

TEMPORARY FEDERAL EMPLOYMENT: In Search of Flexibility and Fairness

**A Report Concerning
Significant Actions of the
U.S. Office of Personnel Management**



**A Report to the President and the
Congress of the United States by the
U. S. Merit Systems Protection Board**

September 1994

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Executive Summary

At any given time, between 145,000 to 175,000 employees are serving in temporary positions in the Federal Government. By definition, these employees are appointed to their positions for 1 year or less. Over at least the last 10 years, the size of this “contingent workforce” has remained relatively constant at approximately 6 to 7 percent of the total civilian Federal employee population. Thus, temporary employees can make a significant difference in the Federal Government’s capability to carry out its many missions on behalf of the Nation.

A recent study by the U.S. Merit Systems Protection Board (MSPB or the Board) looked at several issues affecting temporary employees in the Federal Government today. At the heart of these issues is the search for the proper balance between necessary management flexibility in hiring, fairness to employees, and the legitimate requirements of a merit-based civil service system. Events occurring since the Board’s last examination of temporary employment policy, in 1987, lead us to conclude that a proper balance has yet to be achieved.

This report details the findings of this latest MSPB study. It describes several proposals by Congress and the U.S. Office of Personnel Management (OPM) to address some of the problems associated with current temporary employment policies and practices. Finally, it offers some recommendations regarding future changes in this very important, but often overlooked, area of Federal human resources management.

Temporary employees perform a valuable service for the Government and the public by providing Federal departments and agencies with much needed flexibility in handling temporary increases in workload, such as seasonal work and short-term projects, or in hiring people to fill in behind permanent employees on an extended leave of absence. Not only do temporary employees work without any promise of continuing employment, but they also receive fewer employee benefits than permanent employees. One tradeoff of sorts is that temporary employment is often easier for an applicant to obtain than permanent employment.

In 1987, when MSPB last looked at the Federal Government’s temporary employment policy, we focused on a 1985 change in policy by OPM which allowed Federal agencies to extend temporary-limited appointments in up to 1-year intervals, so that a single appointment may total 4 years. We concluded that this change provided managers with some new, desirable flexibilities. However, we also voiced concern that these expanded flexibilities created an opportunity for abuse of employees and of the statutory merit principles and called for reasonable safeguards against such possibilities.

For example, because many potential job applicants prefer to consider only permanent employment possibilities, there is generally much less competition for temporary jobs. In some cases, temporary jobs are filled under excepted appointment authorities which may not require any formal competition at all. Should some temporary jobs simply be entry vehicles for eventual permanent employment, this would be in conflict with the statutory merit principle calling for “fair and open competition which assures that all receive equal opportunity.”

There is also the question of fairness to the employees who accept a temporary job. Beginning in December 1991, subcommittees of the Committee on Post Office and Civil Service of the U.S. House of Representatives held several hearings to receive the complaints of temporary employees and to look at alternatives to temporary employment policy. The hearings confirmed that questionable practices were occurring—including the retaining of employees in an ongoing series of “temporary” appointments for long periods of time (8 to 10 years or more), depriving them of what might otherwise be permanent status and the employee benefits associated with that status.

These hearings and information from other sources have prompted OPM to propose revised regulations for temporary employment. In addition, legislation has been proposed which would significantly change the tenure track and benefits of temporary employees. Further, these events have occurred within the context of the larger effort of the Vice President’s National Performance Review (NPR), which has separately prompted a reexamination of some basic assumptions about how Federal jobs should be filled. Both the NPR report and subsequent recommendations by the National Partnership Council (composed of representatives of Federal employee unions and top management officials to advise on implementation of the NPR recommendations) have called for fundamental changes in many areas affecting Federal staffing, including temporary employment.

Findings

- ❑ **Investigations conducted by the Office of Personnel Management and House Committee on Post Office and Civil Service confirm that some abuses of the temporary appointment authority—and of temporary employees—have occurred.** The predominant abuse involved retaining “temporary” employees on the Federal roles for an extended period of time (8 to 10 years or more) through the use of an ongoing string of temporary appointments. Not only is this directly contrary to the explicit intent of the temporary appointment authority, but it also denies the employees involved the benefits available to other long term employees, primarily health and life insurance, retirement benefits, and periodic pay increases.
- ❑ **Inappropriate use of temporary employees to fill positions that are permanent contravenes the statutory merit system principle calling for “fair and open competition which assures that all receive equal opportunity.”** As with our 1987 study, we continue to find that a serious issue remains concerning inappropriate use of temporary employees in contravention of the merit principle of fair and open competition based solely on the relative qualifications of candidates. Since many potential job candidates do not wish to be considered for temporary positions, the size and quite possibly the overall quality of the applicant pool for temporary jobs is usually less than that for permanent ones. This limits the openness of competition and is contrary to the public’s obvious interest in having the Federal Government hire, to the maximum extent possible, a well-qualified and motivated Federal workforce.

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- ❑ **Managers who currently wish to convert to permanent employment even highly successful temporary employees often find that the current hiring process prevents those temporary employees from being hired under competitive staffing procedures.** The “rule of three” (requiring that only the top three candidates be considered regardless of the total size of the applicant pool); competitive registers (lists of eligibles) closed to receipt of new applicants because of a surplus of candidates; and other procedural requirements may prevent even a fully trained, motivated, and successful temporary employee from being within reach for competitive selection into a permanent position.

- ❑ **There are three basic solutions being proposed to deal with the problems of inappropriate use of temporary employment:**

1. Limiting the length of temporary appointments. OPM has proposed changing the current regulations to limit the use of temporary-limited appointments to 1 year with a maximum extension of 1 additional year. This would cut in half the current option of incremental extensions for up to 4 years. The proposal would also impose other restrictions, including a limit on the total amount of time a position could be filled with the same or different temporary employees.
2. Providing a means to convert temporary employees to permanent status. A bill introduced in the House of Representatives would provide broad authority to convert qualified temporary employees to permanent status if they have served under a temporary appointment for at least 2 years within a 5-year period. The National Partnership Council has recommended enactment of legislation which would provide for the conversion

of temporary employees to permanent status providing the employees were initially hired using competitive procedures.

3. Providing additional benefits to temporary employees without regard to their temporary status. Two bills introduced in the House of Representatives would provide to temporary employees some additional combination of benefits that are now available only to permanent employees. In addition, the National Partnership Council has recommended the enactment of legislation which would grant eligibility for health insurance to all temporary employees and which would grant other benefits based upon employees’ aggregate length of service rather than the status of their current appointment.

- ❑ **In considering the various proposals for dealing with various issues or problems associated with temporary employment, three competing needs must be balanced:**

1. Federal departments and agencies and their managers have a legitimate need for a flexible hiring system, responsive to workload requirements, and which allows them to recruit, identify, and select highly qualified and motivated employees in a timely manner.
2. Current and future temporary employees have a right to be treated fairly in return for their contributions to getting the work of the Federal Government accomplished. Employees who believe they are being treated unfairly are likely to evidence a lower commitment to the job and their employers—the American public.

3. The American public, in turn, has a vested interest in a civil service that is free of prohibited personnel practices and in accord with the merit system principles. Those principles call, in part, for a Federal workforce that is used efficiently and effectively and which is selected and advanced through free and open competition.

Conclusions

In reviewing current temporary employment policy and practices and the major proposals for change, we kept foremost in mind the importance of balancing the competing needs enumerated above while giving due consideration to fiscal reality and the many diverse work environments in the Federal Government. Not surprisingly, every proposal discussed in this report is well-intentioned and designed to address one or more of the problems associated with the Government's current temporary employment policy.

Assessing how well each current (or future) proposal for change in temporary employment policy and practice meets the aforementioned "balancing test" is a matter of judgment and perspective. The Merit Systems Protection Board's charter clearly calls for our judgment to be exercised in a manner consistent with the statutory merit system principles. In that context, we offer the following recommendations.

Recommendations:

1. **OPM's proposed regulatory changes published in the Federal Register on February 1, 1994, which would place some additional constraints on the maximum length of temporary employment for any one individual and on the amount of time any one position can be filled by temporary employees address a significant aspect of the problem of abuse and should be implemented as soon as possible.** While these changes will not take care of all aspects of the problems currently identified, they will be a useful first step. OPM's proposal also correctly identifies temporary employment as a one-time, temporary arrangement and not a mechanism to bypass regular competitive staffing procedures nor a method to deny employees legitimate rights or benefits. The proposed changes, of course, should not take the place of some larger and more fundamental refinements to the Federal staffing process proposed by the Vice President's National Performance Review.
2. **To conform with the merit principles, any conversion of temporary employees to permanent status should occur only when the temporary employees were initially selected by a competitive process which conforms with the "fair and open competition" requirements. Further, as a reasonable safeguard, any**

conversion of temporary employees to permanent status should occur only when the temporary functions for which those employees were initially hired become permanent. Two specific proposals have been made to allow conversion of temporary employees to permanent status. In considering these proposals, we think that conversion eligibility should be limited to prevent merit system abuses. Allowing conversions of temporary employees not initially selected through fair and open competition would violate the merit principles. Allowing conversion to any position for which a temporary employee is qualified could, over time, become too tempting as a means to circumvent regular competitive procedures for filling permanent positions. Without restrictions on conversion eligibility, temporary employment could become a routine "trial period" for employees outside the context of a probationary period.

- 3. Additional benefits should be considered for temporary employees, but these benefits should be based on the overall length of employees' Federal civilian service and not the length or permanency of their current appointment.** The current legislative proposals and the proposals of the National Partnership Council all base additional benefits for temporary employees on the length of an individual's Federal service,

not the status of the current appointment. Using this basis would reward employees for the loyalty demonstrated over time while providing a disincentive for the inappropriate use of temporary employees on a long-term basis to avoid legitimate benefits.

- 4. As a specific Federal benefit, health insurance should be extended to all but extremely short-term Federal employees.** This would allow the Federal Government to get an early start on implementation of the Administration's goal of providing universal health coverage for Federal employees. Should the Federal Employee Health Benefits Program be absorbed into a new national system after 1997 as proposed, then temporary employees could be converted along with everyone else.

NOTE: Officials of the Office of Personnel Management have reviewed a draft of this report, providing clarifications and insights on the study and stating their views regarding our conclusions and recommendations. Their comments and clarifications have been incorporated into the report, and their agreement or disagreement with our conclusions and recommendations has been noted in the text.

Background

The Merit Systems Protection Board last looked at OPM's program for temporary hiring in 1987,¹ focusing on OPM's 1984 expansion of temporary-limited hiring authority up to grade GS-12 and for a period of up to 4 years. At that time, the Board concluded that " * * * the expanded authority is a positive addition to the management tools available to Federal managers."² However, the Board was concerned that the greater flexibility could lead to " * * * poor management practices * * * that result in continuing staffing needs being met with temporary employees simply because it is administratively easier to hire [temporary employees]."³

The Board's concerns have been borne out by anecdotal evidence presented to subcommittees of the House Committee on Post Office and Civil Service. Since December 1991, several hearings have been held in which employees have come forward with their experiences of being hired in a series of temporary appointments spread over many years and performing the same work under these appointments. These witnesses have complained about their lack of major benefits (e.g., employer-subsidized health insurance) and their inability to gain the protections of tenure. This anecdotal evidence is confirmed by OPM's 1992 study of temporary employment in land management agencies.⁴ This study, focused on the use of temporary excepted hiring authorities available to the land management agencies, concluded that " * * * in practice [temporary employment]

has expanded to become quasi-permanent employment for many. In contravention of OPM rules, temporary employees are being utilized to perform ongoing work."⁵

The traditional reaction to this kind of concern is to increase the restrictions on the agencies, but we do not live in traditional times. The concerns over specific abuses of temporary hiring flexibilities come at the same time as a major review of Federal Government personnel practices. The National Performance Review, led by the Vice President, has looked at the Government's current personnel system and concluded that:

Our federal personnel system has been evolving for more than 100 years. Year after year, layer after layer, the rules have piled up. This elaborate system does not work. To create an effective federal government, we must reform virtually the entire personnel system * * *.⁶

The NPR recommended that managers be given more flexibility to manage their human resources. In order to devise strategies and specific proposals to make such reforms of the personnel system, a National Partnership Council was formed which included a broad representation of Federal managers and union officials. This council has made specific proposals to the President for changing the entire civil service recruitment and placement system. The

¹ U.S. Merit Systems Protection Board, "Expanded Authorities for Temporary Appointments: A Look at Merit Issues," Washington, DC, December 1987.

² Ibid., p. i.

³ Ibid., p. 12.

⁴ U.S. Office of Personnel Management, "Temporary Employment Within Land Management Agencies of the Federal Government," Washington, DC, July 1992.

⁵ Ibid., p. ii.

⁶ Vice President Al Gore, "From Red Tape to Results: Creating a Government That Works Better and Costs Less," National Performance Review, Washington, DC, September 1993, p. 4.

proposals would delegate all recruiting, examining, and hiring from OPM to the operating Federal agencies and attempt to greatly simplify the Federal hiring system. The council's proposals include specific provisions to change the temporary hiring rules, including allowing the conversion of temporary employees to permanent positions.⁷ This call for simplification is occurring at the same time that problems with the temporary hiring program would seem to call for more restrictions. Both of these developments suggest that meeting the needs of managers for more flexibility while prevent-

ing abuse of employees and the merit system is the challenge which must be addressed in any revised temporary hiring policy.

This study reviews the current status of temporary employment policy and discusses the alternatives which have been proposed for meeting the Federal Government's future employment needs. We look at the concerns which have prompted the proposals for change, then discuss the ways in which these proposals meet the needs of the Government and employees while preserving the underlying merit system principles.

⁷ National Partnership Council, "A Report to the President on Implementing Recommendations of the National Performance Review, Washington, DC, January 1994, pp. 28-29.

What Is Temporary Employment in the Federal Government?

Defining It in the Federal Government

OPM recently conducted a congressionally required study of the rights and benefits of temporary employees in the Federal Government.⁸ In its study, OPM gives the following general definition for Federal temporary employment:

Temporary Federal employees serve under appointments limited to 1 year or less. In the competitive service, **temporary-limited employees** are appointed for periods of up to 1 year, and their service can be extended for a maximum of 4 years. Temporary employees also serve in executive branch positions that have been excepted from the competitive hiring requirements by law, regulation, or administrative determination. In the excepted service, time limits for temporary employment vary and are generally tied to the duration of the specific situation for which the excepted appointing authority is authorized.⁹

OPM's general definition excludes all Government corporations such as the Postal Service and the Tennessee Valley Authority. Further, the definition distinguishes between "competitive" and "excepted" service. The competitive service is that body of jobs in the executive departments and independent agencies which are subject to competitive civil service hiring procedures. The excepted service is the total of those positions which are excepted from the

competitive civil service. Whole agencies and occupations are excepted by law. These include the security agencies such as the Central Intelligence Agency and the Federal Bureau of Investigation; Government agencies with completely excepted employment systems such as the system for health care professionals in the Department of Veterans Affairs; and lawyers throughout the Government. OPM has little control over the practices of the legally excepted employment systems.

In addition to employment systems which are generally outside the control and oversight of OPM, the definition of temporary employment above also excludes time-limited employment within OPM's control which exceeds one year initially. This category includes term appointments, temporary appointments pending the establishment of a register, and indefinite employment.

After excluding all of the above categories, we are left with two basic types of temporary employment for which OPM is responsible: temporary-limited appointments in the competitive service and temporary excepted appointments. Temporary-limited appointments are made under the authority of 5 CFR 316.402. Temporary positions outside the competitive service which are under the control of OPM are filled under the authorities contained in 5 CFR 213 and include confidential policymaking positions and positions for which OPM determines examining is impractical.

⁸ U.S. Office of Personnel Management, "The Rights and Benefits of Temporary Employees in the Federal Government," Washington, DC, April 1993.

⁹ Ibid., p. 5.

Temporary employees accounted for 6.8 percent of the Federal workforce as of September 1993. While the percentage of temporary employees fluctuates throughout the year, with the highest numbers occurring during the summer months, it remained relatively constant year to year over the 11-year period 1982-93.¹⁰

Utilization of Temporary Employees

Temporary employees are intended to perform work which is temporary or to cover temporarily the absence of permanent employees. Situations which are appropriate for the use of temporaries according to OPM guidance to agencies include:

- ❑ Staffing to meet peak workload demands;
- ❑ Staffing continuing positions when future funding and workload are in doubt;
- ❑ Filling permanent positions on a temporary basis in order to save them for eventual incumbency by permanent employees expected to be displaced from other parts of the organization; and
- ❑ Filling vacancies which occur in activities under study for possible contracting out.¹¹

Beyond these situations, there are other unusual situations which would warrant the use of temporary employees in the place of career employees. However, normally when a function is a continuing one, it should be filled via career employment. OPM's guidance lists

several situations in which the use of temporary employees is clearly inappropriate. These include:

- ❑ Hiring temporary employees to avoid the cost of employee benefits or ceilings on permanent employment levels;
- ❑ Using temporary employment as a "try-out" or trial period prior to permanent appointment (except where specifically authorized for severely disabled or mentally restored employees);
- ❑ Circumventing the competitive examining process by appointing an individual on a temporary basis because that individual is not within reach for permanent appointment;
- ❑ Refilling positions which, over the preceding 4 years, have been filled continuously on a temporary basis.¹²

OPM's list of inappropriate uses focuses on the use of temporary employment for purposes other than meeting temporary needs. For example, the prohibition on refilling a job which has been filled continuously on a temporary basis for 4 years with another temporary appointment is, in essence, a statement that a function which has existed for this long cannot really be considered temporary. The other inappropriate uses listed above focus on using temporary appointments as a means of restricting the legitimate rights and benefits of employees for the convenience of management. To understand how this restriction occurs, we need to contrast temporary with permanent employment.

¹⁰ Ibid., p. 16.

¹¹ U.S. Office of Personnel Management, Federal Personnel Manual, ch. 316, par. 2-2b. (These Federal Personnel Manual provisions remain in force through Dec., 31, 1994. OPM has restated these uses in proposed regulations, 5 CFR 316.302 (a).)

¹² Ibid., paragraph 2-2c. (This portion of the Federal Personnel Manual remains in effect through Dec. 31, 1994.)

Temporary Versus Permanent Employment

By being time-limited, temporary employment differs from most other Federal employment, which does not have an ending date. This other employment is generally called “permanent” or, in the competitive service, “career” employment. Besides the time element, three things differentiate temporary from permanent employment in the Federal Government:

- (1) There is far less competition in filling temporary jobs than in filling permanent jobs. This results from two factors, one inherent in the nature of temporary jobs and the other by the requirements placed on the recruitment and placement process by OPM. Inherently, temporary jobs are less attractive. They do not provide ongoing stable employment, the possibility of career advancement, or many of the employee benefits of permanent employment. Therefore, a far smaller pool of people is interested in such jobs.

Also contributing to the lower level of competition are OPM’s less stringent requirements for recruiting and selecting temporary employees compared with permanent employees. These requirements are sufficiently different that different parts of title 5 of the Code of Federal Regulations (pt. 332 for permanent employees and pt. 333 for temporary employees) describe them. For example, before candidates from the general public may be considered for permanent positions, agencies must consider employees displaced by reductions in force, and many bargaining

agreements require that current permanent employees be considered prior to seeking candidates from other sources. These requirements both exclude outside candidates and take significant time to comply with procedurally and substantively. Further, the procedural requirements for the recruitment and examination of candidates for permanent positions are significantly more detailed than for temporary positions. Generally, agencies may simply announce their temporary vacancies through the State employment service and the OPM service center for a short time rather than using the more elaborate announcement procedures used for permanent positions. Further, unless the pool of candidates is rather large, agencies do not have to do the numerical ratings of candidates which are typically done for permanent positions.

The net result of these differences is twofold. Agencies can hire temporary employees much more quickly and with greater flexibility in candidate selection than is the case with permanent employees, and applicants for Federal jobs can more easily be hired for temporary jobs than for permanent jobs. When these less stringent hiring requirements are coupled with the far smaller pool of applicants for temporary work, the result is far less competition in filling temporary jobs.

- (2) A significant factor differentiating temporary employment from permanent is that temporary employees have no tenure. Temporary employment has a preestablished ending date but can be

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ended at any earlier time with short notice. If an agency has a reduction in its workforce, temporary employees may be separated without regard to retention standing. When separated, temporary employees have no right to appeal their separations to MSPB as do permanent employees.

- (3) Temporary employees do not receive most of the benefits which are given to permanent employees. Temporary employees do not receive life insurance, retirement benefits, or periodic step pay increases. Further, they are not eligible for health insurance for the first year of employment. And if their appointment is renewed so that their employment extends past 1 year, while they become eligible for health insurance, they must pay the entire premium. This contrasts with the situation of permanent employees, who are eligible for health

insurance as soon as they are employed and who on average, pay less than 30 percent of the cost of their health insurance, with the employing agency paying the remaining amount. (A comprehensive list of benefits of temporary and permanent employees is given as an appendix to this report.)

Tenure, rights, and benefits are assigned to employees based on the nature of their immediate appointments, so that, in general, previous Federal employment does not affect eligibility for benefits or tenure rights. Because permanent and temporary employees often work side by side and temporary employees sometimes have as much total service as permanent employees with whom they work, temporary employees perceive their lack of rights and benefits as inequitable. This perception, along with managers' desire for more flexibility in hiring and with various other concerns has provided the impetus for changing temporary employment policy.

Impetus for Change in Temporary Federal Employment

The Office of Personnel Management is under considerable pressure to change Federal temporary hiring policies. The impetus for change comes from many sources, including concerns arising from congressional oversight activities, concerns revealed by OPM's evaluation activities, and the findings of the National Performance Review.

Complaints from temporary employees have led to hearings (including field hearings) being held by subcommittees of the House Committee on Post Office and Civil Service beginning in December 1991. Members of Congress have heard testimony from individual employees who have worked under many temporary appointments without receiving benefits or tenure. The testimony led Representative Frank McCloskey, a subcommittee chairman, to state that OPM needs " * * * to inform agencies that they can no longer abuse temporary employees. * * * The fact that a temporary worker has been employed for 20 years without any rights is heinous and must not be allowed to continue."¹³

OPM's 1992 evaluation of temporary hiring policies in the land management agencies¹⁴ confirmed many of the complaints aired in congressional testimony. The evaluation report revealed that the land management agencies have been using temporary employees to accomplish ongoing work in violation of OPM guidelines. Further, the agencies have used

the same people on repeated temporary appointments to accomplish this work. OPM found that over 20 percent of temporary employees in the land management agencies are, in fact, making a career out of these appointments.¹⁵ Some of these practices clearly have circumvented the competitive requirements of the merit system and have denied employees benefits and tenure while performing continuing work.

Further, OPM reported that land management agencies have used temporary employees to perform ongoing work to increase their abilities to expand and contract agencies' workforces quickly and to reduce their personnel costs by avoiding the cost of benefits.¹⁶ OPM also noted the preference of managers for using temporary employment to avoid competitive requirements:

Managers and supervisors are afraid that the solid temporary performers who are well known to them will fall out of the competitive process with the requirements for announcements, rating and ranking, "rule of three," and indeed, veterans' preference.¹⁷

These findings point to another impetus for change: the dissatisfaction of Federal managers with the inflexibility of the current tenure system. This dissatisfaction is centered on the procedures for filling permanent positions that

¹³ Statement of Representative Frank McCloskey, Chairman, Subcommittee on Civil Service, Committee on Post Office and Civil Service, U.S. House of Representatives, Hearing on the Use of Temporary Employees in the Federal Government, June 22, 1993.

¹⁴ U.S. Office of Personnel Management, "Temporary Employment Within Land Management Agencies of the Federal Government," Washington, DC, July 1992.

¹⁵ Ibid., p. 14.

¹⁶ Ibid., p. 17.

¹⁷ Ibid., p. 18.

grant tenure. As noted above, one of the reasons managers continue to assign ongoing work to temporary employees is that proven temporary employees often cannot be actively considered for permanent hire. The recent MSPB study of Federal personnel offices found that managers view the current staffing procedures for permanent jobs as too cumbersome.¹⁸

Managers' concerns with the complexities of permanent hiring come into play when the functions being performed by temporary employees become permanent, or if a permanent employee performing a similar function leaves. In these cases, according to OPM guidelines, the positions involved in the function should be filled with permanent status employees. Current temporary employees may not be automatically converted to permanent status, but may only be converted to permanent status by competing under permanent hiring procedures. From a manager's point of view, converting temporary employees is often highly desirable if temporary employees have performed the now-permanent function well. Noncompetitive conversion would allow managers to avoid orientation and training costs and to reward the loyalty and high-quality performance of temporary employees.

However, the complex rules for examining and placing employees often preclude the consideration of many current temporary employees for permanent positions regardless of how well they have performed. This occurs because of both legal and procedural barriers. First, the law specifies that selection must be made from the top three rated candidates on a civil service register.¹⁹ Further, the law specifies that veterans will be given additional points²⁰ and will be entered into lists ahead of nonveterans with the same score,²¹ and that agencies may not pass over a veteran to select a nonveteran.²² Added to these legal hurdles are the procedural requirements for the opening of registers, the area of consideration, and the method of examining. The legal and procedural requirements taken together often exclude current temporary employees from active consideration for permanent placement in their positions when those positions become permanent.

The dissatisfactions with the complexities of the civil service hiring system came to the attention of the recent National Performance Review chaired by the Vice President. One of its major recommendations for the personnel system stated that "we must make it easier for federal managers to hire the workers they need * * *."²³ This finding has added to the pressure on OPM to reform its temporary hiring procedures.

¹⁸ U.S. Merit Systems Protection Board, "Federal Personnel Offices: Time for Change?," Washington, DC, August 1993.

¹⁹ 5 U.S.C. 3318 (a).

²⁰ 5 U.S.C. 3309.

²¹ 5 U.S.C. 3313.

²² 5 U.S.C. 3318 (b).

²³ Vice President Al Gore, *op. cit.*, p. 22.

Proposed Solutions

Regardless of the source of pressure for changes in temporary hiring policy, the desire for managerial ease and flexibility, fairness to temporary employees, and merit principle integrity has led to different proposals to change policies. Three types of solutions have been proposed:

- ❑ Prohibiting the use of extended temporary appointments or repeated temporary appointments of the same person;
- ❑ Providing a mechanism for the direct conversion of temporary employees to permanent status; and
- ❑ Giving temporary employees some or all of the benefits available to permanent employees.

In the following section we discuss each of these approaches and the specific proposals to implement them.

Prohibition of Extended Temporary Appointments

OPM has issued proposed regulations²⁴ which would limit the use of temporary-limited appointments to 1 year with the option of an extension for an additional year, for a total of 2 years. In contrast, the current regulations permit extending temporary-limited appointments in 1-year increments for a total of up to 4 years. Further, OPM's proposed regulations

limit the length of temporary excepted appointments to 1 year with a 1-year extension and allow temporary excepted positions (or their successors) to be filled only for an aggregate of 2 years within the preceding 3-year period. In addition, no temporary seasonal position may be filled for more than 6 months in a service year.

These new restrictions would answer the criticism that using temporary employees on a long-term basis without providing full benefits and tenure is exploitative. It would do this by prohibiting any such use. However, this approach will reduce managers' flexibilities in dealing with their staffing needs which exceed 2 years. To meet staffing needs which are not expected to be permanent but are expected to last more than 2 years, OPM is proposing that agencies use the "term appointment" authority in lieu of the temporary authorities.

Term appointments are made under the authority of 5 CFR 316.301, and although they are time-limited, they are not considered temporary for purposes of regulation since they are made initially for a period of more than 1 year. Term appointments have the following features:

- ❑ Appointments are made for more than 1 year and up to 4 years, with the ending date of the appointment set at the time of initial hiring;
- ❑ Selections are made from civil service registers or the other alternatives available for permanent hires;

²⁴Federal Register, vol. 59, No. 21, Feb. 1, 1994, pp. 4601-4603.

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- ❑ Term employees are eligible for the benefits given to permanent employees, including longevity pay increases, health insurance, life insurance, and retirement programs;
- ❑ Term employees serve a 1-year trial period after which they may not be separated prior to their initial ending date except by formal reduction-in-force procedures or for cause.

OPM's proposed regulations would allow agencies to convert temporary-limited employees to term appointments on a one-time basis at the time the regulations become effective. This would be done by allowing the term appointments to be made without regard to existing civil service registers, thus allowing competition to be restricted to current temporary appointees. OPM had originally intended to seek legislative authority to convert term appointments to permanent status, so that the term authority would be more flexible and, thus, more attractive to managers. However, OPM has chosen to defer to the recommendations of the National Partnership Council, which is proposing a broader overhaul of the placement system in the Federal Government and whose recommendations for legislative action are discussed later in this report.

OPM's proposal addresses many of the concerns that have been raised about the Government's temporary hiring program. First, it would prevent further exploitation of temporary employees by strictly limiting the time for which they may be employed. Term appointments would be used for longer periods of nonpermanent employment. Since term appointments confer eligibility for all employee

benefits, their use would eliminate the concerns that employees who serve over a period of time have not been eligible for such benefits. Second, strictly limiting the time in temporary status would ensure that the merit system principles are not violated by clearly differentiating temporary appointments from permanent, competitive appointments.

While OPM's proposals for using term appointments address some of the concerns about temporary employment, they do not address the concerns which have often caused managers to resort to temporary employment. The term appointment authority requires agencies to use the competitive staffing procedures associated with permanent hiring. As has been noted, permanent hiring procedures are considered very cumbersome by managers and in some cases have been the motivation for using temporary employment when permanent employment would have been more appropriate. In addition, many cases exist where the need for employment cannot be projected beyond the immediate year. In these circumstances, managers are likely to use temporary employment to speed placement. However, under OPM's proposed regulations, if at the end of 2 years the function is continued, the only way to retain the functioning employee (and management's investment in training and orientation) would be through conversion to term appointment. This would require the use of competitive staffing procedures which are cumbersome and often effectively exclude temporary incumbents, so that the services of the trained incumbents would be lost.

Further, OPM's solution does not speak to those incumbents who have served in temporary appointments over several years. These incumbents have been a major impetus in bringing the problem to Congress, and their

concern is not that they have been hired repeatedly but that they have not acquired benefits or tenure along the way. OPM's solution would simply exclude them from employment after a maximum of 2 years unless they could successfully compete for term or permanent jobs, or force them to move to another agency or locale to utilize the skills they have acquired. Further, OPM's proposals would not change the exclusion of temporary employees from major benefits enjoyed by permanent employees.

Converting Temporary Employees to Permanent Status

Under current rules, employees cannot normally be converted from a nonpermanent to a permanent status without being selected from a civil service certificate. However, two proposals, one a bill currently under consideration in the House of Representatives and the other a proposal for legislation from the National Partnership Council, have been put forward to change these rules. H.R. 606 was introduced in the House in January 1993 and provides that:

* * * an individual serving in a position in the competitive or excepted service, under an indefinite or temporary appointment, who performs at least 2 years of service in such a position within a 5-year period, and who passes a suitable noncompetitive examination, shall be granted competitive status for purposes of transfer or reassignment.²⁵

This bill would have the effect of allowing all temporary-limited employees and excepted employees who meet the specified criteria to

gain permanent status by being reassigned to any permanent job for which they are qualified. The requirement that they pass a noncompetitive examination would ensure that candidates under this provision are qualified for the positions in which they are placed.

In addition to the current legislative proposal, the National Partnership Council has recommended the enactment of law and the implementation of regulation which would allow temporary employees to become permanent if they are selected after competing with current permanent employees under agency merit promotion procedures. To be eligible under these provisions the council recommends that a temporary employee must:

- ❑ Have been hired initially under competitive procedures for temporary appointment;
- ❑ Serve a minimum of 2 years under any combination of temporary appointments initially made under competitive procedures; and
- ❑ Meet established performance expectations while serving under temporary appointment.²⁶

Both of these proposals would favor current temporary employees by allowing them to be considered for permanent jobs without competing with job seekers from outside the Federal Government. Further, the proposals would allow managers the opportunity to select those temporary employees in whom they have invested training and orientation time without considering outside candidates.

²⁵ H.R. 606, 103d Congress.

²⁶ National Partnership Council, *op. cit.*, p. 29.

However, these proposals strike different balances in granting temporary employees an advantage in gaining permanent status. As drafted, the current legislative proposal would count all appointments in the competitive and excepted services toward meeting the eligibility for conversion to permanent status. These appointment requirements can range from substantial competition to none at all, including Schedule C excepted appointments, which require no competition and are essentially political appointments.²⁷

The proposals of the National Partnership Council are more restrictive than those of the current legislative proposal in that, as indicated above, they would require that those eligible for conversion be “* * * hired initially under competitive procedures * * *” and that they “* * * serve a minimum of 2 years under any combination of temporary appointments **initially made under competitive procedures** [emphasis added].”²⁸ While limiting conversion eligibility to those who are hired under competitive procedures would be more restrictive than the provisions of H.R. 606, the differences in “competitive procedures” currently used to make temporary appointments and those used to make permanent appointments create a substantially lower standard of competition for temporary appointments.

Any measure passed into law will be subject to debate, but any balancing of interests should meet the merit principle which states that selections for permanent jobs should be made using “* * * fair and open competition which assures that all receive equal opportunity.”²⁹

Extending Benefits to Temporary Employees

The law now makes tenure an eligibility criterion for receiving full employee benefits. As a result, the issues of tenure and benefits eligibility are often discussed as though they are a single issue. However, the legal criteria for benefits eligibility need not be tied to tenure. Temporary employees already receive a number of benefits (see the appendix for a detailed listing) but not some of the major ones. Chief among these benefits are health insurance, life insurance, and retirement system participation.

Of these benefits, health insurance is the most sought after by most employees because of the need for protection from high medical costs and because employer-provided health insurance is the normal source for such coverage in our society. As discussed earlier, while the law currently allows temporary Federal employees who have served more than 1 year without a significant break in service to participate in the health insurance program, these temporary employees must pay the entire amount of the premium.

OPM has opposed any additional extension of health benefits eligibility to temporary employees under the current health benefits program. In testimony before a subcommittee

²⁷ Schedule C exceptions are positions of a policy-determining character and which require knowledge of and sympathy with the goals of an official having a policymaking relationship with the President (i.e., a political appointee). They are typically the personal staff members of political appointees. They are hired without competition.

²⁸ National Partnership Council, op. cit., p. 29.

²⁹ 5 U.S.C. 2301(b)(1).

³⁰ Statement of the Honorable James B. King, Director, Office of Personnel Management, before the Subcommittee on Civil Service, Committee on Post Office and Civil Service, U.S. House of Representatives, June 22, 1993.

of the House Post Office and Civil Service Committee, the Director of OPM stated that:

We understand that both coverage of temporary employees and funding of that coverage will be addressed in a comprehensive way as part of the President's health care proposal, and we believe that is the appropriate context in which to address the issue of benefits for temporary workers.³⁰

Since the time of that statement, the Administration has decided to extend the current Federal Employees Health Benefits Program through 1997. It is intended that Federal employees be moved into a national health care program after that time. Currently, the President's proposals for such a national program are before Congress along with several alternate proposals introduced by various Members of Congress. The final form and approval of such a massive program will be subject to much debate and amendment.

Meanwhile, two pieces of legislation have been introduced which would extend additional benefits to some temporary employees. One would extend health benefits and the other would extend health and life insurance and retirement coverage to temporary employees. Both of these bills would change the criterion for eligibility, allowing temporary employees to receive benefits based on aggregate length of service rather than requiring that they be hired under a specific type of appointment.

H.R. 98, introduced in January 1993, would:

Provide that any Federal employee serving under a temporary appointment who has completed at least 1 year of service in such position within the preceding 2 years shall be eligible for the Government's health benefits program * * * .

Later, in July 1993, H.R. 2648 was introduced. This bill is titled the "James Hudson Temporary Employee Equity Act of 1993" after a National Park Service employee at the Lincoln Memorial who suffered a fatal heart attack on the job but had no benefits because he had remained on temporary appointments over a period of 8 years. The bill as originally introduced would provide the following benefits for employees in temporary appointments who have, in the aggregate, 4 years or more of service in temporary appointments:

- ❑ Health insurance with the Government paying the same share as for permanent employees.
- ❑ Life insurance with the Government share being paid as with permanent employees; and
- ❑ Federal retirement coverage and contributions on the same basis as with permanent employees.

H.R. 2648 would also grant the following to employees serving in a continuing temporary appointment (i.e., with a break of no more than 5 days) of more than 6 months:

- ❑ Health insurance with the employee paying the entire cost of coverage; and
- ❑ Life insurance with the employee paying the entire cost of the coverage.

By granting benefits on the basis of aggregate service and not the status of an employee's present appointment, these bills meet the concern that temporary employees who have considerable Federal service are not eligible for

benefits, while avoiding potential problems in granting tenure to temporary employees.

In addition to the two legislative proposals, the National Partnership Council report recommends that temporary employees be given health care benefits:

Temporary employees will be entitled to health care benefits from the first day of employment. There are two options concerning the employer's contribution: one is to base the contribution on the length of employment, and the other is a full employer contribution upon appointment.³¹

As to other benefits, the National Partnership Council report says that "eligibility for other benefits * * * will be geared to length of service."³²

The disadvantage of all these proposals is their cost. OPM was required by a provision of the Defense Authorization Act of 1993³³ to analyze the feasibility of providing additional benefits to temporary employees. In reporting its

analysis to Congress, OPM estimated that the additional cost of providing full benefits to temporary employees except those employed on a strictly short-term basis would "range upwards of \$800 million a year."³⁴ That estimate, reported in 1993, was based on the temporary service population averaged over the 10 preceding years. To provide full benefits only to those employees with 5 or more years of Government service, including military service, OPM estimates a cost of \$180 million a year.³⁵

Because OPM's Central Personnel Data File, which provides the base information needed for analysis of cost, does not contain the data needed to identify current temporary employees who would meet the criterion of 4 or more years of aggregate temporary service specified in H.R. 2648 or the criterion of 1 year of temporary service in the past 2 years specified in H.R. 98, we cannot accurately estimate the cost impact of the two legislative proposals.³⁶ However, the cost of either measure would be substantial.

³¹ National Partnership Council, *op. cit.*, p. 29.

³² *Ibid.*

³³ Section 1078 of the National Defense Authorization Act of Fiscal Year 1993, Public Law 102-484, Oct. 23, 1992.

³⁴ U.S. Office of Personnel Management, "The Rights and Benefits of Temporary Employees in the Federal Government," Washington, DC, April 1993, p. 22.

³⁵ *Ibid.*, p. 24.

³⁶ The Central Personnel Data File maintains a single length of service figure on each employee which combines all of each employee's Federal civilian and military service. How the service time was gained (e.g., military or temporary civilian) is not maintained in the CPDF.

Balancing the Needs

Three constituencies for temporary employment can be distinguished, each with different needs: managers, who want a simpler, faster means of hiring and separating employees; current temporary employees who wish to improve their benefits and tenure; and the general public, whose interest in a fair Federal employment system is represented by the merit principles. The Board's first interest in studying temporary employment policy is to ensure that the public interest in a civil service free from prohibited personnel practices and in accord with the merit system principles is maintained. Management flexibility is desirable. Likewise, temporary employees should not be treated unfairly. However, management flexibility and the desires of temporary employees must be subordinated to the requirement that permanent positions be filled through fair and open competition with selection being based solely on relative qualifications. Thus, we must balance the need for fairness to temporary employees, against the manager's need for flexibility, against the need for practices which ensure open and fair competition for all. The balancing of needs is different for each of the three approaches to changing temporary employment discussed above. In the following section, we discuss the differences.

Restricting the Length of Temporary Employment

Restricting the length of temporary appointments is the core of OPM's proposed revisions in temporary employment policy. OPM's

proposal to restrict the length and the repetition of temporary employment would prevent many of the abuses which have been reported. The proposal would strictly limit the length of temporary-limited appointments to 2 years, limit the length of temporary appointments in the excepted service, and restrict the repeated hiring of the same individuals under these authorities.

This proposal would strongly support the merit principles by ensuring that the appointments made under these authorities are truly of a temporary nature and not used to circumvent the procedures for fair and open competition used for permanent appointments. It would also ensure that individuals are not abused by being employed on an ongoing basis without tenure protections or benefits. On the other hand, this proposal would restrict the management flexibilities inherent in repeatedly hiring the same people, who are already oriented and trained, and then laying them off quickly when management needs change.

OPM proposes using the term appointment authority for employment which is not expected to be permanent but to last longer than 2 years. However, the flexibility of the easier temporary appointment placement process and the easy lay-off feature of temporary-limited appointments would be lost for nonpermanent employment lasting more than 2 years.

Overall, OPM's proposal strikes a reasonable balance among the interests in the temporary employment process. It keeps temporary employment temporary, drawing a clear line between temporary and permanent employment. It substitutes the currently available

term authority – with its higher level of initial competition for hiring and its greater level of tenure and benefits – to fill needs which fall between temporary and permanent employment.

While OPM's proposed regulations may not present the ideal solution for temporary employment policy, they do meet the merit principle requirement of fair and open competition by restricting longer term nonpermanent employment to term appointments. More importantly, they make it clear that temporary appointments are just that – temporary, not a means to deny benefits or to avoid the competitive process.

Converting Temporary Employees to Permanent Tenure

While OPM's proposed regulations focus on temporary employment concerns by more strictly limiting the length of these appointments, other proposals for change would use temporary employment as a stepping stone to more permanent employment. As discussed earlier, H.R. 606 would allow the noncompetitive conversion to permanent status of an individual serving in a position in the competitive or excepted service, under an indefinite or temporary appointment, who performs at least 2 years of service in such a position within a 5-year period.³⁷

By providing nearly all employees who have served at least 2 years in a single or in multiple appointments within the past 5 years with conversion into any permanent position for which they are qualified, this proposal is tilted toward current temporary employees. At the same time, it would provide managers with the

convenience of an easily tapped inhouse pool of candidates for permanent positions.

In contrast to H.R. 606, the National Partnership Council recommends legislation for conversion of temporary employees to permanent status which would limit conversion eligibility to those temporary employees who are selected initially under competitive procedures. However, as discussed above, the competitive procedures for temporary appointments are typically less stringent than those for direct, permanent hiring. While it should be noted that any job which is temporary is likely to attract fewer candidates than one which is permanent, and thus give any one candidate less competition, comparable standards can be used.

The proposals to allow conversion of temporary employees to permanent status will be subjected to the open debate of the legislative process. In this debate, we believe that both the spirit of the merit principles and the purpose of temporary employment should be kept in mind.

Allowing temporary employees to be considered for all permanent jobs ahead of qualified applicants who are not current employees would arguably violate the spirit of the principle of free and open competition. Further, temporary positions can currently be established and abolished with ease. This circumstance combined with a mechanism to easily convert temporary employees to permanent status could tempt managers to use temporary employment to circumvent the permanent hiring process or to create an extended trial period. For example, some managers might be tempted to create "temporary positions" to perform ongoing work and then convert preselected individuals to permanent positions at the end of 2 years. The remaining "temporary positions" would be abolished, allowing

³⁷H.R. 606, 103d Congress.

the quick separation of the remaining employees without resort to appeals or the need to document performance. This would essentially be an extended, easily exercised, trial period which would allow agencies to avoid paying legitimate benefits and would prevent employees from exercising any of the rights associated with the completion of formal probationary periods.

As we noted earlier, the legitimate uses of temporary employees are to perform functions which are expected to be temporary or to perform ongoing work in the temporary absence of permanent employees. In those cases where temporary functions become ongoing or permanent employees do not become available to assume a function being performed by temporary employees, converting these temporary employees to permanent status would allow management to take advantage of the training and orientation which they have invested in the temporary employees and to prevent disruption of work. In those cases, giving employees who have already proved their ability to perform the jobs being filled a priority over other qualified candidates seems fair.

However, giving current temporary employees a priority over other qualified candidates for a wide range of positions (e.g., those of an entire agency or an entire large installation) closes many opportunities to qualified members of the general public. To properly balance the needs of management, the current temporary employees, and the general public within the framework of the principle of free and open competition, we believe that conversions of temporary employees to permanent status should be limited to those temporary employees placed in permanent positions closely related in their duties and organization location (e.g., a particular work unit) to those held by the employees under temporary appointment. This will ensure that the spirit of the merit principle of free and open competition is honored, and it

will help ensure that temporary employment is not used as a substitute for permanent employment mechanisms.

Granting Full Benefits to Temporary Employees

Tenure and Benefits

As discussed earlier, the issues of tenure (i.e., the rights which accrue with permanent employment) and benefits eligibility have been intertwined because eligibility for certain major benefits has been tied to the type of appointment held. However, as outlined above, the two legislative proposals and the National Partnership Council recommendation to extend major benefits to temporary employees recognize that there is no reason why tenure of appointment and benefits must be connected. All three proposals use length of service rather than tenure of current appointment as the criterion for benefits eligibility.

We agree with the concept of decoupling tenure and benefits. While we can sympathize with temporary employees' need to have the kind of social safety net which is provided by employer-supported health insurance and other benefits, we cannot agree that tenure should be granted for that reason. Permanent appointment should be granted only after selection through fair and open competition, not to ensure benefits eligibility.

Once the issue of benefits is separated from that of tenure, the concerns over open competition cease to be a factor to be considered in determining the proper level of benefits for temporary employees. Thus, we are left to balance management flexibility and cost with fairness to temporary employees. In balancing the two concerns, we cannot take a position that the Government should not provide any benefits to temporary employees. As the listing in the appendix shows, temporary

employees are already eligible for a number of benefits on the same basis as permanent employees, so there is no question of whether temporary employees receive benefits. What is needed is a principle upon which to predicate benefits which are equitable.

Length of Service and Benefits

The current mix of benefits available to Federal employees was created and amended over a long period of time, so that it is difficult to discern a consistent set of criteria for these benefits. However, one concept is clear. As the expectation that the employee will remain in the employ of the Federal Government over a longer time increases, the level of benefits increases. This is clearly illustrated by the difference between temporary-limited appointments and term appointments. Temporary-limited appointments are made for no more than 1 year at a time. Although term appointments are also not permanent, it is assumed that those hired under the term authority will be with the Government for as long as 4 years. Temporary-limited appointments do not confer eligibility for retirement system participation, or for Government-assisted health and life insurance coverage, while term appointments do confer these benefits.

Confronting the Cost of Extending Benefits

The two current legislative proposals which would increase temporary appointees' eligibility for benefits follow the concept of increasing benefits over time by setting eligibility based on length of Federal service.

Once we agree upon the principles of basing benefits eligibility on length of service and decoupling eligibility from tenure, we confront the added cost of extending benefits. At the same time that legislation is pending which would extend permanent employees' benefits to temporary employees, the cost of Federal benefits for fully tenured employees is being criticized as excessive. Numerous proposals have been made over the past few years which would decrease benefits and/or transfer costs from the employer to the employee. The criticism of the cost and inflexibility of the Civil Service Retirement System led to the creation of the Federal Employees Retirement System (FERS) in 1984. FERS is now under attack as being too generous, with proposals pending to reduce Government contributions to the system. Likewise, proposals have been made over the years to recompute the Government contribution to the Federal health benefits program in an effort to shift a greater proportion of the cost to employees.

The National Partnership Council recommendations to implement the findings of the National Performance Review are also ambivalent on extending benefits. Although they recommend health coverage immediately upon temporary appointment, they list only "options"³⁸ for paying for it.

The ambivalent, sometimes contrary, attitudes toward Federal employee benefits beg the basic question of whether the Federal Government should be a model employer. Should the Government as an employer set the example for fair and equitable treatment of its employees, or follow as closely as possible the average of the private sector, or set its standards at a

³⁸ National Partnership Council, *op. cit.*, p. 29.

level which provides only the minimum benefits available in the private sector? The Board previously dealt with this issue as it relates to work and family issues.³⁹ While the judicious use of public resources must always be considered, we pointed out that:

* * * the Federal Government has a special status as both the Nation's largest employer and the embodiment of the Nation's values. And because of this status, many people (including some top Government officials) believe that it is both natural and appropriate that the Government provide leadership in employment matters.⁴⁰

Extending Employer-Supported Health Insurance

If the Government is to be a model employer it should certainly be providing for the basic needs of temporary employees. While life insurance or retirement plans might not be considered basic needs, health care normally would be. Even without becoming a model employer, providing health benefits to all employees would comport with the Administration's commitment to a policy of providing universal health care to the American people. The Administration proposals would make employment the primary source for this universal coverage. While these proposals have not been fully debated, the Administration anticipates that Federal employees will be covered under it. As noted above, in the interim, the Administration has indicated its

intent to retain the current Federal Employees Health Benefits Program until 1997, pending implementation of universal health coverage. Since there is already a policy commitment to universal health care, it seems reasonable for the Federal Government to cover its own employees, including relatively short term temporary employees, under the Federal Employees Health Benefits Program until such time as the more sweeping proposal can be debated and implemented.

Extending Retirement Coverage

By going further and becoming a model employer, the Federal Government could also grant access to the Federal Employees Retirement System to nonpermanent employees. Among other purposes, FERS was designed to allow employees who are not making a career of Federal service to carry their retirement contributions with them when they leave Federal service. When FERS was enacted, it was intended to correct a number of shortcomings of the old Civil Service Retirement System (CSRS). One of these shortcomings was the lack of portability of benefits when employees left the Government prior to retirement age. It was believed that the nonportability of benefits created a "golden handcuffs" effect which kept people in Federal jobs even after they were ready to move on. To correct this effect, FERS was structured so that it would not be a disincentive to career movement out of the Federal Government. FERS was structured with two tiers to supplement Social Security coverage (the old CSRS was in lieu of Social Security, with

³⁹ U.S. Merit Systems Protections Board, "Balancing Work Responsibilities and Family Needs: The Federal Civil Service Response," Washington, DC, November 1991.

⁴⁰ Ibid., p. 74.

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employees in this system neither paying Social Security taxes, except the medicare portion, nor gaining eligibility for Social Security from their Federal employment).⁴¹ Under the FERS system, employees pay Social Security taxes and gain credit toward retirement benefits under Social Security. The first tier of additional benefits consists of a small employer-paid annuity system. The more important second tier, called the Thrift Savings Plan, consists of voluntary employee contributions of up to 10 percent of salary, with the employing agency contributing up to an additional 5 percent of salary which are placed in the employee's individual account. Thrift Savings Plan contributions and earnings from the contributions are tax-deferred. All the contributions of a covered employee and that portion of the employing Federal agency's matching contributions to the individual's thrift savings account plus accrued interest, can be rolled over into tax-deferred accounts of the employees' choosing if they leave the Federal Government after 2 years or more of service.

Because FERS was designed for portability, there is no reason to automatically exclude employees from coverage because it is known that their employment will be of limited duration. Under the FERS provisions, the Government would simply be helping employees accumulate a retirement fund for that portion of their careers which they spend with the Government. Further, there is an additional reason to include temporary employees under FERS. If the recommendations of the National Partnership Council⁴² for changes in the employment system are adopted into law, employees could be more easily moved from temporary to permanent status. Under current FERS rules, most Federal service not covered under FERS may not be counted toward Federal retirement

eligibility. Thus, temporary employees who are converted to permanent status would be deprived of Federal retirement credit for periods of temporary service.

The current FERS rules would also create a dilemma for temporary employees, if these employees were covered by FERS. While longer-term temporary employees could carry accumulated thrift savings plan funds with them when they leave the Federal Government, by doing so they would forfeit any right to counting the period of service from which those savings funds were accumulated toward Federal retirement eligibility should they return to Federal employment at a later date.

It should be noted that changes have been proposed which would allow temporary employees to retroactively "buy in" to the FERS system if they have more than 9 years aggregate service not covered by FERS. However, these proposals have been suggested for inclusion in pending legislation but have not been formally added. Certainly any extension of FERS coverage to temporary employees would require some rule changes to accommodate these employees.

While temporary employees need not be excluded from FERS coverage simply because their employment is not permanent and there are good reasons to extend coverage to them, providing coverage to all temporary employees would be quite expensive. Employing agencies pay 12.9 percent of each covered employee's base salary for basic FERS coverage—11.9 percent for the basic annuity tier, and an automatic 1 percent contribution to the employee's thrift savings plan account. In addition, the employing agency is obligated to contribute up

⁴¹All Federal employees not covered under a retirement system that excludes them by law from paying social security pay full social security taxes, and the Government pays the employer's share of these taxes.

⁴²National Partnership Council, *op. cit.*, p. 29.

to an additional 4 percent of salary to match employee voluntary contributions to the thrift account. However, in actual practice employee contributions, and thus, matching contributions, are much less than 4 percent, with OPM using a figure of 1 percent of total salary to estimate the cost of agencies' matching contributions. Using an overall employer cost of 13.9 percent of salary, the cost of covering all temporaries would be approximately \$462 million per year based on September 30, 1993, employment figures.⁴³

This figure represents the annual cost to agencies under current assumptions. However, the largest part of this cost, the 11.9 percent of basic salary charged to agencies to cover the basic annuity tier of FERS, is based on actuarial projection. In its comments to us on our report, OPM points out that portability of FERS benefits comes from the portability of the social security and thrift savings plan components of FERS, and that most temporary employees will not finally accumulate sufficient Federal service to become eligible for the basic annuity tier of FERS. Thus, the 11.9 percent of salary which would be paid to support this tier for temporary employees would be wasted.

However, the agency charge for the basic annuity tier of FERS is determined by actuarial projection. If all temporaries were covered by FERS, but most did not eventually gain eligibility for the basic annuity, an actuarial projection would probably result in a reduction of the current 11.9 percent charge. Thus, the long term cost of providing FERS coverage to all temporary employees would likely be less than the current total of 13.9 percent of salary (11.9 percent for basic annuity and 2 percent contribution to thrift savings accounts). However, the cost would still be significant.

The high cost of providing FERS participation to all temporary employees suggests that an alternative should be found that strikes a more acceptable balance between costs and benefits. Most Federal temporary employment really is a one-time arrangement. The principle that the longer the relationship of the employee with the agency, the greater the obligation on the part of the agency would suggest that retirement coverage not be granted unless there is evidence of an ongoing relationship. In fact, the one current legislative proposal which speaks to FERS (H.R. 2648), and which we discussed above, adopts this principle. The original proposal would make temporary employees who have, at a minimum, an aggregate of 4 years of Federal civilian service eligible for FERS coverage. The only analogous situation in current practice is the term appointment under which FERS coverage is granted upon appointment. Term appointments are made for more than 1 year, but no more than 4 years. The possibility that a single term appointment may be extended up to a total of 4 years is deemed sufficient to grant FERS coverage upon appointment.

The cost of covering only employees with 4 or more years of aggregate service would be far less than covering all employees. However, since the length of service information available on civilian employees in the Central Personnel Data File combines all Federal service, both as a civilian and as a member of the uniformed military, it is not possible to determine how many employees would qualify for FERS under the proposed aggregate service formula.

While we cannot pinpoint an exact length of service after which temporary employees should be given FERS eligibility, the 4 years of aggregate service criterion originally advocated

⁴³ This is based on Central Personnel Data File information showing that on Sept. 30, 1993, there were 144,756 temporary employees with an average salary of \$22,958.

in the legislative proposal would be consistent with the nonpermanent term authority, which currently provides eligibility for retirement, health insurance, and life insurance for those with appointments terminating after 4 years.

Extending Life Insurance

While life insurance may be viewed as a less critical benefit than health insurance or retirement coverage, it is nonetheless an important benefit. The need for life insurance was clearly demonstrated by the unfortunate death of James Hudson, the temporary National Park Service employee mentioned earlier. He had served for 8 years, but because of his temporary status, had no Federal employees' life insurance. While his family was eventually given the equivalent amount that life insurance would have provided, it was necessary for Congress to specifically authorize the equivalent payment as a matter of law.⁴⁴

The cost to the Government of Federal employees' life insurance is relatively low. The Government portion is approximately \$2.15 per \$1,000 of coverage a year. Based on the average salary of temporary employees as of September 30, 1993, the Government's cost would be approximately \$54 per employee, per year. Based on the 145,000 temporary employees on the roles on September 30, 1993, this would be less than \$8 million per year, or 0.2 percent of the salaries of these employees. This cost assumes that all employees opt for life insurance. In practice, a percentage of employees could be expected to decline coverage, since there is a required employee contribution for basic coverage equal to two thirds of the premium cost.

The cost of life insurance would have little impact on payroll costs. Therefore, the question of when to authorize this benefit is a matter of consistency. If eligibility for health insurance is extended to temporary employees, it would be consistent to adopt the same eligibility standard for life insurance as for health insurance.

The "Paygo" Issue

Balancing the needs and desires of temporary employees and those of management is complicated by the "paygo" (pay-as-you-go) requirement adopted by Congress as a deficit reduction measure. This is the requirement that any new expenditure authorized by Congress be offset by reductions in spending elsewhere in the Federal budget or by new revenues. Depending upon what benefits are extended to temporary employees, the annual expenditures which would have to be offset could vary from about \$8 million to extend life insurance benefits to over \$800 million to extend full benefits to all temporary employees. Potential sources for offsetting the cost of additional benefits are difficult to identify, given the deficit reduction pressures and the expressed goal of reducing the Federal civilian workforce by 272,000 people.

The most closely related source from which to offset the monies for temporary benefits would be agencies' current personnel budgets. However, this would mean that the number of total employees who could be supported on agency payrolls would be further reduced beyond the current reduction goal.

⁴⁴A payment of \$38,400 was authorized by a rider attached to the Interior Department Appropriations Act for Fiscal 1994.

While the “paygo” requirement complicates the process of extending benefits to temporary employees, it should not be used as an excuse for misusing temporary employees. OPM’s study of temporary employment in the land management agencies concluded that the

agencies were using temporary employees to perform permanent work in order to avoid the cost of providing benefits.⁴⁵ OPM’s guidance to agencies correctly points out that temporary employees should be used to meet temporary needs and not to avoid paying legitimate benefits.

⁴⁵U.S. Office of Personnel Management, “Temporary Employment Within Land Management Agencies of the Federal Government,” Washington, DC, July 1992, p. 19.

Summary and Conclusions

Investigations conducted by OPM and the Committee on Post Office and Civil Service of the House of Representatives have confirmed a number of abuses and concerns involving temporary hiring programs in the Federal Government. A number of specific proposals and concepts have been put forward to address the abuses and concerns. These proposals have all tried to address in one way or another, managers' desire for greater flexibility, temporary employees' desire for fairness, and the general public's interest in fairness represented by the merit principles. Three basic mechanisms have been proposed to address and balance those interests: prohibiting use of extended temporary appointments or repeated temporary appointments of the same person; converting temporary employees to permanent tenure directly; and providing additional benefits to temporary employees.

OPM's proposed regulations would reduce the abuses of the temporary hiring authority which have focused so much attention on Federal temporary employment policy and preserve the merit principles by drawing a clearer line between temporary and permanent appointments. The OPM proposal also addresses the concerns of current temporary employees over benefits by making provision for conversion of temporary-limited employees to term appointments at the time the regulations become effective.⁴⁶ This one-time conversion would make these former temporary employees eligible for health and life insurance and cover-

age under FERS, thus effectively addressing current, long-serving, temporary employees' concerns over the lack of major benefits.

We agree with the thrust of OPM's proposal. The proposal is intended to meet the merit principles by preventing abuse of employees and by requiring that staffing for long-term employment be done by fair and open competition. OPM's proposal meets this basic goal without embarking on a major restructuring of the Federal employment system.

H.R. 606 provides for noncompetitive conversion of temporary employees to permanent status, and the National Partnership Council proposes the adoption of a mechanism for converting temporary employees to permanent status without further external competition. Based on the findings presented in this report, we believe that any mechanism which allows the conversion of temporary employees to permanent status needs some restrictions as safeguards against abuses of the merit system. We suggest that two major limitations be placed on such conversions: (1) only temporary employees who have been initially selected through a competitive process which meets the merit principle of selection being " * * * determined solely on the basis of relative ability, knowledge, and skills, after free and open competition * * *"⁴⁷ and which is comparable to the process used for permanent hiring for similar positions; and (2) temporary employees should be eligible for conversion to permanent

⁴⁶ OPM proposes to allow agencies to convert current temporary-limited employees to term appointments by considering them outside of regular civil service registers, so no public notice would be required. Unless all temporary-limited employees in a particular job are converted, however, objective criteria prescribed by 5 CFR Part 333 must be used in the selection process.

⁴⁷ 5 U.S.C. 2301 (b)(1).

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status only by placement in permanent positions, the functions of which are closely related in duties and in organization to the positions in which they are serving on a temporary basis.

The “reinvention” proposals of the National Partnership Council call for delegation of all recruiting and examining functions from OPM to the operating agencies. If in taking on the proposed delegations, agencies’ processes meet the basic legal requirements of the merit principles and agencies apply the same standard of competition to temporary hiring that they do to permanent hiring, then our first criterion could be met.

Our second criterion is needed to prevent the potential use of temporary employment as a way to circumvent regular hiring processes and to prevent the use of temporary appointments as a trial period. This restriction would permit managers to convert temporary employees to permanent status when a legitimate need existed for their continued services either in the positions into which they were originally hired or in ones closely related by duties and organization. At the same time, it would preclude the use of conversion as a regular alternative to permanent hiring processes, a practice that would unfairly exclude qualified applicants from the general public.

While OPM agrees that conversions of temporary employees to permanent status should be restricted to those initially selected under competitive procedures, they do not agree that the conversions should be restricted to the function in which the temporary employees are serving on a temporary basis, arguing that if temporary hiring is properly used for legitimate temporary needs, few temporary employees would become eligible for conversion under our proposed restriction. By restricting conversion,

OPM argues, the knowledges and skills acquired during temporary service would be lost to the Government.

The restriction the Board proposes would indeed make direct conversions of temporary employees exceptional—that is, only to accommodate those special situations where the temporary employees’ functions becomes permanent—rather than a regular alternative to other permanent hiring methods. If a temporary employee has been successfully performing a function, and this function becomes available permanently, it would be unfair not to allow that employee the chance to be considered for permanent placement on a priority basis. In addition, the likelihood of finding a candidate as well-qualified as a person currently performing a specific function is unlikely. However, to allow temporary employees to compete ahead of the public for any job for which they are qualified is unfair to other applicants.

Further, if the National Partnership Council’s proposed broad revisions of the Federal staffing system are enacted, the barriers which have prevented active consideration of current temporary employees under regular, career hiring should be eliminated. This should allow temporary employees who have acquired knowledges and skills applicable to a broad range of positions within an agency to compete fairly with other qualified candidates from the general public.

To ensure merit systems integrity, adherence to the merit principle of fair and open competition must be maintained if a conversion to permanent status is permitted. However, this means additional effort and time will be required to fill temporary positions. To accommodate special circumstances where agencies need to hire

temporaries immediately, we would advocate an extension of the currently authorized 30-day emergency appointment authority⁴⁸ to permit appointments of a somewhat longer duration (e.g., 90 days). In extending the emergency authority, we would advocate excluding service under this authority from establishing eligibility for conversion to another appointment.

OPM agrees with this concept. OPM officials have indicated that they intend to set up a short-term noncompetitive appointment authority using a Schedule A authority under 5 CFR 213 to replace the current Federal Personnel Manual provisions. They propose to limit this appointment authority to 60 days, but indicate that they may adjust the time frame of appointments depending upon agency comments.

The third mechanism being considered to address the concerns regarding temporary employment is to expand temporary employees' eligibility for major benefits, especially health and life insurance coverage and retirement plan participation. Two legislative proposals which would expand benefits for temporary employees are currently under consideration, and the National Partnership Council has also recommended additional benefits. At present, negotiations are being carried out in Congress to fashion a compromise piece of legislation which expands coverage while meeting the requirements for reducing the Federal budget deficit. While the final form will be worked out in the political process, we agree with the principle contained in the current legislative proposals and the National Partnership Council recommendation—that

benefits eligibility should be based on overall length of civilian service as opposed to the status of the employee's current appointment.

Finally, we must disagree with OPM's position that any change in eligibility for the Federal Employees Health Benefits Program (FEHBP) should be deferred pending resolution of the issue of providing universal health care. While the Administration is committed to universal health care, a long period of debate can be anticipated before a final piece of legislation can be approved. While the final form and effective date of universal coverage is unsure, conversion of FEHBP to a national health care plan has been deferred until at least 1997. Further, one of the alternate plans for national health care proposes extending use of the current FEHBP as the basis for providing health benefits to all Americans. Under these circumstances we believe steps should be taken to provide some level of coverage for temporary employees under FEHBP until the larger issues of national health care can be resolved.

The Federal Government's temporary employment policy must balance the needs of managers, temporary employees, and the merit system. OPM's proposed policy changes are an effective and positive step forward, but they leave unanswered questions concerning the need of the employees for benefits, particularly health insurance, and the need of managers for a faster, more flexible overall staffing system. These needs are addressed by others in legislation currently under debate or in the recommendations of the National Partnership Council. While changes in both temporary and permanent Federal staffing policy are desirable,

⁴⁸Federal Personnel Manual, ch. 316, par. 2-9. (This provision remains in effect until Dec. 31, 1994.)

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the specifics which are finally enacted into law and interpreted in regulation need to ensure that the basic merit principles are upheld. Any changes in temporary employment policy should be based on the assumption that the

employment will normally be on a one-time, short-duration basis. To proceed on any other basis would serve to create a permanent underclass in the Federal workforce or to create a pool of preferred candidates to be preselected for later permanent vacancies.

Recommendations

- ❑ OPM's proposed regulations for temporary employment should be put into effect as soon as possible as an immediate step to reduce abuse in the temporary hiring program.
- ❑ Additional benefits, particularly health insurance, for temporary employees should be granted within the restrictions of "paygo" and consistent with the principles of basing eligibility on length of service, and granting more benefits incrementally based on length of service.
- ❑ Any provision for the conversion of nonpermanent employees to permanent positions should be predicated on the initial selection of the temporary employee solely upon qualification after fair and open competition. Practically, this means applying the same criteria and process to the initial selection of temporary employees as is provided for permanent employees.
- ❑ Any mechanism for the conversion of temporary employees to permanent tenure should ensure that conversion is restricted to situations where the functions being performed by temporary employees becomes permanently available. To allow temporary employees to become eligible for conversion to other permanent jobs or functions would make temporary employment a preferred method for filling permanent jobs and would subvert merit principles.
- ❑ A separate, strictly short-term noncompetitive authority for temporary employment should be retained to allow managers to quickly meet short-term project needs; under the authority, placements would not be subject to the fair and open competition standard, but persons appointed under this authority should not be converted to permanent tenure based on such an appointment.

Appendix

Summary of Federal Temporary Employee Benefits

Note: This compilation of benefits is adapted from the listing provided in OPM's report to Congress, "The Rights and Benefits of Temporary Employees in the Federal Government."

Pay

Eligible for:

Temporary employees are paid for hours worked on the same basis as permanent employees. They receive a scheduled base salary rate and receive additional pay under such categories as overtime, Sunday premium pay, and hazard pay. They receive any pay adjustments to scheduled rates.

Ineligible for:

Temporary employees do not receive "step increases," which are movements from one scheduled rate to another based on longevity and performance. They are also not eligible for severance pay when separated (they may receive unemployment compensation, but this is not a Federal benefit).

Paid Absences

Eligible for:

Holidays: For any of 10 Federal holidays a day off with pay is given if the employee is normally scheduled to work.

Annual Leave: This is paid absence for vacation or personal business.

Administrative Leave: This is paid absence granted at the discretion of management. Circumstances for granting administrative leave include such things as snow days.

Court Leave: This is paid absence when an employee is summoned by a court as a juror or for testimony.

Sick Leave: This is paid absence granted if disabled by reason of illness or for medical or dental appointments.

Ineligible for:

Military Leave: This is leave for reservists called to active duty for training or emergencies.

Unpaid Absences

Temporary employees may be granted leave without pay if authorized by the appropriate manager. They are not eligible for the 12 workweeks of unpaid absence authorized under the Family and Medical Leave Act of 1993.

Health Coverage

Eligible For:

Federal Employees Compensation Act (FECA): Temporary employees are given 45-days continuation of pay if disabled from work as a result of on-the-job traumatic injuries. They are compensated for job-related disabilities, and after the initial 45 days, for traumatic injuries at up to 75 percent of base salary.

Federal Employees Health Benefits Program (FEHBP): After the completion of 1 year of continuous employment with less than 5 days' break in service, temporary employees are eligible for the FEHBP, but they receive no Government contribution toward the premium (the Government contribution is approximately 70 percent of the premium for permanent employees.)

Ineligible For:

FEHBP: Temporary employees with less than 1 year of continuous service are not eligible for FEHBP.

Life Insurance

Temporary employees are not eligible for Government-sponsored life insurance.

Retirement

Temporary employees are not eligible to participate in the Federal Employees Retirement System or the supplementary tax-deferred Thrift Savings Plan retirement program. If the employees are later converted to or hired under permanent appointments, the time served under temporary appointments cannot normally be credited for retirement.