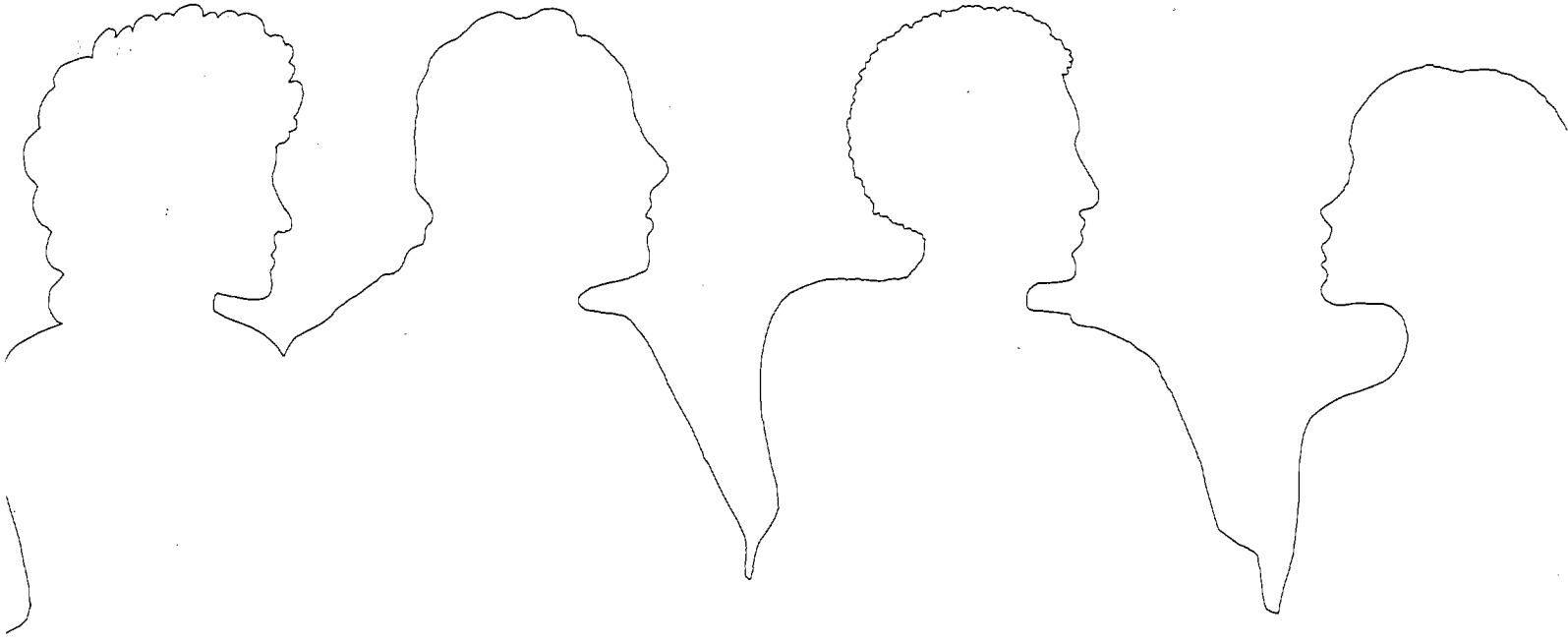
A REPORT TO THE PRESIDENT AND THE
CONGRESS OF THE UNITED STATES BY
THE U.S. MERIT SYSTEMS PROTECTION BOARD

EXPANDED AUTHORITY FOR TEMPORARY APPOINTMENTS: A Look At Merit Issues



A Report Concerning Significant Actions of the
Office of Personnel Management

U.S. MERIT SYSTEMS PROTECTION BOARD

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U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419
December 22, 1987

Sirs:

In accordance with section 202(a) of the Civil Service Reform Act of 1978 (5 U.S.C. § 1205(a)(3) and § 1209(b)), it is my honor to submit this Merit Systems Protection Board (MSPB) report titled "Expanded Authority for Temporary Appointments: A Look at Merit Issues."

This report reviews the effects of a significant expansion of Federal agencies' authority to hire temporary employees. Granted by the Office of Personnel Management (OPM) on December 24, 1984, that expansion: provided greater agency discretion in determining when a temporary appointment is appropriate; raised from GS-7 to GS-12 the highest grade level that can be filled under the authority; and increased from 2 years to 4 years the length of time a temporary appointment can remain in effect without OPM approval.

This report examines the following issues:

- Has the expansion of the temporary appointment authority had any effect in terms of actual or potential merit system abuses?
- Does the expanded authority change the nature of temporary employment as a staffing strategy?
- Do the conditions associated with temporary employment have an effect on the quality of the employees hired?

I think you will find this report useful as you consider issues affecting the quality and integrity of the civil service.

Respectfully,

Daniel R. Levinson

Daniel R. Levinson

The President of the United States
The President of the Senate
The Speaker of the House of Representatives

Washington, DC

OVERVIEW

On December 24, 1984, the Office of Personnel Management (OPM) greatly expanded agencies' authority to make and extend temporary appointments. This report examines the effect of the expanded authority on the merit system, and the strengths and weaknesses of the authority as a staffing strategy.

As a result of the expansion agencies gained:

(1) the authority to make temporary appointments at GS grades 8 through 12 (or their equivalents), as an addition to their previous authority to make appointments at GS grades 7 and below;

(2) greater discretion in deciding when to use temporary appointments;

(3) the authority to extend temporary appointments (in 1-year increments) for up to 4 years, compared to a previous limit of 2 years; and

(4) the authority, with OPM approval, to extend appointments beyond the 4-year limit.

In announcing this expansion, OPM emphasized: the value of temporary employment as a means to control the size and costs of the Federal work force (savings result from lower benefits, and to a lesser extent salary, costs associated with temporary employees); the fact that temporary employees are easy to hire because the agency controls the procedures; and that temporary employees may be separated more easily than most other employees. MSPB concludes that the expanded authority is a positive addition to the management tools available to Federal managers.

Because the guidelines governing use of the authority are very broad, in its first review of the expanded authority MSPB expressed concern about the potential for widespread indiscriminate use of the authority. Based on information supplied by agencies and OPM concerning use of the authority over a 2-year period, MSPB has found no evidence of such abuse. In fact, OPM data show use of the expanded authority declined by 10 percent in 1986 as compared to 1985.

This report may be viewed as a vulnerability assessment. It finds that the authority has increased the civil service system's vulnerability to violations of the merit system principles. It also finds, however, that with adequate safeguards the benefits inherent in the expanded authority outweigh the risks posed. The report identifies three ways in which management controls should be strengthened, and makes recommendations for their improvement.

Agencies have used the new authority in a wide variety of situations. The actual numbers of new appointments at GS grades 8-12, and appointments extended beyond the second year, however, were not very great during the time period covered by this report.

Examples that agencies provided concerning how they have used the expanded authority show that they are aware of the extensive latitude it offers them. Most of the examples provided by agencies are consistent with the examples provided in OPM guidance on use of the authority; however, some of the examples represent situations that appear to put the merit system principles at risk. This suggests the need for additional guidance from OPM to combat the possibility of misusing the expanded authority. OPM particularly needs to provide examples of situations where it would not be appropriate to use temporary appointments.

Agencies have taken a variety of actions to ensure proper use of the new authority. The degree to which these actions are effective, however, remains an open question. Of the 21 departments and independent agencies questioned for this study, 2 were unable to provide any information about their use of the new initial appointment authority and 3 others were unable to provide information about extensions of appointments. This raises questions about how they are monitoring use of this authority.

OPM reviews agency use of the expanded authority three ways: 1) through program reviews of agency examining and staffing activity; 2) through its personnel management evaluation (PME) program; and 3) by tracking actions through the automated Central Personnel Data File (CPDF). Overall, OPM's oversight appears to be adequate. MSPB recommends that, in conjunction with the next change of Administration, OPM publish a notice reminding agencies of the proper use of this authority. Such a notice would be a preventive measure to avoid the prospect of misusing temporary employment authority for political appointments.

Agencies report problems with attracting high-quality (or sometimes even any) candidates for temporary jobs. They also report difficulty in keeping--for the duration of the job--those temporary employees they do attract. By its very nature, temporary employment may never be as attractive to applicants as permanent employment. In addition, however, agencies cite lack of health insurance and life insurance benefits (which permanent employees receive) as reasons for both recruitment and retention problems.

If temporary employees are going to play an increasingly important role in the work force, the Federal Government should do more to make temporary employment attractive. OPM should explore the cost-benefit equation associated with providing health insurance and life insurance benefits to temporary employees. The additional cost of those benefits could well be more than offset by an improvement in the Government's ability to attract more and better applicants for temporary jobs, and to keep its temporary employees for the length of time they are needed.

INTRODUCTION

MSPB is required by 5 U.S.C. § 1209(b) to report annually to the President and the Congress on the significant actions of OPM. The report is to include "an analysis of whether the actions of the Office of Personnel Management are in accord with the merit system principles and free from prohibited personnel practices."

This is one of a series of reports to be published during calendar year 1987 analyzing the significant actions of OPM during the preceding 12-18 months. This report addresses the effect on agencies of an expanded authority to use temporary limited appointments.

Other reports in this series cover:

- Entry-level Federal hiring;
- Implementation of the Performance Management and Recognition System;
- Implementation of revised reduction-in-force regulations; and
- Performance management.

BACKGROUND

General

On December 24, 1984, through advanced release of Federal Personnel Manual (FPM) Letter 316-21,[1] OPM announced an expansion of agency authority to make and extend temporary limited appointments. These appointments may be made from a list of qualified applicants maintained by the appointing agency, or from a list of eligibles rated, ranked, and certified by OPM.

Individuals employed under this authority lack competitive civil service status, and are not eligible for either periodic within-grade ("step") increases or health or life insurance. Additionally, they are not eligible to participate in either the Civil Service Retirement System or the Federal Employees Retirement System. They are, however, covered by the Social Security System. They also may be separated at any time, without appeal rights, upon written notice from an agency official. Put another way, these employees are easy to hire because the agency controls the procedures; cost less than permanent employees because agencies do not have to pay part of the cost of some benefits; and can be separated more easily than most other employees.

MSPB's 1984-85 report on OPM's significant actions[2] included an early review of this expanded authority. However, factfinding for that initial review was conducted so soon after the new authority was announced that agencies could report little experience with the new authority.

[1] FPM Letter 316-21, "New Authority to Make and Extend Temporary Limited Appointments," was dated January 2, 1985, but an advance copy was released December 24, 1984, and it was effective "immediately".

[2] "Report on the Significant Actions of the Office of Personnel Management During 1984-1985," U.S. Merit Systems Protection Board, May 1986, pp. 66-72. (Subsequent references to this source identify it as "MSPB May 1986 report".)

When the data were gathered for this report, the expanded authority had been available to agencies for approximately 20 months. This second MSPB review explores whether the added flexibilities which the agencies gained from the expanded authority are consistent with the merit principles, and whether agencies use the expanded authority in ways that avoid prohibited personnel practices. This review also takes into account a request from Congresswoman Patricia Schroeder, Chairwoman of the House Subcommittee on Civil Service, who, noting that "previous experience with temporary hiring authority has been fraught with problems, including abuse of the merit system,"[3] asked MSPB to "closely monitor implementation of the new temporary hiring authority, and set the provision aside if its use leads to prohibited personnel practices."[4]

What Changed?

OPM has always had limits on agencies' authority to make and extend temporary appointments. While limits continue (e.g., each initial appointment is limited to 1 year), agencies were given significantly expanded authority on December 24, 1984. Compared to the guidance previously in effect, the new guidance:

- Adds positions at GS grades 8-12, and their equivalent, to the previous GS 1-7 grade range coverage of this appointing authority;
- Extends agencies' authority to make appointments in 1-year increments for up to 4 years, from a previous maximum of 2 years; and
- Extends employment under this authority beyond 4 years with OPM prior approval.

These changes apply only to temporary appointments made from "authorized sources."[5] There are two separate temporary appointing authorities specifically for: 1) handicapped individuals, and 2) very short-term (1 month or less) special needs situations. These latter authorities are not included in this expansion of temporary appointing authority.

The new authority redefines the situations where temporary appointments can be used. Four criteria previously had limited agency use of temporary limited appointments. Those criteria defined the authority as appropriate to fill:[6]

"(1) Positions not expected to last more than one year;

(2) Seasonal positions (i.e., positions involving periodically recurring employment other than career-type positions);

(3) Part-time and intermittent positions that are not clearly of a continuing nature; and

[3] Contained in a letter from Congresswoman Schroeder to then MSPB Chairman Herbert E. Ellingwood, dated February 19, 1985.

[4] Ibid.

[5] Appointments from "authorized sources" include, for example, those made from OPM registers, appointments made by agencies from their own lists of eligibles maintained under the temporary limited appointing authority, and appointments of persons with reinstatement eligibility. See FPM Letter 316-21, paragraph 6.

[6] Quoted from FPM Chapter 316, Subchapter 4-1.a.

(4) Continuing positions when temporarily vacated for periods of less than one year."

While temporary appointments still can be used in these circumstances, OPM provided examples of additional situations where agencies might find those appointments useful. These included (but were not limited to):[7]

- filling vacancies in government activities being studied for contracting out under provisions of OMB Circular A-76;[8]
- filling continuing positions if--
  - -- future funding and workload levels are uncertain, or
  - -- reduced funding levels are anticipated, or
  - -- reorganization of the activity is anticipated; and
- filling permanent positions temporarily to save the positions for eventual incumbency by permanent employees expected to be displaced from other activities or organizations.

OPM then went on to say that agencies could use the expanded authority "[i]n these and other situations which the agency determines to be appropriate."[9] The significant latitude OPM has thus given to agencies was a major factor in the Board's decision to examine use of this authority.

Why Were These Changes Made?

Using phrases such as "very cost effective" and "to control the size and cost of the Federal workforce," OPM[10] made it clear that relief from rising personnel costs was a driving consideration in expanding this authority. To further quote OPM, there was a "disturbing growth in full time permanent employment," at a time when "operations are being cut back and employment levels are being reduced."

OPM perceived a need to give agencies more hiring flexibility to help counter that costly trend, and to give them a useful tool during a period of uncertain Federal employment levels. Viewed in that context, increased emphasis on temporary employment is logical since (as has already been noted) temporary employees cost less than permanent employees at the same grade and are easier to separate when their services are no longer needed.

FINDINGS

Agency Use of the Expanded Authority

MSPB asked the responding agencies to report on their use of the new authority. Focusing only on the new provisions (e.g., initial appointments above GS grade 7, and extensions beyond the second year), the information requests asked agencies to report on the: 1) numbers of appointments and extensions; 2) occupational series of positions

[7] FPM Letter 316-21, paragraph 4 (paraphrased).

[8] OMB Circular A-76, "Performance of Commercial Activities," revised August 1983 (first published in 1955), contains guidance and procedures for a program for determining whether work performed by Federal employees could be done more cost-effectively through contracting the work to private enterprise.

[9] FPM Letter 316-21, paragraph 5.

[10] In FPM Letter 316-21.

filled and appointments extended; and 3) reasons for using the authority.

1) Numbers

The total number of appointments above GS-7 and extensions beyond the second year reported by the responding agencies are shown below. A detailed breakdown of the figures by agency is contained in appendix A.

	CY 1985	1st 6 months CY 1986
Number original appointments at GS grades 8-12	2,613	1,531
Number existing appointments extended by agency beyond 2nd year	719	687

These numbers are incomplete for the following reasons:

- The Departments of Commerce and Interior reported they were unable to provide any figures for either original appointments or extensions of existing appointments. These two departments had been unable to provide similar information in response to MSPB's questions for the first review of this subject.[11]

- The Departments of the Air Force and Health and Human Services, and the Veterans Administration reported they were unable to provide any figures for extensions of appointments. Neither had they been able to provide that information for the first MSPB review.[12]

MSPB asked agencies to report separately for headquarters and field locations. The Departments of the Air Force, the Army, and Health and Human Services were unable to do this.

Overall, from among the agencies that were able to provide the information as requested, field installations made roughly four times as many appointments and extensions of appointments as their headquarters components did. This was true for both reporting periods. Six agencies (the Departments of Education, Labor, Treasury, Transportation, and State, and the National Aeronautics and Space Administration) were exceptions to this generalization. Headquarters components in those agencies made more appointments and extensions of appointments under the new authority than did field installations.

MSPB did not compare the half-year 1986 figures with those for all of 1985 because the seasonal nature of temporary employment can cause great fluctuation in temporary employment throughout the year. However, OPM provided MSPB with full-year figures that show a 10-percent decrease between 1985 and 1986 in the combined number of appointments to positions above GS-7 and in extensions of appointments beyond the first full year.

2) Occupational Series

In response to a specific question, 18 of the 27 reporting agencies said no particular occupational series dominated their use of the expanded authority. The remaining nine

[11] MSPB May 1986 report, Table 2-22 on p.72.

[12] Ibid.

agencies identified a wide variety of predominant occupations. Many of these are occupations often found in a single agency or only a few agencies, although a few are common to many agencies. The following tabulation shows examples of occupations agencies cited for original appointments at or above GS-8 in relatively large numbers, the number of agencies reporting them as "predominant series," and the total number of appointments reported from January 1985 through June 1986:

Occupation	Number of Agencies Reporting	Number of Appointments
Computer Specialist	2	69
Electronics Technician	1	38
Engineering Technician	2	55
Environmental Protection Specialist	1	32
Loan Specialist	1	22
Mechanical Engineer	1	47
Medical Technologist	1	124
Nurse	2	73
Pharmacist	1	387
Public Utilities Specialist	1	15
Social Worker	1	126

The major reported use of the authority to extend appointments beyond the second year was for clerical and secretarial jobs. Agencies also mentioned using the new authority to initially appoint clerical and secretarial employees (in situations which the new guidance permits, but which would have been inappropriate under the earlier guidance), but without listing those kinds of jobs as predominant. Appointments of small numbers of positions in the higher-graded occupations listed in the preceding paragraph also were identified as being extended beyond the second year. Those small numbers are not surprising, given that the authority to make appointments at the higher grades had been in effect only slightly over 18 months when the data for this report were requested.

3) Reasons for Use

The reasons agencies cited for using the expanded authority generally paralleled those identified by OPM and listed earlier in this report. Most of the agencies' answers were expressed in general terms, virtually repeating the language of the authorizing FPM Letter. Some agencies, however, provided specific examples that show just how much flexibility agencies have found in the expanded authority. The following are examples:[13]

- "[to hire] post-graduate students to work on research projects that will last several years."
- "to temporarily place those candidates awaiting final security clearances in less sensitive places."
- "to work in continuing positions which could not be filled on a permanent basis due to budget cuts."
- "to fill clerical positions for which CS [Civil Service] registers are closed."
- "pending certification from OPM, especially for shortage category and hard-to-fill positions."
- "to fill PAC [entry-level Professional and Administrative Ca-

[13] All of these quotes were taken from agency responses to MSPB's information requests of August 15, 1986.

reer] positions when an OPM-approved alternative competitive exam or Schedule B appointing authority is not available."

- "[to prevent loss of] candidates to private industry in occupations like computer specialist--with this authority, they may be hired within two or three weeks with conversion to permanent employment at a later date. Authority also allows employers to identify the qualities and potential of candidates before actual conversion takes place."

Although the information MSPB received about each of these uses was sparse, most are consistent with the general framework contained in the implementing guidance. Agencies offered these examples to demonstrate the variety of situations they had found it to fit.

In a number of cases, agencies appear to be dealing with administrative problems in the competitive staffing process rather than situations of uncertainty related to the size of their workforces. In some cases, their examples trigger "warning bells" indicating possible merit system concerns. The last three examples are particularly worrisome, because they involve subsequent agency intent to select and appoint the individuals to competitive service positions.

The later "MSPB Assessment" section of this report expresses concern that persons who serve in temporary positions for an extended time gain directly-related skills and knowledge that gives them an advantage in the event the agency later decides to fill the position permanently through competitive procedures. Temporary appointing authority should not be used in lieu of competitive procedures when the intent is to fill a position permanently. Doing so puts the merit system principles at risk.

The last three examples above suggest that OPM's guidance is incomplete, leaving open the possibility for agencies to go beyond the intent of the expanded authority. Apparently, emphasis in the guidance on agency determination of when it is appropriate to use temporary appointments[14] can be--and may have been--read out of context. To help eliminate this problem, and to round out the guidance to agencies, MSPB believes OPM should issue additional guidance which provides examples of situations where use of the expanded temporary appointing authority would not be appropriate.

Some of the examples above also demonstrate how this expanded authority can be used in place of other established appointing authorities to accomplish a particular purpose. For example, the first example listed is almost a textbook example of a term appointment situation. However, the agency may have considered and rejected term appointment because it is more costly (employees with term appointments are eligible for health and life insurance, part of the cost of which the agency must pay) and because, after 1 year under a term appointment, the employee gains the right to appeal adverse personnel actions. Thus, temporary

[14] FPM Letter 316-21 states "To help agencies take full advantage of the flexibilities provided by temporary employment, this letter gives agencies broad new authority to use temporary limited appointments in any appropriate situation, as determined by the agency." After listing examples of situations where temporary appointments are appropriate, it also says "In these and other situations which the agency determines to be appropriate, [temporary appointments may be made]. (Emphasis supplied in both quotes.)

appointment may be preferable on both cost and administrative efficiency grounds.

Some of the examples presented above highlight the perception--and perhaps reality--of delays inherent in competitive staffing processes. Taken in that light, those examples may describe agency attempts to use the temporary appointing authority to avoid problems they have experienced with competitive processes. Unfortunately, some of those attempts may not be consistent with the merit system principles.

Problems Agencies Have Experienced Using the Expanded Authority

Six departments and one independent agency[15] reported experiencing problems related to the use of this authority. The problems were ones of attracting candidates and, to a lesser extent, retaining temporary employees. Left unaddressed, these problems could lead agencies to use other employment authorities (since use of temporary employment is optional), even if temporary employment is appropriate for the situation.

These agencies reported problems in both an absolute sense (trouble attracting candidates) and a qualitative one (trouble attracting high-quality candidates), because of:

- the absence of a benefits package (cited four times, with health insurance being specified twice); and
- the temporary nature of the appointment, which gives no security to the employee, or other restrictions resulting from the nature of the appointment, such as lack of eligibility for step increases (cited twice).

These same factors were identified by the Department of Labor and the Veterans Administration as contributing to difficulties in retaining temporary employees. Although "retention of temporary employees" sounds paradoxical, the guidelines for this extended authority, together with OPM's emphasis on the use of temporary employees, appear to be making their retention a very real issue.

For example, the changed nature of this temporary appointment authority (allowing agencies to keep the employees for up to 4 years, and beyond 4 years with OPM approval) suggests that temporary employees might well become a stable part of the long-term Federal work force. Then too, since agencies are given considerable latitude to decide when it is appropriate to use the authority, and since its use is encouraged by OPM, it is conceivable that short-term retention can also become critical.

The work of each Federal agency is important; no agency will want to face the disruption required by constant replacement of its temporary employees, particularly if those employees represent a growing part of the total work force. Thus, retention, or turnover, of temporary employees may yet surface as a larger Federal employment issue. The Department of Labor and the Veterans Administration say it is already occurring.

MSPB's May 1986 report on OPM's significant actions identified the lack of life and health insurance benefits as a potential problem in recruiting temporary employees. There is now some evidence that this may also affect their retention.

[15] Departments of Agriculture, Army, Health and Human Services, Justice, Labor, and Treasury, plus Veterans Administration.

Borrowing information from a June 10, 1985, General Accounting Office report titled "Benefit Practices for Permanent and Temporary Employees," MSPB also noted in its May 1986 report that:

> OPM's Compensation Group prepared a staff paper in October 1980 which reportedly recommended that temporary employees with appointments of more than 90 days be made eligible for life and health insurance. OPM took no action on the recommendation, however, because of the additional costs involved.[16]

MSPB then recommended that OPM:

> Consider possible ways of making temporary employment more attractive to potential candidates as an effort to ensure their quality, since temporary employees potentially will play an increasingly important role in the Federal work force.[17]

Figures provided by OPM show that in January 1985, temporary (including indefinite) employees constituted 4.28 percent of the competitive workforce, and that in January 1986 they represented 5.09 percent.[18] Although OPM's figures indicate only a small growth in the representation of temporary employees in the total competitive service work force since the authority was expanded in January 1985, the Board's earlier recommendation remains valid.

The desire to eliminate unnecessary personnel costs (including use of permanent employees where not really needed) is a worthwhile goal, but the Government should be mindful of possible undesirable side effects. An improvement in the quality of temporary Federal employees, and improvement in the ability to keep temporary employees once they are hired, may be worth the additional cost associated with making them eligible for health and life insurance benefits.

In hiring temporary employees, total compensation--rather than basic pay--may be the major problem facing Federal employers. Providing health and life insurance benefits may be, or become, critical to the Government's ability to be competitive in the temporary job market. Consequently, MSPB again recommends that OPM consider ways to improve the attractiveness of Federal Government temporary employment, with particular attention to the potential benefit to be gained from making temporary employees eligible for improved benefits.

Compliance and Oversight Activity

Both OPM and the agencies are charged with ensuring compliance with personnel laws and regulations.[19] As OPM moves steadily towards delegating to agencies greater authority for making personnel decisions, and towards reducing procedural guidance and instructions in the personnel area, the need for oversight will increase. What is OPM doing to ensure proper use of this authority, and what are the agencies doing?

[16] MSPB May 1986 report, p.70.

[17] Ibid., p.73.

[18] OPM response.

[19] The requirement for OPM to do this is found in 5 U.S.C. § 1103(a)(5) and § 1104(b)(2) and (b)(3). The requirement for agencies is found in 5 U.S.C. § 2302(c), a Presidential Memorandum to Heads of Departments and Independent Agencies, dated October 12, 1969, and, in many cases, delegation agreements between OPM and agencies.

1) Safeguards By OPM

Following the Board's first review of this expanded authority, we concluded "[t]here is clearly a greater potential for merit system abuse under the expanded authority but, with proper safeguards, that potential need not be realized."[20] The Board then went on to recommend that OPM "[p]rovide more specific guidance to Federal agencies regarding proper use of the authority * * *."[21]

In February 1987 OPM did publish additional guidance[22] that "summarizes the key requirements governing the proper use of the temporary appointing authority."[23] It reminds agencies of key requirements regarding: merit principles; veteran's preference; maintenance of records; public notice; and documentation.

Additionally, in a written response to MSPB in December 1986, OPM reported to MSPB that its personnel management evaluation program covers agency use of the expanded appointment authority; the Central Personnel Data File (CPDF) is used to track appointments made under the new authority; and OPM also reviews agency staffing activities in connection with examining program reviews.

According to OPM, these efforts had

> not disclosed evidence of noncompliance with merit system principles or of prohibited personnel practices. Data on appointments made have not revealed any systemic problems.[24]

When asked if its analyses had disclosed any patterns in agency use of the extended authority, including heavy use in certain series or by certain agencies, OPM replied:

> No, we have not detected any disturbing patterns. Based on data available to date, we see a variety of uses in appropriate situations, but nothing abnormal.[25]

MSPB recognizes OPM's examining program review activity as an effective oversight means. In large part, this is because the program reviews combine close attention to the structure of each reviewed agency's program with case review to ensure that the structure is properly applied. Its limitation is primarily one of scope: the program office is unable to conduct frequent indepth reviews, or to reach large numbers of offices. Gaps in information necessarily exist where no reviews are conducted.

Reviews conducted under OPM's personnel management evaluation (PME) program usually rely primarily upon either statistical data in OPM computer files or data supplied by agencies in advance of an onsite visit (or a combination of the two). Actual onsite time in most reviews is limited to 1 or 2 days, and the reviews are usually conducted by one or two persons. This program offers OPM opportunity to obtain information about numerous installations each year, but the depth and nature of the information is limited by the information sources and the resources (time and staff) OPM can make available. MSPB believes the broad scope,

[20] MSPB May 1986 report, p.73.
[21] Ibid., p.73.
[22] FPM Letter 316-23, Temporary Limited Employment, dated February 17, 1987.
[23] Ibid., paragraph 1.
[24] OPM response.
[25] Ibid.

but shallow depth, of these reviews reduces their value in ensuring proper use of the expanded temporary appointment authority.

MSPB also has a concern, which is more problematic, with OPM's reliance on tracking use of the authority through the CPDF. That concern results from the following agency comment, which OPM verified:

> OPM provides no nature-of-action-code in FPM Supplement 296-33 that would distinguish an appointment being extended beyond the second year from one being extended beyond the first year. Therefore, * * * information [about extensions beyond the second year] is not part of our automated data base.[26]

The CPDF is a significant information source for OPM's revised PME program. Since the value of the information in the CPDF is only as good as the file's data elements and codes, the inability to track extensions of temporary appointments is weakness in OPM's ability to oversee use of this authority through remote processes. As the length of time the expanded authority is in effect increases, the importance of being able to monitor extensions of appointments will become more significant. MSPB believes OPM should address this need, to enhance both its own and agencies' capabilities to monitor use of this authority.

Of the three parts of OPM's oversight process, one involves active indepth on-site reviews of agency activity; one involves review of OPM and agency data in conjunction with a short, multipurpose onsite visit, and one involves "remote sensing" from a data base that lacks complete information. In concert, MSPB believes these three parts provide an adequate level of oversight, but one that could be improved.

2) Safeguards By the Agencies

Each agency indicated it had taken some action to highlight the importance of using the expanded temporary appointing authority properly. The most common action was to publish specific policy or procedural guidance concerning its use. The next most common action was to include coverage of this authority as part of each agency's (or agency subcomponent's) evaluation programs.

The establishment of specific internal tracking systems and a requirement for higher level review of each extension were other safeguards identified by agencies. Agency responses were replete with mention of the requirement to apply merit procedures, including application of merit promotion procedures, using continuous open announcements for frequently filled jobs, and using State employment services and colleges and universities as means of advertising openings.

All but three departments or independent agencies indicated they had taken at least two of the preceding actions; a few listed three.[27] These actions suggest agencies are aware of the need to ensure proper use of the temporary appointment authority.

[26] Contained in enclosure to letter dated October 23, 1986, from Thomas S. McFee, Assistant Secretary for Personnel Administration, Department of Health and Human Services, to Honorable Maria L. Johnson, Acting Chairman, U.S. Merit Systems Protection Board.

[27] The Departments of the Air Force and Health and Human Services listed only publishing specific policy or procedural guidance; Department of the Army listed only coverage in its PME program.

Without the opportunity to evaluate the effectiveness of these agency safeguards firsthand, we judge them as apparently adequate.

MSPB has concerns about a few agencies, however, based on their inability to provide information about use of the authority when asked to do so. First, we noted earlier that the Departments of Commerce and Interior were unable to provide any figures for original appointments above GS grade 7, or for extensions of appointments beyond the second year. The lack of this information can only make it more difficult for these departments to monitor use of the expanded authority. MSPB believes both departments should make provisions for monitoring actual use figures, so they may be sure they are not "blindsided" sometime in the future.

Second, the Departments of the Air Force and Health and Human Services, and the Veterans Administration, were unable to provide figures for extensions of appointments. MSPB has the same concern in these instances as those expressed immediately above. These agencies should make provision now for obtaining and monitoring these figures, since extension of appointments may be a key to tracking legitimate use, and since there are still absolute time limits on an agency's authority to extend these appointments.

Agency Assessment of the Expanded Authority

The agencies that have had experience with the expanded authority all agree that it is a useful tool in their personnel management inventory. Their comments established that it is not a panacea for all temporary hiring needs, but they appear pleased with the availability of the authority and the additional flexibilities it gives them. Its greatest values appear to be in:

1. providing a means of meeting temporary, but not necessarily short term, workload increases;

2. providing a vehicle for filling permanent positions with temporary employees, even for lengthy periods of time, when the final size (and perhaps composition) of the work force is in doubt but the workload has not been reduced; and

3. allowing agencies latitude in determining when to use the authority to address other administrative needs.

MSPB ASSESSMENT

The Board's earlier assessment of the potential for abuse under this authority[28] remains valid, as does our earlier finding that there is currently no evidence of any systemic abuse having occurred. The potential for abuse or misuse exists for the following reasons:

- The process involved in making a temporary appointment is largely controlled by the agency taking the action. Oversight by OPM is limited in scope and frequency, and is always after the fact. While the inherent flexibilities and autonomy in this arrangement are key managerial and administrative benefits of the expanded authority, they also make the existence of the internal agency safeguards or controls that much more important.

[28] MSPB May 1986 report, pp.66-70.

- Although the guidance is broad enough to permit agencies to use temporary appointments to deal with administrative difficulties, as well as temporary staffing needs,[29] poor management practices may develop that result in continuing staffing needs being met with temporary employees simply because it is administratively easier to hire the latter. Such a situation could result in decreased organizational effectiveness because of the constant need to train new staff and the inability to build up institutional memory.

- An individual serving in a "temporary" position for an extended period of time gains the advantage of increased and directly-related skills and knowledge, which provides a competitive "edge" should the agency later decide to fill the position on a permanent basis through competitive procedures. The ability to gain such a competitive advantage is worrisome, particularly if the original temporary appointment was made as a result of questionable selection procedures, after very limited or uneven recruiting, or for nonmeritorious reasons in conflict with the merit system principles. The earlier "Reasons for Use" section of this report contains examples of situations where agencies reported using this authority that appear to offer potential for this kind of abuse.

This MSPB study provides a "vulnerability assessment" relative to the merit system. In that context, it finds that the expansion of the temporary appointment authority has increased the vulnerability of the civil service system to violations of the merit system principles, and that existing management controls may not be adequate.

This is not to say that the expansion of the authority is unwise or fatally flawed. On the contrary, based on the use of the expanded provisions to date, it appears that the benefits of the expanded authority have outweighed the additional risks. Such an assessment of course, presumes the continued existence of reasonable safeguards against abuse. Within this context, MSPB believes that implementation of the recommendations contained in this report will help ensure that a favorable benefit/risk ratio continues to exist.

The importance of putting effective controls in place in the near future is heightened by the fact that 1988 is a national election year, with a change of President a certainty. It is during a change of administrations that the risk to the merit system of improper political interference is at a peak. In addition to each agency and OPM having appropriate procedures in place to monitor use of the authority, the Board recommends that OPM prepare and publish, in conjunction with the next Presidential election, a specific reminder of what would constitute improper use of the authority. This would be similar to past notices OPM has published, such as FPM Bulletin 273-18, dated January 4, 1980, concerning restriction on conversion of Schedule C and other excepted service employees to competitive service positions.

CONCLUSIONS

In the Board's first review of this expanded authority, we said "[i]n essence, OPM handed a double-edged sword to Federal manag-

[29] See footnote 14 above.

ers"[30] in giving such broad latitude to agencies. MSPB saw the two edges as being the considerable flexibility to meet legitimate staffing needs, and the greater opportunity for merit system abuse. MSPB continues to see this expanded authority as having the potential for abuse or misuse, but has seen no widespread or systematic evidence of such activity. A small number of agency examples of situations involving use of this authority appear to represent misuse. These suggest the need for additional OPM guidance describing situations where use of this authority would not be appropriate.

OPM is correct in its assessment that "[t]he authority has provided agencies with a useful tool in a period of budgetary uncertainty."[31] MSPB believes the expanded authority has substantially changed the nature of temporary employment in the Federal Government. This, in turn, has led to changes in how temporary employees are viewed as part of the Federal work force. (Two years ago, the idea of temporary employee turnover being a problem would have been inconceivable.) Inevitably, this has led to changes in what constitutes a problem in temporary employment. Federal managers, supervisors, and personnel officials will have to adjust their methods of operation, and their thinking, if they are going to gain maximum benefit from their expanded authority to appoint temporary employees.

METHODOLOGY

In preparing this report, MSPB drew heavily upon information from the Office of Personnel Management and the 21 largest executive departments and independent agencies, which collectively employ approximately 95 percent of the executive branch civilian work force. The information was provided in writing in response to MSPB requests and, in a number of cases, through follow-up telephone calls to agency officials. The officials who provided written responses for this report are identified in appendix B.

MSPB actually received 27 responses from the 21 departments and independent agencies, because the Department of Defense submitted separate replies from seven components of the Department, rather than a single, consolidated response. (These were in addition to responses from the Departments of the Army, Air Force, and Navy which were treated as separate departments for purposes of data collection.)

OPM and the agencies responded to specific questions. Their answers were a mixture of facts, perceptions, and opinions.

The MSPB analysis looked for trends and assessed whether or not agencies' actions conformed to the merit system principles and avoided prohibited personnel practices.

OPM REVIEW

The OPM Associate Director for Career Entry was given an opportunity to review this report before it was published. Following his review, MSPB representatives met with him on December 11, 1987, to discuss his comments. Those comments were taken into consideration in preparing the final report.

[30] Ibid., p.67.
[31] OPM response.

APPENDIX A
AGENCY-REPORTED INFORMATION ON TEMPORARY LIMITED APPOINTMENTS AND EXTENSIONS OF APPOINTMENTS BEYOND THE SECOND YEAR
CY 1985 and First 6 Months of CY 1986

Department or Independent Agency	CY 1985		First 6 Months of CY 1986	
	Original Appointments at GS Grades 8 through 12	Extensions beyond 2nd Year	Original Appointments at GS Grades 8 through 12	Extensions beyond 2nd year
Agriculture	89	65	35	152
Air Force	138	*	128	*
Army	16	183	6	143
Commerce	*	*	*	*
Defense	36	12	17	3
Education	14	0	15	0
Energy	56	2	16	12
Environmental Protection Agency	69	15	28	20
General Services Administration	3	50	1	25
Health and Human Services	309	*	208	*
Housing and Urban Development	37	12	0	7
Interior	*	*	*	*
Justice	80	120	74	136
Labor	22	11	1	2
National Aeronautics and Space Administration	11	0	1	0
Navy	584	180	497	124
Small Business Administration	5	13	3	9
State	20	3	4	3
Transportation	121	34	39	16
Treasury	58	19	31	35
Veterans Administration	945	*	427	*
TOTAL	2,613	719	1,513	687

* Agency reported the data were not available.

Source: The departments and independent agencies listed.

APPENDIX B
LIST OF OFFICIALS IN DEPARTMENTS AND INDEPENDENT AGENCIES WHO CONTRIBUTED INFORMATION TO THIS REPORT BY RESPONDING TO MSPB'S AUGUST 1986 INFORMATION REQUESTS

William J. Riley, Jr.
Director of Personnel
Department of Agriculture

P.I. Schittulli
Director of Civilian Personnel
Department of the Air Force

Charles E. Thomas
Chief, Planning and Evaluation
Office of the Deputy Chief of Staff
for Personnel
Department of the Army

John M. Golden
Director of Personnel
Department of Commerce

Claire E. Freeman
Deputy Assistant Secretary for
Civilian Personnel Policy
Department of Defense

Veronica D. Trietsch
Director, Personnel Resource
Management Service
Department of Education

J.M. Schulman
Director of Personnel
Department of Energy

Clarence Hardy
Director of Personnel
Environmental Protection Agency

Terence C. Golden
Administrator
General Services Administration

Thomas S. McFee
Assistant Secretary for
Personnel Administration
Department of Health and
Human Services

Judith L. Hofmann
Assistant Secretary for Administration
Department of Housing and
Urban Development

Gerald R. Riso
Assistant Secretary for Policy, Budget
and Administration
Department of Interior

Harry H. Flickinger
Acting Assistant Attorney General
for Administration
Department of Justice

William E. Brock
Secretary
Department of Labor

Carl Grant
Director of Personnel
National Aeronautics and
Space Administration

Chase Untermeyer
Assistant Secretary for
Manpower and Reserve Affairs
Department of the Navy

Constance Horner
Director
Office of Personnel Management

Carolyn Shackleford
Special Assistant to the
Director of Personnel
Small Business Administration

Stephanie Ewasko
Chief, SES and PMRS Programs
Office of Civil Service Career
Development and Assignments
Department of State

Diana L. Zeidel
Director of Personnel
Department of Transportation

Philip E. Carolan
Director of Personnel
Department of the Treasury

Michael Rudd
Director of Personnel and Labor Relations
Veterans Administration

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