas and told the Civil Service Commission to implement them, including those that required legislation. The next year, 1976, President Ford lost his bid for reelection. The following year, 1977, the idea of total compensation comparability became part of President Jimmy Carter’s civil service reform effort, though not among the reforms the President initially sent to Congress in what became the Civil Service Reform Act.

Later, after the Civil Service Reform Act went into effect and the Office of Personnel Management replaced the Civil Service Commission, the Carter administration sent to Congress a legislative proposal in 1979 to carry out the idea of total compensation comparability and all of the other ideas associated with it, including breaking the General Schedule into three “services.” Congress did not act on total compensation comparability or on the idea of splitting the General Schedule into three services.

Public Access to Information and the Protection of Individual Privacy

In 1974, Congress turned its attention to systemic reforms that might prevent recurrence of the kind of activities that had brought the Nixon administration to an end. The predominant ideas related to opening Government to public scrutiny, summarized generally in the catch phrase “Government in the sunshine.”

Congress enacted the Freedom of Information Act, which allowed citizens (and news media) to gain access to files and records of all kinds in all of the Federal departments and agencies. Then Congress enacted the Privacy Act in an effort

to keep from public disclosure files and records containing personal information about individuals.

These two acts had a profound impact on management of civil service records. While records about employees, applicants, and retirees were maintained by specific departments and agencies, the Civil Service Commission became responsible for prescribing the forms and contents of personnel records containing personal information in all of the departments and agencies. The Commission, therefore, had central management authority and responsibility for the personnel records in all of the Federal departments and agencies. The Commission set up a Task Force on Protection of Privacy and Freedom of Information, and from its 1974 reports developed new guidelines for Federal agencies to follow both in protecting personal information in personnel files and in responding to freedom of information requests.

Forty Years of Growth of Modern Personnel Management in the Government

The year 1978 marked a period of 40 years since President Roosevelt first ordered Federal departments and agencies to establish personnel offices and modern systems of personnel administration. During that time, the guardians of the ideal of a merit system of employment in the Federal civil service had made additional progress in expanding the domain of the merit system and diminishing the domain of the spoils system at the Federal level and had, in addition, seen the relatively simple merit system of employment transformed into the comprehensive system of modern personnel management.

Initially charged with the straightforward mission to install merit concepts in filling Federal civil service jobs, the keepers of the merit system ideal had been transformed into the advocates of modern personnel management—making maximum use of all of the tools provided by law to build, organize, compensate, and motivate a competent workforce to carry out the many missions of the Federal departments and agencies in a manner characterized by nonpartisan devotion to the service of the public.

Over the years, observers had also seen the role of the Civil Service Commission change from the relatively simple function of conducting examinations and providing certificates of qualified candidates to departments and agencies to the much more complex mission of serving as the central personnel management agency of the Government. They had seen the Commission and personnel management community throughout Government take on areas of responsibility far beyond those originally expected—job evaluation, compensation management, positive recruiting, employee relations, labor-management relations, employment training, equal employment opportunity, employee appeals, executive assignment, intergovernmental personnel management,

protection of privacy, and the administration of the increasingly important employee benefits of retirement, health insurance, and life insurance.

Some critics were saying, by the middle of the 1970s, that all of these roles and responsibilities that make up modern personnel management undermined and conflicted with the Commission's original role to build and defend the system of merit employment in the Federal civil service. They asserted that the Commission, in fostering the principles of modern personnel management, was inevitably in conflict with the Commission's role in ensuring the application of rules and procedures. They believed the two roles of the Commission, which they regarded as incompatible, should be split between two separate agencies. This dichotomy would come to a head in the civil service reform effort of the Carter administration.

The Second Civil Service Reform: 1977-1979

The tenth decade of the merit system in the Federal service began with scandal and ended with reform. The reforms completely reshaped the institutions responsible for the merit system ideal and launched the Federal personnel management systems in a new direction.

Straws in the Wind

A debate began in the late 1960s and intensified in the early part of the 1970s on the proper role of the Civil Service Commission.

The opening rounds of the debate had the officials of the Commission defending the agency and the merit system against allegations that the Commission had undermined the merit concept and the principles of the Act of 1883. Another line of discussion opened as to whether the role of the Commission as advisor to management in promoting positive personnel management conflicted with the role of the Commission as adjudicator of employee appeals.

Early in the 1970s, the National Civil Service League, the organization that had originally pushed through the Civil Service Act of 1883, published a proposed Model Public Personnel Law, hoping to induce State and local governments to adopt it and move into the era of modern personnel management. The top officials of the Commission found themselves arguing that some features of the model legislation went too far in abandoning the merit principles embodied in the Federal civil service system.

The debate about the proper balance between protection of the merit system from political interference and vigorous use of personnel management tools to help agencies staff up to carry out their missions continued into the Nixon administration, as did arguments about possible incompatibility between merit concepts. But these debates always took place in the background—behind the many steps toward positive personnel management that are reported in the previous chapter of this history.

The discussions of roles and relationships became more visible when, in 1972, the Public Interest Research Group (led by Ralph Nader) published 2 reports of more than 500 pages critical of the Commission's performance in 4 areas: equal employment opportunity, appeals, inspections of agency personnel programs, and investigations of the backgrounds of persons selected for jobs in the departments and agencies.

Once again, the reports claimed that the Commission had pushed its management support role so vigorously that it had neglected its role as regulator and defender of the merit concept. In October 1972, the Chairman of the Commission testified on these matters before a subcommittee of the House Post

Office and Civil Service Committee. In his testimony, the Chairman once again defended the Commission and its multiple missions.

The Election of 1976 and President Carter's Legacy

In the election campaign of 1976, candidate Jimmy Carter consistently promised to reorganize the bureaucracy if he were elected. The idea of reorganizing the bureaucracy contributed to his victory by tapping a deep well of public anxiety about the Federal Government and suspicion that there was a huge mess in Washington that had to be cleaned up.

President Carter took office in 1977. He immediately set up the President's Reorganization Project and won from Congress authority to formulate reorganization plans, similar to the authority of previous Presidents. With this authority, the President could announce the reorganizations he intended to make and send each reorganization plan to Congress. Congress had a specified period of time to consider it and, if the Congress took no action, the plan went into effect automatically. Congress could neither amend nor revise the plan. Congress rarely disapproved reorganization plans.

The Federal Personnel Management Project: 1977

The new President declared that civil service reform would be the "centerpiece" of his administration, and appointed Alan K. ("Scotty") Campbell as Chairman of the Civil Service Commission and Jule M. Sugarman and Ersa H. Poston as Civil Service Commissioners. The President also established the Federal Personnel Management Project as an entity apart from the Commission and gave the Project the mission to pull together a comprehensive plan for civil service reform. Campbell, together with Wayne Granquist of the Office of Management and Budget, co-chaired the Project. The two leaders established a "working group" made up of the Assistant Secretaries for Administration of 19 departments and agencies. Sugarman, together with Howard Messner of the Office of Management and Budget, co-chaired the working group. The Project became one of the studies associated with the overall President's Reorganization Project.

The Co-Chairmen designed the Project very carefully to make two crucial points: (1) this was not a Civil Service Commission study—it was a study to be made by an ad hoc organization quite apart from the Commission; and (2) career employees of the Federal Government would conduct the study because career people who lived with and worked under the Government's personnel systems knew better than anyone else what the problems were and how to fix them. Furthermore, recommendations emanating from people within the system would carry more weight with the civil service itself than yet another set of proposals from a group outside the service. To emphasize even more the separation of the study project from the Commission, the leaders set it up in office space far removed from the Commission.

A New Approach

Whereas the direction of civil service reforms under discussion prior to 1977 had been toward establishing more and more regulations and rules to insulate the civil service merit system more completely from political interference, Campbell declared that the real problem was quite the opposite of the apparent problem—more rules were not needed to separate the civil service from politics; instead, what was needed was to make the civil service more responsive to the President’s executive direction and leadership.

Whenever a new administration took office with an agenda based on the election, the argument went, the President found in place a civil service under the direction of an independent Civil Service Commission, with layers of rules and restrictions on what the President and his appointees could or could not do. On the other hand, while the public holds the President, as Chief Executive, accountable for everything that happens during an administration, the President had no effective means of exercising executive control over the massive civil service. Furthermore, the independent Civil Service Commission was focused on balancing the interests of managers and employees in the vast civil service and did not have a serious role as the President’s personnel management office for the civil service.

The general direction of the civil service reforms that emerged from the deliberations of 1977 was to free managers from excessive restrictions (“Let managers manage”); to make managers more accountable to the political leadership; and to give them incentives to be responsive. At the same time, the reformers hoped to install the concepts and machinery of modern performance management throughout all the layers of the civil service.

During the summer and fall of 1977, the Project published nine “option papers,” one from each task force. Each option paper defined problems in the civil service systems and outlined several possible ways to solve each problem, without making specific recommendations as to a preferred solution. The Federal departments and agencies reviewed the papers and commented on the issues and the possible solutions.

The Project’s leaders held hearings, town meetings, and forums with groups of Federal employees in many cities (chaired by the local Member of Congress when possible); met with the editorial boards of news media around the Nation; and met with important constituencies and interest groups—unions, associations of managers, academicians in public administration, and other influential groups of many kinds.

After the Project task forces received the comments on the option papers, they developed final reports on their topics, presenting refined statements of the

problems and recommendations for action based on agency and public comments. The central Project staff also prepared a final report pulling together all of the task force reports.

The 10 task forces completed their assignments at the end of 1977. The political leadership and the key executives of the Civil Service Commission, along with the central staff for civil service reform, then pulled together proposals for legislation and a reorganization plan for the President to submit to Congress. These proposals embraced the subjects and proposals from the task force studies and from other sources that were the most significant and also that were feasible both technically and politically.

Civil Service Reform Legislative Proposals: 1978

In March 1978, the President sent the package of legislative proposals to Congress. The Civil Service Reform Act of 1978 and Reorganization Plan No. 2 of 1978 (together with Reorganization Plan No. 1 of 1978) utterly changed the world of personnel management in the Federal Government, beginning in January 1979.

Reorganization Plan No. 1 of 1978

Reorganization Plan No. 1 of 1978 took the entire matter of equal employment opportunity out of the Civil Service Commission and transferred it to the Equal Employment Opportunity Commission. That Commission and the new Merit Systems Protection Board would share responsibility for acting on discrimination appeals from Federal employees. The operational responsibility for equal employment opportunity in the Federal civil service shifted to the Equal Employment Opportunity Commission and out of the hands of the central personnel office of the Government.

Reorganization Plan No. 2 of 1978

The Carter administration sent its reorganization plans for Federal personnel management to Congress as Reorganization Plan No. 2 of 1978. The Plan first abolished the Civil Service Commission, effective January 1, 1979, some 96 years after the Pendleton Act had created it and after it had successfully created a merit-based civil service.

The Plan established the U.S. Office of Personnel Management (OPM), effective January 1, 1979. The new Office would serve as the President's chief advisor on civilian personnel matters and would inherit from the Commission only one set of its functions and authorities: personnel management of the civil service of the Government. The new Office would have a Director and a Deputy Director (initially Campbell and Sugarman, respectively), appointed by the President with Senate confirmation. The Office would have authority to promulgate regulations

for the merit system and to maintain programs to enable departments and agencies to establish, classify, and fill their jobs in the competitive service and to deal with their employees on all matters relating to employment throughout their careers—examination and appointment, suitability and security, merit promotion, compensation, training, employee relations, awards and incentives, managerial and executive development, and employee benefits. The Office would also continue to carry out evaluations of personnel programs and operations in the departments and agencies and to provide advice and guidance to Federal agencies on all aspects of personnel management.

The Plan established the Merit Systems Protection Board and assigned to it two essential functions: (1) protecting merit systems from political intrusions and (2) adjudicating appeals from Federal employees on all matters affecting their employment. The Board would take over all of the appeals functions that the Commission had exercised (except classification appeals, which remained with OPM). The word “Systems” in the title was chosen deliberately to signify that the jurisdiction of the Board extended to all merit systems in the Federal Government, not just to the competitive service that is under the jurisdiction of OPM. The Board would protect merit systems by two methods: (1) in the manner of an administrative court, hearing and deciding cases in which Federal officials and employees are charged with violating merit system rules and procedures; and (2) annually, or more often, reporting on the significant actions of OPM.

The Plan also established the Office of Special Counsel within the Board. The function of the Office of Special Counsel would be to investigate charges that might be brought against any Federal official of violating the merit system rules and regulations, and to prosecute such matters before the Board. Congress expressed exceptional interest in one kind of case that could be brought to the Board through the Office of Special Counsel: whistleblower cases. These are cases in which an employee of an agency, detecting fraud, mismanagement, or other wrongdoing in the agency, brings improper activities to the attention of Congress or the news media and is subsequently punished by the agency for insubordination. The Office of Special Counsel would prosecute those in the agency who had brought punitive actions against the whistleblower.

The Plan established a Federal Labor Relations Authority and transferred the labor relations responsibilities of the Civil Service Commission to it. In addition, the Plan transferred to the Authority the long-established Federal Service Impasses Panel, which had the role of settling disputes and negotiations between Federal agencies and unions when they reached a point of stalemate.

In addition to these changes, a separate piece of legislation enacted in 1977 established an Office of Government Ethics and made it responsible for promulgating and enforcing standards of ethical conduct in the Federal service—particularly in the matter of financial disclosures and conflicts of interest. The

legislation made the Office of Ethics part of OPM at first; later it became an independent agency.

In sum, the Civil Service Reform Act of 1978 endeavored to resolve both the procedural and organizational problems behind much of the criticism of the civil service. It sought to make performance of Federal employees more important and easier to deal with, and it sought to sort out the various conflicting responsibilities of the Civil Service Commission by creating a number of new organizations focused on particular aspects of the civil service: equal employment opportunity, protection of the merit system, labor relations, ethics, and personnel management itself.

Merit System Principles and Prohibited Personnel Actions

The Civil Service Reform Act put into statute a statement of fundamental merit system principles (5 U.S.C. 2301) and also, for the first time, a statement of prohibited personnel practices (5 U.S.C. 2302). The idea was to state for all time the principles, as opposed to the procedures, that define a merit system in the era of modern personnel management. These principles would then be used as the standards for judging the rules, regulations, actions, and decisions of the institutions of the merit system and personnel management of the Government. The principles, together with the prohibited personnel actions, apply to all agencies of the Government, not just to the Office of Personnel Management or the Merit Systems Protection Board. As merit systems and personnel management systems change over time, they must still meet the standards set in the statute's merit system principles. Though the Federal Government would have different merit systems within its domains, all of them would have to measure up to the universal merit system principles in the law.

The Senior Executive Service

The act also established the Senior Executive Service (SES). The Service was to be a complete merit system of employment, but separate from the competitive service merit system that embraced most jobs and employees of the Government. The reform leaders envisioned it as a high-prestige, high-reward, and somewhat high-risk service embracing the top career executives of the Government just below the level of the politically appointed officials (and embracing some of the latter as well).

The members of the new Service would, like those who held positions at that time in grades GS-16, GS-17, and GS-18 of the General Schedule, be the managers who headed major organizations and programs of the departments and agencies. Unlike the former "supergrades," whose rank was tied directly to the position they held, the SES would be a "rank in person" corps of top executives, who would carry their rank with them no matter what position they might be assigned to, making it easy for the agencies (and comfortable for the

executives) to move them wherever they were needed without loss of rank or pay. Although the new Service had six pay levels, there were to be no grades in it; and jobs assigned to the SES would not be classified.

The act set a limit on the number of positions in the SES at any one time and allowed the Office of Personnel Management to adjust the limit from time to time. The act defined in very general terms the kinds of managerial positions that agencies should assign to the Service, but the agencies themselves would assign positions to the Service, subject to the approval of OPM. There would be two types of positions in the SES: “career reserved” (to be filled only by a career executive) and “general” (to be filled by either a career or noncareer—political—executive). The act provided several types of appointments that departments and agencies could make to the SES: “career” (selection by a merit process); “noncareer” (appointment without a merit process; number of such appointments restricted to 10 percent of positions in the Service); and “limited term” and “limited emergency” (appointments to positions for specified periods).

The Senior Executive Service as a whole ranked above grade level GS-15 of the General Schedule. Executive resources boards in each agency would screen career employees of the competitive service who were candidates for the SES, and then nominate them to OPM. The Office, using qualifications review boards of executives drawn from Federal agencies, would consider the managerial qualifications of each person nominated and give approval or not to an individual’s first appointment to the SES.

Once in the SES, an executive could be assigned or reassigned to any other position in the Service in any department or agency at any time, to meet changing needs and priorities of Federal programs, without further OPM involvement. This feature, based on the long-established concept that a manager should be able to manage any kind of program based on managerial skills, also enabled new political administrations to shift the executives they found in place to other posts or departments and agencies for any number of reasons. The only restrictions on such transfers would be that a new administration could not shift career executives until it had been in office for 120 days—a period that would allow new political appointees to get acquainted with the career executives in place when they arrived—and had to give the career executives 15 days notice of transfers. Career executives could not appeal reassignments or transfers to other programs.

The act required agencies to develop performance appraisal systems for their Senior Executive Service managers, apart from the systems for other employees. They were to base performance criteria on both the individual performance of the executive and the organizational performance of the program the executive headed.

Under the act, members of the Senior Executive Service could lose their executive status for less than fully successful performance. Under some conditions, a career executive removed from the SES could ask for an informal hearing before the Merit Systems Protection Board, could move back to a position in the General Schedule at grade GS-15, or could retire if eligible.

To offset these “high-risk” features of the SES, the act authorized some “high-reward” features: a set of impressive compensation incentives in the form of high base pay and an array of performance awards. The awards included the possibility of substantial annual bonuses plus, for some career executives, selection for the rank of “Meritorious Executive” (with a one-time award of \$10,000) or “Distinguished Executive” (with a one-time award of \$20,000), to be granted by the President.

A Merit Pay System for Managers

As the Senior Executive Service offered performance-based incentives to executives to make them and their organizations responsive to changing missions as determined by the political leadership, the merit pay provisions of the act provided similar performance-based incentives to managers, supervisors, and management officials throughout the General Schedule at the organizational levels next below the SES (grades GS-13, GS-14, and GS-15). The act abolished the 10 steps in those grades for managers and supervisors (but not for nonsupervisory employees) and provided for them a pool of funds from which, in addition to their base pay, they could receive annually merit pay increases based on the level of performance of the individual and the organizational unit in meeting the goals and objectives of the department or agency.

In addition, the act provided for cash awards to any employees who provided suggestions, inventions, superior accomplishments, or improvements for governmental operations or who performed special acts or services. The agency head could award up to \$10,000, or with OPM approval, up to \$25,000, and with the President’s approval, over \$25,000.

Performance Appraisal

For the multitude of Federal employees who were not in the Senior Executive Service and not subject to the merit pay system for managers and supervisors, the act repealed the Governmentwide performance rating system that had become something of a routine exercise for managers and employees every year, with no effects on careers. In its place, the act required departments and agencies to construct new performance appraisal systems for all of their employees that would make development of specific performance standards for each job a joint task of the supervisor and the employee. The results of the appraisals each year would be used specifically as the basis for personnel actions affecting the employee—to recognize and reward employees whose

performance warranted it, to identify and assist employees whose performance fell short of goals, and to reassign, demote, or remove employees who continued to have unacceptable performance. By these provisions, the reformers intended to instill throughout Government the values of performance appraisal and responsiveness to managerial directions.

Providing a direct authority to remove an employee whose performance failed to meet established standards on a single critical performance element was a central selling point for the entire civil service reform effort and fulfilled President Carter's pledge to improve individual accountability for all civil servants.

Personnel Actions Based on Performance or Conduct

The Reform Act greatly clarified the grounds for taking action against employees whose performance fell below requirements or whose conduct in office became unacceptable. The act swept away a clutter of grounds for adverse actions and for appeals of adverse actions that had built up over a period of decades. The reformers found that the appeals procedures that existed when they came into office provided excessive opportunities for employees to challenge, overturn, and frustrate the actions of managers intent upon disciplining or removing employees whose performance or conduct became unacceptable.

For one thing, under the appeals system existing before the act, employees had approximately three levels of appeals against actions they considered disadvantageous, and it took a long time for appeals to work their way through the system. The new act provided only one level of appeals: to the Merit Systems Protection Board. The act imposed timelines for filing and resolving appeals.

For another, by the buildup of case decisions on appeals, the existing system provided many grounds for employees to appeal that went far beyond actions against poor performance or conduct. The extreme example was appeals for "loss of rank." The concept of "rank" did not exist in statutes or regulations. Nevertheless, some employees won appeals based simply on the fact that actions of management reduced their "rank" or stature in their organizations. An employee whose desk was moved from the window to an interior location could win an appeal based on loss of "rank." An employee who held "seniority" in a work unit and lost it when the unit was merged with another unit could win an appeal based on loss of "rank." The Reform Act allowed appeals based only on adverse actions charging unacceptable performance or conduct.

Of even greater significance, however, was the Reform Act's change in the level of evidence that would be required for a performance-based removal or demotion action. Instead of the difficult legal requirement of "a preponderance of evidence," now management needed only to demonstrate that an employee had failed to meet an established standard of performance on a particular aspect of

the job, after being given an opportunity to perform. The potential of this change in the standard of evidence was considered a breakthrough in equipping management to take expeditious action to remove nonperforming employees and restore public confidence in the civil service.

Research and Demonstration Authority

The reformers wished to ensure that the Government could continue to experiment with different approaches to personnel management that might lead to future improvements that could not be foreseen or predicted at the time Congress passed the act. The Reform Act, therefore, provided authority to carry on continuing public management research and to establish, with approval of the Office of Personnel Management, formal, controlled demonstration projects to try out new concepts. OPM could establish up to 10 demonstration projects at a time, and the act spelled out procedures for departments and agencies and the Office to follow in doing this. In pursuit of experiments leading to improvements in personnel management, OPM could waive some of the existing personnel laws, but not others, as spelled out in the act, and it could test new authorities consistent with the merit system principles.

Labor Relations

The act incorporated into statute the labor relations regulations and programs that had, since the Kennedy administration, rested on the base of Executive orders. These provisions spelled out what unions and management could and could not do, what they could and could not negotiate, and how labor relations would be administered in the Federal civil service. For the most part, the new statutory provisions replicated the rules that had been in effect under the previous Executive orders.

Like the original Kennedy Executive order, the new statute, ushered through the House of Representatives by speaker Tip O'Neill of Massachusetts, contained a national security exclusion. The statute gave the President the authority to exempt Government organizations involved in important intelligence, investigative, or national security work from coverage under the labor-management relations statute. This authority has been judiciously exercised only 11 times since 1978, but every President since Jimmy Carter has used it at least once.

The Merit System Faces a New Era of Performance Management

The Civil Service Reform Act of 1978, and the Reorganization Plans related to it, continued a civil service based on merit that would be reasonably protected from political intrusion, but that would also be subject to modern personnel management and responsive to changes in the public will as reflected in elections, especially Presidential elections.

With a new set of personnel management and merit system institutions, and with a new spirit of mutual endeavor toward ends established democratically by the public, the civil service of the Federal Government moved toward the centennial of the merit system and a new era of the civil service, which could be called the era of responsiveness and accountability—but it was not to be in a straight line.

Post-Reform: Gains, Losses, and Constant Change: 1979 – Present

The main effort of the Carter administration culminated in the Civil Service Reform Act of 1978, but other efforts took place aimed at strengthening and diversifying the civil service.

Presidential Management Intern Program

1977 saw the creation of the Presidential Management Intern (PMI) program to strengthen management and leadership in the Government. The program aimed to attract to Federal service individuals with high potential for leadership and management and who possessed recently earned graduate degrees oriented towards public management. The goal was to develop these younger recruits as future leaders in the public sector. An Executive order in 1982 opened the program to individuals with graduate degrees in a broader range of disciplines.

Initially, 200 candidates could be placed each year with hiring agencies and join the Federal Government for a 2-year “internship.” Beginning in the late 1990s, participation nearly doubled, with some 400 candidates possible each year. They enter as GS-9s, normally receive a promotion after completion of their first year, and can transition into the regular career service with yet another promotion after the second year of the internship.

PMIs have the opportunity to “rotate” during their 2-year internship, taking shorter-term assignments within their own and other agencies to explore other aspects of their agencies’ work as well as other professional interests of their own. In addition, the program offers special training and development opportunities to the interns, including a minimum of 80 hours of training a year. All of this is focused on developing the PMIs’ capacity to serve at senior levels in their organizations in the future.

Creating Flexible Schedules

The Federal Government moved into the vanguard of employers who sought ways to let employees balance their work responsibilities and personal lives. Alternative work schedules (also known as flexible or compressed work schedules) allowed for a variety of working arrangements tailored to fit the needs of individual employees, while providing managers and supervisors with the ability to meet their program goals. Experimentation with alternative work schedule (AWS) programs began with legislation signed in 1978 by President Carter that called on the Office of Personnel Management to develop, manage, and assess a 3-year pilot project. The first AWS programs began in April 1979, and OPM subsequently reported that such flexible programs had the potential to improve productivity and public service, as well as reduce costs. President Reagan extended the use of alternative work schedules in 1982, and AWS became a permanent fixture of the modern civil service in 1985.

The First Demonstration Project: Navy China Lake

In 1980, OPM established for the Navy Department the first demonstration project under the new Reform Act authority. This project, known as the Navy China Lake Project, tested an integrated approach to pay, performance appraisal, and simplified position classification. The project used broad ranges of work and pay that resulted from banding together two or more General Schedule grades and the pay rates for those grades—hence the common label, broad banding (or pay banding), which has since been used generally to describe any alternative pay and classification approach that makes fewer fine distinctions and uses wider pay ranges. Other highlights of the project included substantial flexibility to set entry pay within the broad pay ranges, eliminating the General Schedule fixed-step pay rates and pay progression, rewarding performance with a combination of increases to rate of basic pay and lump-sum bonus payments, and delegating position classification authority to line managers.

The project had a major impact on developing future broad-banding classification and pay approaches. Perhaps more importantly for the General Schedule, OPM had set a major policy in concluding that using such broad work levels and pay-setting flexibility is consistent with the merit system principles, as required by the demonstration authority.

Addressing Diversity: Changes in Examining Practices

Concerns about recruiting and hiring a diverse workforce—one that represented the demographic diversity of the United States—emerged in the late 1970s, when statistics showed that white candidates were passing the Government’s primary entry-level examination for administrative careers (the Professional and Administrative Careers Examination, or PACE) at a much higher rate than other groups. A court case (Angel G. Luevano, et al., Plaintiffs, v. Alan Campbell, Director, Office of Personnel Management, et al.) ensued in 1979, with representatives of minority groups suing on the grounds that PACE was a discriminatory examination with adverse impact on the hiring of minorities in administrative and professional positions in the Federal Government.

The Carter administration chose not to litigate the case and negotiated a consent decree that included plans to phase out PACE occupation by occupation as soon as new examinations could be developed. The Reagan administration then abolished the examination altogether for all covered occupations.

In place of PACE, hiring in PACE-covered occupations was made subject to a “Schedule B” authority. Such authority was to be used when no competitive examination was practicable, or while an alternative exam was being developed. While this authority could be timely, it did not provide for a competitive assessment of all candidates interested in applying for the PACE-covered, entry-level jobs. Furthermore, a review of the interim hiring under Schedule B

suggested that the process was failing to meet the “free and open competition” standard of the merit system. OPM Former Director Constance Horner agreed, finding that the system was not meeting “the spirit of our mandate to hire the most meritorious candidates.” She determined that OPM should quickly develop a replacement examination, the Administrative Careers With America (ACWA) examination, which was introduced in 1990.

The ACWA was actually a series of six examinations, each tailored to a specific occupational grouping previously covered by PACE. These examinations were carefully developed using new psychometric techniques to identify candidates with the needed knowledge, skills, and abilities for the jobs, while also reducing racial or ethnic adverse impact and more fairly assessing applicants from diverse backgrounds. In 1994, the written test portions of these examinations were essentially replaced by written questionnaires addressing experience and other evidence of competencies.

The consent decree also provided two special hiring tools that were to be used when necessary to reduce adverse impact on “blacks and Hispanics” that might result from continued use of PACE or from newly developed alternative examinations. Intended as supplements to competitive examining, they were not to be used as the sole source of hiring into PACE-covered occupations, in the absence of adverse impact findings. These hiring tools are still in effect. The Outstanding Scholar Program allows Federal agencies to hire college graduates with any major from any school as long as the graduate has a grade point average of 3.5 or better. The program enjoys popularity because agencies can hire candidates on the spot. The other consent decree-based hiring authority—the less-used Bilingual/Bicultural hiring authority—permits agencies to hire a candidate who meets basic job qualifications where the position being filled would benefit from a candidate possessing bilingual or bicultural skills.

In the late 1990s, the program became controversial when data showed that agencies were using the Outstanding Scholar Program as a substitute for examining and in ways that did not always reduce adverse impact. After warnings from OPM and the Department of Justice, agencies improved their usage of the program.

Rewarding Executive Performance

At the core of the Senior Executive Service at its creation was the concept of “high risk, high rewards.” Many executives supported and joined the newly formed SES corps in 1979, accepting the new demands and expecting to be recognized for their performance. The intersection of politics and the civil service came to the fore in 1980 when agencies awarded bonuses according to the new performance system, and Congress reacted negatively to the results. Acting under the provisions of the new system, NASA, for example, awarded bonuses to 56 percent of its career executives. Congress found this excessive and quickly

acted to limit bonuses to 25 percent of career SES members. Later, OPM required prior approval if an agency sought to award bonuses to more than 20 percent of its SES members. Congress followed suit with legislation in 1982 reducing to 20 percent the number of career appointees eligible for bonuses.

Eventually, the centralization pendulum would swing back and agencies would regain authority. Limitations on the number of bonuses expired or were dropped. By 2000, OPM had overhauled performance management regulations to promote executive excellence and accountability. The new system gave agencies much more flexibility to design systems to meet the unique needs of their organizations and missions.

Reagan Administration: Responding to the Nation's Call for Effective Government

These reforms proved insufficient to restore public faith and trust in the Federal Government. Like Jimmy Carter 4 years earlier, Ronald W. Reagan campaigned for more responsive and effective Government. His administration came to Washington with strong notions of how to improve the civil service and Government along with it. Throughout his campaign, Reagan had stressed issues such as limiting the size and cost of Government. He wanted improved Government performance; reduction in the size and reach of the Federal Government; elimination of waste, fraud, and abuse; reduction of paperwork; and cost-benefit analysis for all new programs. America responded by electing the two-term California Governor as President. Where Carter turned to insiders to reform the system—resulting in the Civil Service Reform Act—Reagan sought a fresh, outside review and approaches that would bring the best practices of the private sector to Government.

To this end, Reagan created the President's Private Sector Survey on Cost Control, better known as the Grace Commission (chaired by J. Peter Grace, then CEO of the chemicals and materials corporation W.R. Grace). The commission's 12,000-page report recommended that the Federal sector adopt more private-sector business practices and techniques to root out waste and fraud and save billions.

In addition to seeking outside recommendations, President Reagan in his first term established the Cabinet Council on Management and Administration (CCMA). Comprised of most of the Cabinet members, and including the directors of OPM and the General Services Administration, CCMA focused on management issues, particularly those in the area of personnel. Assistant Secretaries for Administration and their equivalents (both political and career) made up a Secretariat that reviewed proposals and White House issue papers to better frame items for CCMA action and, ultimately, decisions by the President. The functions of CCMA were folded into the Domestic Policy Council in President Reagan's second term.

Influence from outside Government also came from the conservative think tank, the Heritage Foundation, which produced the 1,000-page book on policy management for a conservative administration, *Mandate for Leadership*. The book made a number of recommendations for the new administration and its approach to creating a responsive and responsible civil service.

Political Control and Political Neutrality

The historical struggle over the appropriate role of politics with regard to public service received renewed attention in the 1980s. Among its primary aims, the Civil Service Reform Act of 1978 sought to strengthen Presidential control over the Federal bureaucracy. Creating a responsive civil service has long been a goal of new administrations, and the Reagan administration was no exception. Indeed, a sizable and focused transition team worked consciously to blend political appointees and career civil servants in such a way that would allow the administration to move quickly to instill policy responsiveness throughout the Federal sector and fulfill commitments made to the American people.

To achieve the desired cooperation of political and career staff at the more senior levels, the administration used the flexibilities of the new Senior Executive Service to move career executives into positions where they could best contribute to the new administration's efforts. On the political side, noncareer senior executives and lower-level political appointees passed through a careful clearance process to ensure their commitment to administration goals.

At the Office of Personnel Management, Former Director Donald J. Devine reduced the agency's staff and budget and reoriented its mission to serve as a principal advisor to the President on policy management and to help create a much more responsive public service.

Labor Flashpoint: The PATCO Strike

When the Civil Service Reform Act was passed, it codified a growing body of Executive orders covering employee rights and the role of unions. The creation of the Federal Labor Relations Agency sought to better manage the relationship between management and labor in the Federal sector and provide workers with more political and bargaining power. However, Federal employees were still not permitted to strike.

This law faced a direct challenge in 1981 when the Federal air traffic controllers union, the Professional Air Traffic Controllers' Organization (PATCO), called a strike. PATCO had been engaged in negotiations over a variety of issues, including a \$10,000 across-the-board raise, a 32-hour workweek (down from 40), and a better retirement package. When talks between PATCO and the Federal Aviation Administration (FAA) stalled and finally collapsed, roughly 11,000

members of the 15,000-person-strong union went on strike on August 3, 1981. President Reagan warned PATCO that the move would be illegal and that the administration would act decisively. When PATCO refused to reverse its action, President Reagan acted to uphold the law and fired the striking controllers 48 hours later, and the FAA successfully moved to have the Federal Labor Relations Authority withdraw union recognition from PATCO.

In early 1993, President Clinton issued an Executive order that allowed those former controllers to apply for Federal civilian employment in positions other than as air traffic controllers and with agencies other than the FAA.

Performance Pay Retreats From Decentralization

The merit pay provisions of the Civil Service Reform Act, whose intentions were still embraced, began to be seen as falling short of their goals and faced a surging wave of unpopularity. At the start of the Reagan administration, budget problems hampered the application of the system and severely constrained the funds available for distribution. At the same time, many merit pay employees who had spent their careers under the one-size-fits-all General Schedule and still worked alongside General Schedule employees believed the merit pay system's highly decentralized approach introduced the possibility of inequity across Government. As the disgruntlement among merit pay employees grew, legislation emerged to address the perceived problems.

In 1984, Congress passed legislation that created the Performance Management and Recognition System (PMRS) to replace the merit pay system. PMRS fashioned a Governmentwide pay structure based on an employee's performance appraisal but more closely in line with the pay progression of the General Schedule. Using annual merit increases instead of the General Schedule's within-grade step increases, PMRS could deliver higher compensation sooner—in theory, an employee could advance through an entire pay range for a grade in 9 years under PMRS, as opposed to 18 years under the General Schedule. PMRS retained the lump-sum bonus features of the merit pay system, but established Governmentwide funding and payout requirements.

A distinctive feature of the PMRS was a centralized performance appraisal system that standardized the number of performance levels and how appraisals would operate. The pendulum had clearly swung back to a highly centralized approach to pay-for-performance for managers. In addition, OPM extended this recentralization when it revised the Governmentwide regulations for appraising all non-SES and non-PMRS employees and established a uniform approach based on the statutory Performance Management and Recognition System.

As a milestone in the story of the Government's increasing focus on performance, the establishment of PMRS is notable for putting the term "performance management" firmly in place. The relevance of performance

planning and assessment to financial recognition, and the topics of annual ratings and increases to basic pay, were getting increasing attention both inside and outside the Federal Government.

Social Security Coverage and a New Retirement System

The original Civil Service Retirement System (CSRS) was enacted in 1920 in the name of an efficient civil service. It humanely removed aged and infirm employees via mandatory retirement and provided adequate income for them. Over time CSRS became more and more generous, and the significant shortcomings of its structure became increasingly apparent and problematic.

The term “golden handcuffs” was used to describe the stand-alone, defined benefit structure of the CSRS. This structure, and the absence of Social Security coverage, created an inherent lack of portability. Few employees left Government at or near the mid-career point because the loss of retirement benefits would be too great. The lack of portability (except for within the Federal system) contrasted sharply with retirement programs in the private sector that were founded on fully portable Social Security benefits in combination with defined contribution savings plans and modest defined benefit formulas.

It became obvious that CSRS was no longer aligned with the strategic purposes of the Government’s compensation package. Indeed, the Senate Committee on Government Affairs highlighted this point at the time, finding that “a Federal retirement plan should continue to offer incentives to build a career workforce” while also recognizing “that increasing mobility of Federal employees in and out of Government, particularly during mid-career, is desirable.”

The CSRS had also amassed an unfunded liability of a half trillion dollars. This, and the fact that Members of Congress, the President, and civil servants were not covered by the national Social Security system, even though they made the rules and administered the system, engendered suspicion and resentment in some quarters. In addition, by 1983, the Social Security system was in real danger as its reserves fell and as economic and demographic trends suggested that the system would become bankrupt without any significant changes.

Thus, in 1984, Congress put itself and all new Federal employees under the Social Security system and thereby created the need for a new Federal employee retirement plan that would take account of their new coverage by Social Security. After considerable work, a new system of Federal employee retirement benefits was enacted in 1987, a three-tiered system that includes Social Security, a modest defined benefit plan, and a defined contribution Thrift Savings Plan.

The creation of a new retirement system for the civil service—the Federal Employees Retirement System (FERS)—was a significant moment in the

evolution of the civil service. FERS was designed not only to provide for the retirement needs of Federal employees but also as a tool for responding to broader societal changes outside the civil service. It also served to help make the public sector an attractive and competitive employer.

The foundation of the new system is the Social Security benefit. To that is added a defined benefit portion, the FERS component, financed by a very small contribution from the employee and a significant contribution from the Government. As in most retirement programs, this plan uses a formula to compute the payments under the Basic Benefit Plan. The Government averages the highest 3 consecutive years of basic pay. This “high-3” average pay and the employee’s length of service are then used in the benefit computation. Eligible employees also receive a “Special Retirement Supplement” from retirement until the employee reaches age 62. This supplement approximates the Social Security benefit earned by the employee while he or she was employed by the Federal Government and seeks to parallel the normal retirement benefits to employees under the older Civil Service Retirement System.

The third part of the FERS benefit is the Thrift Savings Plan (TSP). The TSP is a tax-deferred retirement savings and investment plan that offers several investment vehicles, with much the same savings and tax benefits that many private corporations offer their employees under 401(k) plans.

The Federal Employees Retirement System is a flexible plan for a flexible workforce—a workforce that is more likely to work for several different employers during the course of a career. It recognizes that many employees may not retire from the Federal Government and represents a forward-thinking and innovative response on the part of the civil service to critical developments in the broader American workforce and to the specific needs and interests of public employees.

Family-Friendly Federal Employment

The Federal Government continued throughout the 1980s to take the lead in creating for its employees a system and culture of flexibility and family-friendly policies in response to the Nation’s changing demographics, the largest peacetime economic expansion in history, and renewed attention to changing family responsibilities. These new programs were also designed to help the Government remain a competitive and desirable employer.

One of the changing realities was the increased incidence of divorce, a trend that did not bypass the civil service. The Spouse Equity Act of 1984 provided new protections for current and former spouses of Federal employees. For the first time, the law required a retiring employee to get the spouse’s consent before electing a kind of retirement annuity that didn’t provide full survivor protection. In addition, the act allowed OPM to honor a State court order to provide survivor benefits for a former spouse, so that the divorced spouse would not be left

destitute in the event of the employee's or retiree's death. Prior to that time a divorced spouse, even in cases of a 30-year or longer marriage, could be left with no old-age benefits.

Alternative work schedules (discussed earlier) became a permanent part of the system in 1985 and allowed for a variety of working arrangements tailored to fit the needs of individual employees. The evolution of such family-friendly policies continued in 1987 with a temporary leave transfer program. This experimental program permitted employees to donate their unused annual and sick leave to selected colleagues experiencing personal medical emergencies. In 1988, the Federal Employees Leave Sharing Act expanded the program across the Government and allowed employees to donate their unused annual leave to other employees experiencing a personal or family medical emergency with little or no available paid leave. These leave transfer and leave bank programs provide full income replacement for public servants at times when they most need it, and it is income provided directly by their fellow Federal employees. Legislation enacted in 1993 made these programs permanent.

President George Bush: Veteran of Federal Civilian Service

Eight years of leadership by the same party made for considerable policy consistency in the new administration. A lifelong public servant, President George Bush exhibited faith and pride in the civil service. Bush, in a message to all SES members celebrating the tenth anniversary of the Service, declared:

As a public official, I have witnessed firsthand the positive influence of the SES system and have developed a deep respect for the men and women who make it work. Today, I rely on these executives to help translate our Nation's goals and ideas into successful Federal programs. They bring great expertise—and honor—to the field of public service.

Background: The Volcker Commission

In 1989, the National Commission on the Public Service, chaired by former Federal Reserve Chairman Paul Volcker, provided a series of recommendations for energizing and revitalizing the Federal public service. Known as the Volcker Commission, the group was put together following a Brookings Institution and American Enterprise Institute symposium that recommended a private, nonprofit organization be assembled to address the “quiet crisis” in Government, namely an erosion in the attractiveness of public service to talented young people, which in turn was undermining Government effectiveness. The commission organized its recommendations around the themes of leadership, talent, and performance and emphasized areas like better training and development, pay flexibility, an increase in career civil servants in senior positions, and reforms to further diversify the Federal sector.

Executive Pay

The 1989 Volcker Commission Report had sounded a clear alarm on the issue of pay disparities between public service professionals and their private sector counterparts, saying that “Failure to increase the top salaries in Government . . . undermines the Government’s ability to recruit and retain the scientists, cancer researchers, computer engineers, and career executives who manage the essential services of Government.” The chorus of concern was joined on a number of fronts. A 1987 General Accounting Office survey found that over 60 percent of the SES ranks reported dissatisfaction with pay. The same year, a Congressional Research Service report noted that compensation for the top SES officials lagged behind the private sector by 65 percent. In February 1988, the President’s Commission on the Compensation of Career Federal Executives revealed that SES pay had not even kept pace with inflation since 1979. Still, in February 1989, Congress voted down a Reagan administration proposal to increase executive, legislative, and judicial pay.

The Bush administration continued the effort to improve public sector pay and sent a new proposal to Congress, which was enacted as the Ethics Reform Act of 1989. It included a 25 percent pay increase for Executive Schedule employees, and the President acted to extend this raise to the SES as well.

Competitive Pay: The Federal Employees Pay Comparability Act

Echoing another of the “quiet crisis” issues raised by the Volcker Commission, concern within Government circles had grown significantly in the late 1980s over recruitment and retention problems, particularly as they related to pay. In addition, there was significant interest in pilot projects, experiments with pay-banding concepts, and removing certain agencies or groups of employees from the standard General Schedule system. Furthermore, study after study within and outside Government showed an increasing disparity between public and private sector pay.

Under the leadership of Former Director Constance Berry Newman, OPM embarked on a study of the white-collar civilian pay system to find ways to improve it. In submitting OPM’s comprehensive legislative proposal to Congress in 1990, she observed that the “monolithic, nationwide General Schedule for all white-collar occupations has shown itself to lack the flexibility needed to respond effectively to diverse and changing labor market conditions.” Meanwhile, Senator John Glenn, Senator Dennis DeConcini, and Representative Gary Ackerman each introduced their own pay reform proposals. Elements of all four bills were eventually merged into the Federal Employees Pay Comparability Act of 1990 (FEPCA).

FEPCA represented perhaps the most far-reaching and comprehensive civil service legislation since the Civil Service Reform Act of 1978. The act had some of its roots in the 1978 reforms, including the Navy's China Lake demonstration project, which explored new management and pay systems within the Federal context. FEPCA's most significant provisions include:

- Locality pay, which allows the Government to pay employees at the same grade level different rates of pay based on local labor market conditions in major metropolitan areas.
- An annual pay adjustment process designed to close the overall disparity between Federal and non-Federal pay over a 9-year period.
- Discretionary authority to pay recruitment and relocation bonuses and retention allowances (the "3 Rs") of up to 25 percent of basic pay.
- Discretionary authority to pay travel and transportation expense for new hires.
- A new pay authority for positions deemed "critical."
- New pay systems for administrative law judges and other senior-level employees.
- Time off as an incentive award.
- Establishment of a committee to study the relationship between pay and performance.
- Special pay rates and geographic pay adjustments for law enforcement officers.

Overall, these and other provisions of FEPCA were designed to assist the Government in recruiting and retaining a capable workforce and to provide Federal managers with more tools to perform their jobs better and lead successful, high-performing public organizations.

From Individual to Organizational Performance

Renewed Federal sector focus on effective organizations grew in part from broader developments and trends in organizational development. In particular, during this period the Total Quality Management movement garnered much attention. Promoted by Dr. W. Edwards Deming and others, the "TQM" approach emphasized the performance of work units and organizations rather than the individual employee. Employee performance determinations were limited, while more attention was paid to measuring overall organizational improvement. TQM

served as a harbinger of the shift in the civil service from focusing on individual employee performance to measuring organizational performance—in the case of the Federal sector, how effectively and successfully it was delivering goods and services to the American people. Government agencies adopted and adapted many cornerstones of TQM and began to develop reliable measures to determine progress and customer satisfaction.

Hatch Act Revisited and Transformed

In 1990, a proposed revision of the Hatch Act would have loosened its restrictions. The Hatch Act Reform Amendments of 1990 sought to allow Federal employees to participate actively in partisan political campaigns, hold official positions in political parties, actively endorse partisan political candidates in the public media, and solicit political contributions in most situations from employees in the same organization for that organization's political action committee. President Bush vetoed the legislation, arguing that it would destroy the Hatch Act's actual and perceived insulation of the civil service from undue political influence, would create potential politicization and would destroy its neutrality. The U.S. Senate sustained the President's veto.

In October of 1993, legislation substantially amending the Hatch Act was signed into law by President Clinton. The Hatch Act Reform Amendments of 1993 expanded the scope of permissible political activities of Federal employees, permitting most Federal employees to take an active part in partisan political management and partisan political campaigns. While Federal employees still are prohibited from seeking public office in partisan elections, most Federal employees are free to work on the partisan campaigns of the candidates of their choice while those employees are off duty.

Whistleblower Protection

The Whistleblower Protection Act (WPA) strengthened existing protection given to Federal employees who provide information on waste, fraud, abuse, and prohibited practices in the Government. It amended the Civil Service Reform Act to overturn legal precedent and made it easier to prove whistleblower retaliation. In particular, the WPA mandated corrective action for whistleblowers whenever whistleblowing is found to be a contributing factor in the challenged personnel decision and the employing agency is unable to prove by clear and convincing evidence that it would have taken the same action in the absence of whistleblowing.

In addition, the WPA established the U.S. Office of Special Counsel as independent from the Merit Systems Protection Board and gave it a primary role in the protection of those Federal employees who believed they had suffered from reprisals or other illegal treatment after they had exposed wrongdoing in

their agency. Under the act, whistleblowers were also allowed to take their cases to the Merit Systems Protection Board.

Merit and Performance: A New Dialogue

The Clinton Administration

President William Jefferson Clinton took office in 1992 and worked hard at exerting influence over the civil service to better control policy. Like its predecessors, the Clinton administration came to Washington promising to “reinvent Government” in order to better solve the problems facing the Nation and serve the interests of the American people.

Clinton’s approach and rhetoric reflected trends in organization and management outside Government that focused on the concept of “reengineering the corporation.” This administration thought that Federal organizations could be improved through reform, and they drew inspiration and ammunition for their case from the 1992 book, “Reinventing Government,” by journalist David Osborne and former city manager Ted Gaebler.

The notion of reinventing Government meshed well with the “reengineering” wave in the private sector, stressing devolution of authority away from rigid hierarchical, overly bureaucratic centralized structures and towards more competition, innovation, emphasis on customer service, accountability, and performance management.

In addition, these new themes echoed international trends in public administration (especially in New Zealand and the United Kingdom) toward results-based management in the public sector as Western nations wrestled with the effects of post-industrial, post-cold war restructuring and the need to resize and retool Government programs and spending to remain competitive in the global economy.

The National Performance Review

Against this backdrop, the Clinton administration embarked on its program to reinvent Government through the National Performance Review (NPR). Like President Carter’s Federal Personnel Management Project in 1978, the NPR turned to those within the system—career civil servants—to explore best how to reinvent the Government in which they served and had firsthand experience. Chaired by Vice President Al Gore, the process and analysis took almost 6 months and involved over 200 people, with “Reinventing Government teams” in all departments and major agencies. The result was almost 400 major recommendations, grouped by four main themes or principles:

- Cutting red tape.

- Putting customers first.
- Empowering employees to get results.
- Getting back to basics; producing better Government for less.

Cutting red tape meant taking on the complex world of Federal administrative rules and regulations. Included in the NPR's recommendations were the abolition of Governmentwide and internal agency rules and significant reductions in the number of oversight employees in personnel, financial management, and budget areas.

In particular, the NPR recommended abolishing the Federal Personnel Manual, which had long been attacked as constraining managers and limiting human resources flexibilities. Rather than resist this notion, OPM's new Director, James B. King, acted swiftly to implement this action a full year ahead of the NPR's recommended schedule. Guidance determined essential to retain was incorporated into regulation or released in a few operating manuals. In a symbolic act, Former Director King maneuvered a wheelbarrow full of FPM documents out of the Theodore Roosevelt Building's lobby to a waiting paper recycling container.

At their core, these and other recommendations were grounded in the belief that creativity and innovation would flourish in the civil service when employees were less burdened by regulations and overbearing oversight. The NPR/reinventing Government project set the overall tone for a host of Clinton-era initiatives with important implications for the Federal civil service.

Privatization of Investigations

In response to implications of the NPR and legislation to reduce Federal budget deficits, the Clinton administration recommended OPM's privatization of the operations of the Office of Federal Investigations. In 1996, OPM followed through with the formation of US Investigations Services (USIS), Inc., the first privatized Federal entity to become an employee stock ownership plan. According to OPM Former Director King, "This would be a new departure for Government. In the past, agencies have privatized in the sense of contracting out, but never before had an agency proposed to help its own employees start their own profit-making, tax-paying company—and one where the highest standards would be the norm." All Federal staff involved in investigations operations were offered their same positions, at the same pay, with comparable benefits, working for USIS. To preserve OPM stewardship of critical security programs, OPM retained Federal Investigations program staff with the authority for investigations policy and procedure, and staff for contract management and

oversight. The program office became OPM's Investigations Service; USIS became the sole-source contractor for OPM investigations operations.

Pay-for-Performance Sunsets

Agency interest in less centralized systems prevailed in 1993 with the termination of the Performance Management and Recognition System (PMRS) for mid-level managers. Over time, PMRS had also proved unpopular with managers. Large proportions of PMRS employees receiving high performance ratings had raised the cost of the system, owing to the statutory link between rating and annual pay increase. No demonstrable performance improvement could be related to those additional costs, however. Also, the statutory limitation on funding for lump-sum awards based on performance ratings for PMRS employees had become a vexing constraint given the increased use of such awards for General Schedule employees, for which no serious limitations existed.

Agencies were becoming much more interested in designing their own performance and pay systems, particularly as more demonstration projects got underway. The minuses of "one size fits all" were starting to outweigh the pluses. A growing sense of "unfairness" caused PMRS to end with no complaints from Federal mid-level managers, even though five out of six of them received high performance ratings that entitled them to more generous pay increases than the General Schedule provided. These employees returned to the normal system of periodic step increases, and the Government's most comprehensive experiment with pay-for-performance came to an end.

New Focus on Performance: GPRA and Beyond

Shifting the focus to measuring organizational performance and results was not just limited to other Western democracies. The Clinton administration and Congress, too, sought enhanced performance, measurement, and accountability from the Federal sector.

The Government Performance and Results Act of 1993 (GPRA) received broad bipartisan support from the Congress and from the Clinton administration. GPRA tried to tackle the timeless questions of Government accountability and performance. However, GPRA differed in significant ways from earlier attempts at similar reform in that it required that agency results be integrated into the budgetary decisionmaking process. Also, GPRA is not an executive branch initiative but instead is statutory: its performance measurement requirements are law, and almost all agencies and department are subject to GPRA requirements.

GPRA sought to shift the focus of Government decisionmaking and accountability away from a preoccupation with the activities that are undertaken—such as grants dispensed or inspections made—to a focus on the results of those activities, such as real gains in employability, safety,

responsiveness, or program quality. Under the act, agencies develop multiyear strategic plans, annual performance plans, and annual performance reports. The GPRA mandate formally requires agencies to do what some were doing independently: develop specific, relevant metrics to measure their success in accomplishing their missions and to support their future budget requests.

To successfully complete GPRA strategic and annual plan requirements, agencies now had to align individual employee performance with the organizational goals and objectives identified in the act. The more traditional, process-oriented performance elements and standards for employees and organizations started to give way to a more results-oriented focus, with the Federal sector embracing and adapting for its purposes evaluation tools like the Kaplan and Norton Balanced Scorecard.

No mandate can effect change overnight, however. Many aspects of the Government's human resources management systems were still rooted in the position-centric, process-driven paradigms of the scientific management era (much of the Civil Service Reform Act of 1978 remained anchored in notions of position and process). Not surprisingly, then, in many cases old structures were poorly matched for the new demands and requirements.

The Senior Executive Service award system continued, however, and increased the focus on individual and organizational performance.

Presidential Rank Awards had been established by the Civil Service Reform Act to recognize a few career senior executives who demonstrated exceptional performance over an extended period of time. Although the prestige of being selected by the President for a Governmentwide award has always been the primary motivation for executives, the financial reward was initially substantial. Under the law, Distinguished Executives received \$20,000 for "sustained extraordinary accomplishment," and Meritorious Executives received \$10,000 for "sustained accomplishment."

As the cost of living and SES pay rose, the financial impact of Presidential Rank Awards diminished. Some executives received more cash for an annual performance award, based on a percentage of pay, than those who received the more prestigious Presidential Rank Award.

The Treasury and General Government Appropriations Act of 1999, which linked Rank Awards to pay, corrected this. Distinguished Executives now receive a lump-sum payment of 35 percent of basic pay; Meritorious Executives receive a lump-sum payment of 20 percent of basic pay.

The Treasury and General Government Appropriations Act of 2002 extended eligibility for Presidential Rank Awards to "certain career senior employees." For the first time, the FY 2003 program will recognize Senior Level and Scientific-

Professional employees who are awarded ranks of Distinguished Senior Professional and Meritorious Senior Professional.

Exploring Decentralization

The National Performance Review included among its recommendations the decentralization of many human resources programs, including performance management and awards. The NPR argued that this approach would empower and energize the civil servants leading Federal agencies and organizations to design programs tailored to their organizations' needs and cultures. OPM followed this recommendation and in 1995 issued performance management and awards regulations that decentralized the design and operation of appraisal and awards systems and programs and supplied broad guidelines for agencies to follow when designing their own programs, especially to deal with the "old structures, new requirements" challenge posed by GPRA. Many agencies took advantage of the new flexibility to focus on organizational performance measurement, to limit the evaluation of individual performance to identifying failing performers, and to use awards programs to recognize those individuals achieving beyond expectations.

Under the mandate of reinvention, hiring also caught the wave of decentralization. The NPR had recommended giving departments and agencies authority to conduct their own recruiting and examining for all positions and the abolition of OPM's central registers and standard application forms. OPM followed this lead and phased out the one-size-fits-all application form, the SF-171. In 1995, Congress authorized OPM to delegate competitive examining to the agencies.

Classification Under Siege

The notion of reinvention, of freeing up the civil service to create new and better conditions under which Federal agencies and organizations could thrive, merged with another longstanding trend: growing disenchantment with the highly centralized Federal classification system. Designed to ensure internal equity throughout Government, the system had become extremely burdensome to administer and maintain, and many continued to question whether its benefits justified its costs.

Brewing and boiling since as early as the 1960s, much of this discontent centered on pay inequities between the public and private sectors which the classification system and rigid General Schedule salary structure seemed unable to address. Agencies had also seen the success of the different approach to classification in the Navy's pay-banding experiment. Skepticism mounted, too, as perceptions grew of increasing misclassifications by agencies. Furthermore, standards were increasingly outdated, many by more than 10 years, and were often inaccessible to agency management or to the general public. Finally,

downsizing of human resource offices throughout Government, particularly in the 1990s, meant a significant loss of expertise in how to apply classification standards.

Responding to this groundswell of dissatisfaction within the civil service, the Office of Personnel Management once again sought to solve the problem within the confines of the 1949 Classification Act by recasting similar occupations into broad “Job Families” which fell under the larger “Occupational Groups.” OPM used its new Web site to officially issue and disseminate the new classification standards, thereby providing full public access. Revised standards were written in much more user-friendly language and emphasized a “how to” approach for users new to the process for determining the titles, series, and grade levels of positions.

Challenging Title 5

The climate of the National Performance Review also led some agencies to once again consider the connection between pay, performance, and a high-quality civil service. Many felt that, given new GPRA provisions, human resources rules (namely those consolidated in Title 5 of the U.S. Code) were overly restrictive and hampered their ability to most effectively accomplish their missions. Citing lessons learned from experimental demonstration projects like those conducted by the Naval Warfare Systems at China Lake and by the National Institute of Standards and Technology, several agencies successfully lobbied for exemptions from the broad rules governing Federal human resources management.

Thus, in 1996, the Federal Aviation Administration won exemption from the personnel statutes of Title 5. They were followed by the Internal Revenue Service, which in 1998 was granted significant flexibility in personnel matters, including authority to establish broad-banded pay systems to enhance and reward high-performing civil servants. However, those flexibilities could apply to bargaining unit employees only with the written agreement of the employee union.

In fact, the exodus from Title 5 actually began as early as 1989, when Congress responded to the savings and loan crisis that threatened the Nation’s financial institutions. Responding to urgent calls to improve the ability of the Government’s financial regulatory agencies to compete for the talented employees required to respond to the savings and loan issue and rebuild citizen confidence, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). FIRREA allows agencies like the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Office of the Comptroller of the Currency to design and operate their own compensation systems.

These developments presaged the later move in other agencies toward more freedom and innovation in order to recruit and retain the best civil servants possible in the ongoing “war for talent.” The increased flexibilities brought their own challenges, not the least of which was the fact that human resources systems suddenly became subject to collective bargaining, as the laws and Governmentwide regulations were no longer in place to bar negotiations. Furthermore, agencies seeking exclusion from Title 5 controls often sought freedom from having to apply veterans’ preference and from having to justify certain actions when they are appealed to outside bodies, in addition to more power over their own pay and performance systems. The FAA got exactly that with their legislation, but it did not take long for Congress to act to enforce and extend veterans’ preference and Merit Systems Protection Board appeal rights—reinforcing both veterans’ preference and due process as national values.

Continued Progress in the Family-Friendly Workplace

In July 1994, a Presidential memorandum, “Expanding Family-Friendly Work Arrangements in the Executive Branch,” directed the heads of all executive agencies to encourage and expand such flexible options. A subsequent Presidential memorandum directed agencies to review their practices and develop a plan of action to provide flexible hours to help employees effectively balance the demands of work and family.

From its experimental origins in the early 1980s, the use of Alternative Work Schedules and related flexibilities has blossomed, allowing Federal employees to gain greater control over their time, balance work and family responsibilities, and take advantage of educational opportunities. Additionally, AWS programs have significantly enhanced recruitment and retention efforts and are a critically important piece in the strategy for making the Federal sector a competitive employer.

Beyond enhanced AWS options, the 1990s witnessed other sweeping changes and developments in maintaining a family-friendly Federal workplace. The Family and Medical Leave Act of 1993 (FMLA) provided employees with up to 12 weeks of unpaid leave during any 12-month period for the birth and care of a child, initial adoption and care of a child, or the care of oneself or a family member with a serious health condition.

Subsequent acts also made permanent the experimental voluntary leave transfer and leave bank programs first established in 1988, and gave employees greater flexibility in their use of sick time to provide care for sick family members, for bereavement purposes, and for the adoption of a child. A public law in 1994 created a special category of leave to encourage employees to become bone marrow or organ donors. And following the terrorist bombing in Oklahoma City in April 1995, Title 5 was amended to allow for the creation of emergency leave

transfer programs to benefit employees affected by a major disaster or emergency but not necessarily facing a medical emergency.

Telework

In 2001, with a strong mandate from Congress, telework emerged as a key work/life flexibility. Congress required each executive agency to establish a policy requiring that, by 2004, 100 percent of eligible employees will be offered the opportunity to telework to the maximum extent possible without diminished employee performance. The law directed OPM to ensure that the requirements of the law are applied. To meet this congressional mandate, OPM has worked closely with the General Services Administration to promote telework and assist agencies in developing their telework programs.

The cumulative effect of these family-friendly options is to recognize the real-life demands of the family and the workplace, promote the economic stability of families dealing with medical issues and other unique circumstances, and signal the Federal sector's commitment to and concern for the families of its employees.

Persistence of Merit System Issues

Amidst the flurry of reform based on the notion of results and performance, the guiding principles of the Federal civil service remained of utmost concern: the merit principles. OPM continued to monitor the maintenance of merit-based employment and advancement and underscored the importance of guarding merit system principles within the Federal community, including avoidance of prohibited personnel practices and ensuring that veterans received the preference to which they are entitled under the law.

Reviewing and Repealing Ramspeck

The merit system received just such attention, and ultimately change, following a review by OPM of the Ramspeck Act. Sponsored by Representative Robert Ramspeck of Georgia, a longtime champion of the merit system, and enacted in 1940, the act was designed to expand merit system coverage. Over the years, most of its provisions had expired or been superseded, but it still provided an authority for executive branch agencies to noncompetitively appoint eligible legislative and judicial branch employees to positions in the competitive service. Individuals who were eligible for a Ramspeck appointment did not have to compete with the general public in a civil service examination.

This aspect of the Ramspeck Act came under scrutiny in 1992, when OPM received a request from its Senate oversight committee to examine allegations that one of the departments had made improper use of the act to convert political appointees to career positions. A finding of improper use of Ramspeck authority sparked broader concern on Capitol Hill that the act was having the unintended

consequence of subverting merit principles in its effort to ultimately bring more employees under the system. Subsequently, Congress repealed the Ramspeck Act in December 1997.

Overall, efforts during the 1990s represented a concerted and sustained effort to identify and address many of the problems facing modern Government and the contemporary civil service. Emphasis on areas like performance, innovation, and customer service simultaneously highlighted the importance and central role of the civil service while also raising the bar of expectations for the missions and effectiveness of the organizations they led.

Labor-Management Partnerships

The Clinton administration sought to transform the traditional adversarial relationship between Federal unions and management. With that goal in mind, President Clinton issued Executive Order 12871 (Labor-Management Partnerships) on October 1, 1993. The order directed agencies to create labor-management partnerships and partnership councils, to negotiate over subjects that were previously off the table, and to provide training in interest-based bargaining. The order also established the National Partnership Council, an advisory body comprised of labor, management, and neutrals, to promote and study labor-management partnerships in the executive branch.

On February 17, 2001, President Bush signed Executive Order 13203 and revoked the partnership order. The President eliminated the requirement to form partnerships and partnership councils, consistent with his belief that effective relationships should develop rather than be mandated, and dissolved the National Partnership Council. What the President found objectionable about EO 12871 was that it mandated partnership, leaving agencies and unions little discretion to choose any other approach to labor relations. The President decided it was better to give responsibility for labor-management relations back to the agencies. That way, agencies and their unions could determine what worked best for them.

On June 21, 2002, OPM Former Director Kay Coles James issued a memorandum to agency and department heads highlighting the value and fundamental need for good labor-management relations. The Former Director said:

I believe that cooperation between labor and management can enhance effectiveness and efficiency, cut down the number of employment-related disputes, and improve working conditions, all of which contribute to the kind of performance and results sought by the President...While agencies are no longer required to form partnerships with their unions, they are strongly encouraged to establish cooperative labor-management relations.

A New Century: President George W. Bush

The Nation's 43rd President took office at a time when it appeared that the major challenges, from the perspective of the civil service, would be the continued modernization of the apparatus of the executive branch and the continued clarification of the Federal Government's role. But the terrorist attacks on New York, Pennsylvania, and Virginia gave extraordinary new importance to finding the best way to hire and manage Federal employees, whose mission had now taken on new importance and urgency.

Managing the Government's Business

The new Bush administration placed its emphasis on management. The President—the Nation's first to have earned a master's in Business Administration—established a Management Agenda identifying five areas for focused improvements, including improving the strategic management of human capital. Attention centers on identifying the skills needed to deliver the results valued by citizens and ensuring that employees have those skills, identifying and rewarding those employees who perform exceptionally well, and dealing with those who fail to perform. Agencies are to use their performance management and awards programs to develop results-based elements and standards, to align employee performance plans with organizational goals and objectives, and to design recognition and incentive programs that reward employees for accomplishing those goals and objectives to develop a strong performance culture within their organizations. Many of these emphases continue efforts underway over the last several decades, but they bring a renewed focus on managers as the source of leadership and change.

Modernizing Federal Pay

In April 2002, OPM released a white paper called "A Fresh Start for Federal Pay: The Case for Modernization." The white paper offered a comprehensive examination of the condition of the Federal white-collar pay and job evaluation systems. It was a starting point for discussions to explore the possibilities for using more up-to-date approaches for setting and adjusting pay in the Federal Government to improve the balance across internal, external, and individual equities. The merit system principles promise all three, but the white paper laid out a strong case that the General Schedule is market-insensitive, performance-insensitive, and overly dominated by internal equity.

As this discussion began, President Bush initiated and worked with the Congress to secure the passage of legislation establishing a Department of Homeland Security, with a critical mission that stands second to none—to protect America. Human resources management was one of the key issues in the debate over this legislation. OPM successfully advocated the paramount importance of equipping the new Department with a modern human resources system that would make

possible the flexible use of all aspects of the system as tools to help management accomplish strategic objectives and results. The legislation establishing DHS granted authority for the Secretary of Homeland Security and the Director of OPM to create, by jointly issued regulation after extensive employee involvement and consultation with stakeholders (such as unions, employee associations, academic experts, and executives in the corporate and nonprofit sectors), modern pay and job evaluation systems that the DHS Chief Human Capital Officer can deploy to establish a world-class organization.

At the same time, the need for similar changes throughout the executive branch had not diminished. The Bush administration continued to pursue broader Governmentwide reform and modernization of the pay and job evaluation systems as a key component of its overall agenda to improve the strategic management of human capital.

Modernizing Federal Benefits

Pretax benefits offered by employers have been permitted under the Internal Revenue Code since the early 1980s. OPM implemented a Health Insurance Premium Conversion Plan in October 2000 for approximately 1.6 million executive branch employees who participate in the Federal Employees Health Benefits (FEHB) program. Pretax premium conversion is a feature of cafeteria benefits plans described under Internal Revenue Code section 125. The employee allots a portion of pay (before taxes are assessed) to be used to pay current premiums for the FEHB plan coverage elected by that employee. OPM adopted the plan on behalf of the Federal executive branch and also accepted adoption agreements from other employers (such as legislative branch entities) with employees participating in FEHB.

Understanding that citizens, including Federal employees, are better judges of how to spend their health care dollars than Government alone, OPM Former Director James advanced and secured the rollout of flexible spending accounts (FSAs) to move the Federal Government into a more competitive position with the private sector.

In addition, OPM plans to implement health care and dependent care pretax spending accounts by July 1, 2003. These FSAs offer employees an attractive opportunity to convert some health care and dependent care expenses from an aftertax expense to a pretax expense or to provide for benefits that may not be provided on a pretax basis through the employer's benefit program. While OPM's adoption of premium conversion and flexible spending accounts lagged behind private sector practice, its administration of other aspects of the FEHB program was at the forefront. It was an earlier adopter of consumer-oriented policies providing for a Patients' Bill of Rights and Patient Safety, and in 2000 it provided parity between traditional medical versus mental health and substance abuse benefits.

Responding to a “Graying” America: Long-Term Care Insurance

The progressive march of the Federal civil service in the area of family-friendly policies and practices continued with implementation of the Long-Term Care Security Act. The act was prompted by the increasingly urgent issue of helping employees pay for extremely costly long-term care services such as home care or care in a nursing home or assisted living facility for themselves, a spouse, or other family members. According to demographic projections, by 2020 1 in 6 Americans will be 65 or older, and by the year 2040 12 million Americans will be 85 or older. Meanwhile, the average cost of a nursing home stay in 2002 was \$50,000, overall long-term care costs have been spiraling upward, less than 10 percent of older adults have long-term care insurance, and almost 50 percent of people 65 or older may spend time in a nursing home.

These statistics, combined with the fact that the issue is particularly relevant and increasingly immediate for Baby Boomers, both for themselves and for their aging parents who face more pressing care issues, compelled action. OPM worked with private insurance companies to craft affordable, high-quality long-term care insurance policies for Federal employees, retirees, and their families.

After significant research, and discussions with stakeholders and insurers, the Federal Long-Term Care Insurance Program (FLTCIP) was unveiled in 2002. Those who choose to enroll pay the full premium—the Government does not contribute—but the cost is considerably reduced because of a group policy rate and economies of scale. FLTCIP coverage, while underwritten, is guaranteed renewable and fully portable.

As OPM Former Director James explained, “Our long-term care insurance program establishes the Federal Government as a pacesetter in the marketplace, and reflects our commitment to and concern for . . . the men and women who work for America.”

Revitalizing the PMI Program

As the twenty-fifth anniversary of the Presidential Management Intern (PMI) program approached in 2002, the President’s Management Agenda had underscored the critical need for top-notch sector management talent. Faith in the promise of the PMI program had never waned, particularly as its graduates attained significant senior leadership roles in the Bush administration. Many observers agreed a serious reconsideration of the scope and design of the program was in order. To that end and to recruit new talent into the Federal Government, Former Director James took action to strengthen the PMI program by moving its headquarters from Philadelphia to Washington, DC, and creating a better staffed and more service-oriented organization. She also initiated action to increase PMI pay and permit greater numbers of PMIs to enter the workforce.

Technology

As the civil service entered the 21st century, it carried with it the benefits and challenges of technology. Job vacancies that had been posted on office bulletin boards and at the post office were now available for review anywhere in the world, courtesy of the Internet and OPM's www.usajobs.opm.gov Web site. The millions each year who visit the site can review all of a job's requirements and, in most cases, can submit a résumé online. The result has been a much higher level of "fair and open competition." At the same time, agencies often have far more applicants than they need to make a good selection, and have to use more resources in reviewing the many applications. Technology may again help, such as through automated screening of applications.

Recognizing the promise technology offers to improve operations and help Government better serve its customers, President Bush included enhanced e-Government as one of the five areas of focus in his management agenda. In 2001, OPM was designated as managing partner for five major projects that use technology to streamline and improve the Federal Government's personnel practices. Together, these e-Gov projects will form an interlocking system for moving Federal workers through the employee lifecycle—beginning with recruitment, continuing through all aspects of employment and training, and culminating with retirement.

OPM applied technology in other ways as well in delivering products and services. After the elimination of the Federal Personnel Manual, agency managers and human resources specialists throughout Government needed access to a wide variety of information to facilitate day-to-day operations. OPM's various programs developed Web pages and Web-based applications to accomplish this and made the information available to its customers and the public through Internet technology. Now anyone can easily look up a specific rate of basic pay in any locality area, find examples of successful recognition programs, double-check a specific regulation, retrieve a presentation from an OPM conference, download a handbook of childcare resources, or call up a specific classification or qualification standard. Information technology has truly revolutionized the way OPM can keep its audiences equipped with up-to-the-minute guidance and information.

The Future

The history of the civil service—the biography of an ideal—mirrors the history of the country that it serves. The civil service has expanded when there were wars to be fought and shrunk when they were over, most recently following the end of the cold war. It has learned from private sector practices and even occasionally taught the private sector. And it has shared and shaped the values of its country. Entering the 21st century, its overarching challenge is certainly to reshape itself

yet again in order to help the Nation respond to the terror of September 11, 2001, and to contribute to the security of the country that is the Government's chief responsibility, as it continues to provide the many other services the Nation expects. This will require continued focus on accountability and responsiveness to the will of the people as expressed in national elections, and even greater flexibility to move quickly and respond appropriately.

History Challenge Quiz

Instructions: Below are questions with lettered (a, b, c, d) distractors, followed by the answers.

Question 1 of 15

The most significant event of Monroe's administration was passage of the Tenure of Office Act of 1820, which opened the door to the spoils system by:

- a. Preventing the removal of unfit Government workers.
- b. Setting aside a percentage of Government for political appointees.
- c. Limiting terms of many Government officials to 4 years.
- d. Requiring a "fitness" for office test for the appointment of key positions.

The correct answer is: C. Limiting terms of many Government officials to 4 years

Supporters of the law claimed that most officials would be reappointed, but that a convenient means would also be provided for removing unsatisfactory officials. The Tenure of Office Act made removal of all incumbents eventually customary, but neither Monroe nor John Quincy Adams took advantage of the Act. They both consistently reappointed to public office all those who had performed their work meritoriously.

Question 2 of 15

When this President was elected nearly 40,000 office-seekers swarmed into Washington for the inauguration. Armed with letters, claims, and gall, they took up their stations in Cabinet members' offices and in the White House. Some brought bedding and slept in the White House corridors.

The President became ill during the third week of his term and died during the fourth. The official

certificate gave pneumonia and general weakness as causes of death, but the opinion of many historians is that the real cause was the spoils system.

Which President is being described?

- a. Martin Van Buren
- b. William Henry Harrison
- c. John Tyler
- d. James Polk

The correct answer is: B. William Henry Harrison

Harrison was in favor of one part of the spoils system but not another. While in favor of rewarding his political adherents by giving them public jobs, he planned to remove large numbers of officeholders because of political activity while in office.

Harrison, who was nearly 70 when elected, was worn out when he took office, by both the strain of the campaign and the importunate demands and counterdemands of the jobseekers. He became ill during the third week of his term and died during the fourth. The official certificate gave pneumonia and general weakness as causes of death, but the opinion of many historians is that the real cause was the spoils system.

Question 3 of 15

The first Civil Service Commission was created by:

- a. President Ulysses S. Grant
- b. President Chester Arthur
- c. President William McKinley
- d. President Theodore Roosevelt

The correct answer is: A. President Ulysses S. Grant

In 1871, President Grant appointed an "Advisory Board of the Civil Service," later called the "Civil Service Commission." Before it died in 1873, the "Grant Commission" recommended classification of all positions into groups according

to the duties to be performed and into grades for purposes of promotion, and competitive examinations for appointment to all positions within the lowest grade of each group. This 3-year trial of the merit system, though it ended in a setback, was valuable to those who advocated measures that were put into effect by the Civil Service Act of 1883.

Question 4 of 15

A patronage dispute between the President James Garfield and Senator Chester A. Conkling over the collectorship of the Port of New York attracted the attention of Charles J. Guiteau. Guiteau along with the hordes of other officeseekers had been visiting the White House daily to press his claim to a job.

On the morning of July 2, 1881, as the President was waiting in the old Baltimore and Potomac railroad station in Washington for a train to take him on a vacation trip, Guiteau:

- a. Staged a protest rally to draw attention to unfair hiring practices.
- b. Committed suicide because he was despondent about not having a job.
- c. Prevented the train from leaving in order to persuade the President to hire him.
- d. Shot the President twice because he felt he was entitled to a job in the new administration.

The correct answer is: D. Shot the President twice because he felt he was entitled to a job in the new administration.

“That cruel shot,” wrote historians Charles A. and Mary R. Beard, in “The Rise of American Civilization,” “rang throughout the land, driving into the heads of the most hardened political henchmen the idea that there was something disgraceful in reducing the Chief Executive of the United States to the level of a petty job broker.”

Question 5 of 15

On December 6, 1881, 2 and a half months after Garfield’s death, a bill to reform civil service was introduced in the U.S. Senate by:

- a. Senator George H. Pendleton, Ohio

- b. Senator Warner Miller, New York
- c. Senator Lucius Q. C. Lamar, Mississippi
- d. Senator Henry G. Davis, West Virginia

The correct answer is: A. Senator George H. Pendleton, Ohio

On December 6, 1881, 2 and a half months after Garfield's death, Senator George H. Pendleton of Ohio, chairman of the Senate committee on Civil Service Reform, introduced a reform bill. The Pendleton bill was reported to the Senate on May 15, 1882. It aroused little enthusiasm in Congress, although petitions for civil service reform, signed by thousands of names, had been received throughout the session. Powerful help came when Chester A. Arthur, President since Garfield's death, who had been considered a spoilsman, declared that he would give his "earnest support" to whatever civil service legislation Congress should enact, and that, failing enactment of legislation, he would recommend an appropriation to restore Grant's Civil Service Commission.

On January 16, 1883, President Arthur signed the epoch-making bill, marking the beginning of the merit system in Federal service. This historic act is the Pendleton Act (also known as the Civil Service Act of 1883).

Question 6 of 15

The first person appointed under the merit law was Ovington E. Weller of Maryland. On August 29, 1883, he was appointed to a post office clerkship at a salary of:

- a. \$500 per year
- b. \$1,000 per year
- c. \$1,500 per year
- d. \$2,000 per year

The correct answer is: B. \$1,000 per year

Acting as agents of the Commission within Federal agencies, boards of examiners were responsible for the actual work involved in examining applicants. They consisted of groups of three or more agency officials authorized by the Commission to run the competitive examining program, or a part of this program, for an agency installation or a group of installations.

The first person appointed under the merit law was Ovington E. Weller of Maryland. On August 29, 1883, he was appointed to a post office clerkship at a

salary of \$1,000 a year. Mr. Weller, a lawyer by profession, was later elected U.S. Senator from Maryland.

Question 7 of 15

Which President is being described? This President took office on September 14, 1901 after the assassination of McKinley. The vigorous personality of the new President made itself felt almost immediately. Expansion, modernization, and reform crackled like electricity in the national atmosphere. The merit system now had a strong supporter in the White House.

- a. Theodore Roosevelt
- b. William H. Taft
- c. Woodrow Wilson
- d. Warren Harding

The correct answer is: A. Theodore Roosevelt

Roosevelt's aggressive tour as a Civil Service Commissioner (1889–95) gave him a great name in the civil service reform movement.

Unlike the Presidents who preceded him, Roosevelt:

- Brought many jobs into the competitive service early in his administration.
- Defined the “just causes” for which an employee could be dismissed.
- Sharpened and required stricter compliance with the restrictions against political activity.
- Forbade disbursing officers to pay the salaries of persons illegally appointed to civil service positions.

Question 8 of 15

On August 2, 1939, President Roosevelt signed the Hatch Act, which prohibited:

- a. Practices that discriminate against Government workers because of race, color, religion, or national origin.
- b. Active participation in politics by employees and officials of the executive branch.
- c. Dismissal of Government personnel for their failure to meet “loyalty” standards.
- d. Appointment of Government workers outside the merit system.

The correct answer is: B. Active participation in politics by employees and officials of the executive branch.

On August 2, 1939, President Roosevelt signed the Hatch Act, which prohibited coercion of voters in Federal elections, and active participation in politics by employees and officials of the executive branch. Penalties included heavy fines and imprisonment for coercion in Federal elections, and removal from office for political activity on the part of Federal employees. The act also prohibited payment of salary to an employee belonging to an organization advocating the overthrow of the Government of the United States.

The so-called “Second Hatch Act”—enacted July 19, 1940—extended the prohibition against political activity to employees of State and local agencies whose principal employment was in connection with activities financed in whole or in part by Federal loans or grants.

In 1993, Congress passed legislation that significantly amended the Hatch Act as it applies to Federal and D.C. employees (5 U.S.C. §§ 7321-7326). Under the amendments most Federal and D.C. employees are now permitted to take an active part in political management and political campaigns.

Question 9 of 15

Under the Veterans’ Preference Act of 1944:

- a. Veterans were not required to take written entrance examinations.
- b. Veterans were required to meet age, height, and weight requirements for the job.
- c. Veterans were not allowed to appeal to the Commission in removals and certain other adverse actions.
- d. Veterans were credited with time spent in the Armed Forces, in examinations in which experience was a factor.

The correct answer is: D. Veterans were credited with time spent in the Armed Forces, in examinations in which experience was a factor.

The most important personnel legislation enacted during the war period was the Veterans’ Preference Act of 1944. This act redefined and consolidated into law certain benefits previously granted to veterans, either by law or regulation, and also added new benefits, some of which had the effect of amending the Civil Service Act.

The act provided for:

- Adding 5 to 10 points to examination scores of veteran-preference eligibles;
- Listing disabled veterans and others granted 10-point preference ahead of all other eligibles on many registers;

- Crediting veterans with time spent in the Armed Forces, in examinations in which experience was a factor; and
 - Waiving age, height, and weight requirements for veteran-preference eligibles in most examinations.
 - Establishing the right of veterans to appeal to the Commission in removals and certain other adverse actions by the agency which had hired them; and
 - Other measures to grant preference to veterans.
-

Question 10 of 15

Before 1958, neither departments and agencies nor the Civil Service Commission had clear statutory authority to:

- a. Recruit employees.
- b. Appraise employees.
- c. Train employees.
- d. Terminate employees.

The correct answer is: C. Train employees.

In 1958, Congress enacted and the President signed the Government Employees Training Act. The act directed the Civil Service Commission to coordinate training programs across agency lines. In addition to placing training on a firm footing throughout the Federal Government, the act recognized training and employee development as a new, strategic component of modern personnel management.

Question 11 of 15

Instructions: For question 11, next to each lettered statement below, select the corresponding numbered President to events listed below. The answers follow below.

- 1. Dwight Eisenhower
- 2. John F. Kennedy
- 3. Lyndon B. Johnson
- 4. Richard Nixon
- 5. Gerald Ford

- A. Assigned responsibility for equal employment opportunity in the Federal service to the Civil Service Commission
- B. Established the President's Panel on Federal Compensation.

- C. Directed agencies to establish and maintain their own programs of personnel management evaluation.
- D. Signed the Federal Employees Health Benefits Act.
- E. Established the President's Commission on the Status of Women.

Compare your answers to the correct answer shown below:

Dwight Eisenhower

The Federal Government lacked a health insurance benefit until 1959, when Congress enacted and President Eisenhower signed the **Federal Employees Health Benefits Act**. From then on, Federal employees (and those who retired after that date) could secure health insurance for themselves and their families at group rates, and the Government shared the cost of premiums.

John F. Kennedy

In the first year of his administration, 1961, John F. Kennedy established the **President's Commission on the Status of Women**. With its responsibility for ensuring nondiscrimination and equal opportunity in the largest employment system in the Nation, the Civil Service Commission took a look at Federal personnel management policies and practices to make sure they did not place barriers in the path of employment for women.

Lyndon B. Johnson

In 1965, at the height of the national debate on civil rights, President Lyndon B. Johnson, by Executive Order 11246, **assigned responsibility for equal employment opportunity in the Federal service to the Civil Service Commission** and declared that:

"It is the policy of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency."

Richard Nixon

President Richard M. Nixon in 1969 **informed the heads of departments and agencies that the responsibility for compliance with personnel laws was theirs and directed them to establish and maintain their own programs of personnel management evaluation** to make self-assessments of the effectiveness of their personnel management systems. The President directed the Commission to set standards for agency evaluation programs and gave the Commission overall Governmentwide responsibility for the evaluation process.

Gerald Ford

President Ford established in June 1975 the **President's Panel on Federal Compensation**. The mission of the Panel was to reexamine and develop a number of ideas that had been under consideration in the personnel management field in previous years and recommend what the President should do about them.

Question 12 of 15

What event caused the Civil Service Commission sign to be changed to the Office of Personnel Management?

- a. The reorganization of government agencies during the Ford administration.
- b. The passage of the Civil Service Reform Act of 1978.
- c. The consolidation of Merit Systems Protection Board, Federal Labor Relations Authority, and Office of Government Ethics into a single entity.
- d. The establishment and implementation of new merit systems principles.

The correct answer is: B. The passage of the Civil Service Reform Act of 1978.

In March 1978, the President Carter sent the package of legislative proposals to Congress. The Civil Service Reform Act and its associated plans:

- Established the U.S. Office of Personnel Management (OPM), effective January 1, 1979. The new Office would serve as the President's chief advisor on civilian personnel matters and would inherit from the Commission only one set of its functions and authorities: personnel management of the civil service of the Government.
- Established the Senior Executive Service (SES). The Service was to be a complete merit system of employment, but separate from the competitive service merit system that embraced most jobs and employees of the Government.
- Established the Merit Systems Protection Board and assigned to it two essential functions: 1) protecting merit systems from political intrusions and 2) adjudicating appeals from Federal employees on all matters affecting their employment.
- Established a Federal Labor Relations Authority. The Authority was given the role of settling disputes and negotiations between Federal agencies and unions when they reached a point of stalemate.

- Put into statute a statement of fundamental merit system principles (5 U.S.C. 2301) and also, for the first time, a statement of prohibited personnel practices (5 U.S.C. 2302).
 - Clarified the grounds for taking action against employees whose performance fell below requirements or whose conduct in office became unacceptable.
-

Question 13 of 15

The Government Performance and Results Act of 1993 (GPRA) sought to:

- a. Replace the General Schedule system for payment of federal employees with a pay-for-performance system.
- b. Establish model performance standards for each occupation and job series within the federal service.
- c. Shift the focus of Government decisionmaking and accountability towards results, rather than activities.
- d. Create standardized selection and retention criteria for "Schedule C" political appointees across all agencies.

The correct answer is: C. Shift the focus of Government decisionmaking and accountability towards results, rather than activities.

The Clinton administration and Congress, too, sought enhanced performance, measurement, and accountability from the Federal sector. The Government Performance and Results Act of 1993 (GPRA) sought to shift the focus of Government decisionmaking and accountability towards results, rather than activities. Under the act, agencies develop specific, relevant metrics to measure their success in accomplishing their missions and to support their future budget requests.

Question 14 of 15

Which President is being described? The Nation's first President to have earned a master's in Business Administration—established a Management Agenda identifying five areas for focused improvements, including improving the strategic management of human capital. Attention centers on identifying the skills needed to deliver the results valued by citizens and ensuring that employees have those skills, identifying and rewarding those employees who perform exceptionally well, and dealing with those who fail to perform.

- a. President Ronald Reagan
- b. President George H.W. Bush
- c. President William Clinton
- d. President George W. Bush

The correct answer is: D. President George W. Bush

Under President George W. Bush's Management Agenda agencies are to use their performance management and awards programs to:

- Develop results-based elements and standards,
- Align employee performance plans with organizational goals and objectives, and
- Design recognition and incentive programs that reward employees for accomplishing those goals and objectives to develop a strong performance culture within their organizations.

Many of these emphases continue efforts underway over the last several decades, but they bring a renewed focus on managers as the source of leadership and change.

Question 15 of 15

In 2003 the Department of Homeland Security (DHS) was established. DHS has a critical mission that stands second to none—to protect America. Human resources management was one of the key issues in the debate over this legislation. OPM successfully advocated:

- a. Equipping the new Department with a modern human resources system that allows for flexible use of all aspects of the system as tools to help management accomplish strategic objectives and results.
- b. Strictly adhering to existing personnel practices dictating how work is assigned and evaluated within the agency.
- c. Expanding benefits to Department of Homeland Security that had been traditionally granted to military personnel.
- d. Exempting all employees of the new Department from classification and competitive selection regulations.

The correct answer is: A. Equipping the new Department with a modern human resources system that allows for flexible use of all aspects of the system as tools to help management accomplish strategic objectives and results.

The legislation establishing the Department of Homeland Security (DHS) granted authority for the Department Secretary and the Director of OPM to create modern pay and job evaluation systems that the DHS Chief Human Capital Officer can deploy to establish a world-class organization.

The history of the civil service—the biography of an ideal—mirrors the history of the country that it serves. Entering the 21st century, its overarching challenge is certainly to reshape itself yet again in order to help the Nation respond to the terror of September 11, 2001, and to contribute to the security of the country that is the Government's chief responsibility, as it continues to provide the many other services the Nation expects. This will require continued focus on accountability and responsiveness to the will of the people as expressed in national elections, and even greater flexibility to move quickly and respond appropriately.