

# **REPORT ON THE SIGNIFICANT ACTIONS OF THE OFFICE OF PERSONNEL MANAGEMENT DURING 1980**



**JUNE 1981**

**A REPORT OF THE U.S. MERIT SYSTEMS PROTECTION BOARD  
OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES**

# **THE U.S. MERIT SYSTEMS PROTECTION BOARD**

Ruth T. Prokop, Chairwoman

Ersa H. Poston, Vice-Chair

Ronald P. Wertheim, Member

## **Office of Merit Systems Review and Studies**

Patricia A. Mathis, Director

Gregory T. Diaz, Associate Director for OPM Review

Staff:

Frank A. Lancione

Francine K. Samuelson

Rosemary H. Storey



MERIT SYSTEMS PROTECTION BOARD

The Vice Chair

Washington, D.C. 20419

Sirs:

In accordance with Section 202(a) of the Civil Service Reform Act of 1978 (U.S.C. § 1209(b)), it is my honor to submit the first annual report of the Merit Systems Protection Board on the Significant Actions of the Office of Personnel Management (OPM). This report covers the significant actions of the OPM during calendar year 1980.

Respectfully,

A handwritten signature in cursive script that reads "Ersal H. Poston".

Ersa H. Poston

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

Washington, D.C.

## TABLE OF CONTENTS

	Page
INTRODUCTION	
Why a Significant Action Report?	1
EXECUTIVE SUMMARY	7
CHAPTER ONE - THE RESPONSIBILITY OF OPM TO PRESERVE THE BALANCE	
What Has OPM Done to Promote Merit Principles and Prevent the Commission of Prohibited Personnel Practices?	15
CHAPTER TWO - DELEGATION OF AUTHORITY	
How Successfully has OPM Delegated and Decentralized Authority and Responsibility for Personnel Management?	35
CHAPTER THREE - THE FEDERAL EQUAL OPPORTUNITY RECRUITMENT PROGRAM	
Is the Federal Equal Opportunity Recruitment Program Being Implemented So As to Improve the Representativeness of the Work Force Without Conflict With Other Merit Systems Goals?	53
CHAPTER FOUR - REFORM SYSTEMS AND POLITICAL TRANSITION	
Are OPM Programs and Statutory Safeguards for the SES Sufficient Deterrents Against Political Manipulation During Transitions?	76
CHAPTER FIVE - PROBLEMS ON THE HORIZON	
What Merit Systems Problems Lie Ahead for the Federal Personnel Program?	85
CHAPTER SIX - EPILOGUE	98
APPENDICES	100

## INTRODUCTION

### WHY A SIGNIFICANT ACTION REPORT?

This report on the significant actions of the Office of Personnel Management, required by law, is an integral part of the delicate system of merit checks and balances created by Congress when it enacted the Civil Service Reform Act of 1978 (CSRA). <sup>1/</sup>

**The Historical Context.** The Civil Service Reform Act caused a number of dramatic changes both in Federal personnel management programs and in the way the Federal Government is organized to carry out those programs.

Major new programs included the introduction of merit pay for managers; the establishment of a Senior Executive Service (SES) with its own system of pay and rules of tenure; and a new system of performance appraisal integrated into the entire spectrum of personnel management decisions about Federal employees and accompanied by less stringent standards for the removal of poor performers than had existed in the past. The effects of these new programs are yet to be measured. In any case, it is certain that they will be felt for years to come.

The organizational changes were equally dramatic. Principal among them was the abolishment of the bipartisan Civil Service Commission, and its replacement by a complex of agencies concerned with personnel management issues: the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB), including the Special Counsel, and the Federal Labor Relations Authority (FLRA).

**The Concern of the Congress for Merit.** When Congress considered reforming the civil service, it was faced with a challenge which was "simple to express but difficult to achieve." <sup>2/</sup> That challenge was to "reduce the red tape on the one hand and . . . provide strong and effective merit protection on the other." <sup>3/</sup> Simply put, it intended in CSRA to strike a fair balance between increasing management flexibility and retaining the complex of fundamental rights and duties which make up a "merit system."

---

<sup>1/</sup> Pub. L. No. 95-454, 92 Stat. 1111, et seq. (1978). This report is mandated by 5 U.S.C. Section 1209(b).

<sup>2/</sup> S. Rep. No. 95-969, 2d Sess. 4 (1978), reprinted in House Comm. on Post Office and Civil Service, 1st Sess., Legislative History of the Civil Service Reform Act of 1978 (Committee Print No. 96-2, 1979) (hereinafter cited Senate Report).

<sup>3/</sup> Final Staff Report of the President's Reorganization Project, Personnel Management Project 52 (December, 1977) (hereinafter cited as Ink Report).

To help maintain this balance, Congress enacted into law two sets of cardinal points which define merit in the civil service. These are a set of hortatory precepts, the "merit principles," 4/ and a list of forbidden acts of commission or omission, the "prohibited personnel practices." 5/ Finally, it provided that personnel management in the Federal Government must be built upon the foundation of the merit principles, secure justice and not permit the commission of prohibited personnel practices. 6/

**The Need for Systematic Oversight of the Merit System.** Notwithstanding its enactment of these legal precepts, Congress realized that law and regulation alone are not enough to assure the preservation of a healthy merit system in the real world of the stresses which face a national bureaucracy. Its study of abuses alleged to have occurred in the past, and the testimony of many interested persons and organizations, convinced it that motivated and skillful persons could evade even the most carefully drafted complex of law and regulation. 7/

The Congress decided that a mechanism was needed to complement the letter of the law by continuously overseeing how the reforms worked out in practice, and in particular how they affected the health of the merit system.

(In fact, just such a systems oversight function had been envisioned by the earliest planners of the legislation which became the CSRA. The Ink Report, 8/ which was the final product of the Carter Administration's study of civil service reform and the blueprint for what became CSRA, contemplated that a merit protection board would have as one of its three principal functions that of monitoring the overall health of merit systems.) 9/

**The Need for Oversight of OPM in Particular.** Congress had one very particular concern related to systems oversight.

That concern involved the change from a bipartisan Civil Service Commission to an OPM, headed by a single, presumably partisan Director, who serves also as principal personnel advisor to the President. Here would be one person having

---

4/ 5 U.S.C. 2301(b).

5/ 5 U.S.C. 2302(b).

6/ See, 5 U.S.C. 1103(a)(1), 1103(a)(5)(A), 1103(a)(7), 1104(b)(2), 2301(b), 2301(c), and 2302(c).

7/ Senate Report at 3.

8/ Supra, note 3.

9/ Ink Report at 54-56, 231-36.

almost unimaginably broad powers of regulation and policymaking, able with the literal stroke of a pen to change the shape of the civil service in many important dimensions. 10/

Congress concluded that, in the absence of the restraints inherent in a bipartisan commission, what was needed was a counterweight to maintain the balance between the Director's broad powers and the at least potentially conflicting demands of the merit system.

**The Statutory Mandate.** Congress addressed all of these needs by including in CSRA the statutory mandates which direct MSPB to do the following, in addition to its adjudicatory function and the functions of the Special Counsel:

- Conduct special studies of the civil service and report to the Congress and the President on the health of those systems. 11/
- Monitor regulations issued by the Director, OPM, and strike down those found to cause prohibited personnel practices. 12/
- Monitor the significant actions of the OPM, and report annually to the Congress and the President on the rectitude of those actions. 13/

These directions collectively constitute the merit systems oversight function of the Board, and are the principal responsibility of the Office of Merit Systems Review and Studies. This report is thus an integral part of that function.

### WHY THE STUDY IS DISTINCTIVE

What distinguishes this report from the several different reports which other agencies, including the General Accounting Office (GAO) and OPM itself, produce?

This report stands apart for these significant reasons:

- It is the only report generated within the Executive Branch which is specifically concerned with the relation between OPM's programs and the health of the merit systems.

---

10/ See, e.g., remarks of Senator Mathias at 124 Cong. Record (daily ed., August 24, 1978) at S14293, and the views of Senators Mathias and Stevens in Senate Report at 133.

11/ 5 U.S.C. 1205(a)(3).

12/ 5 U.S.C. 1205(a)(4),(c).

13/ 5 U.S.C. 1209(b).

- It is the only report produced within the Executive Branch by an agency which has no vested interest in the programs and issues upon which it reports.

**Specific Focus on Merit.** The GAO, OPM itself, and a variety of outside groups are closely tracking the implementation of CSRA changes. These efforts, however, focus principally on the technical aspects of OPM's programs, and are primarily concerned with pragmatic questions of efficiency in program management and the merits of OPM's choices among operational options. None of them have looked at what OPM does from the special point of view of its implications for the merit system. This report does so.

**No Vested Interest.** Unlike other central personnel management agencies, such as OPM, MSPB is not responsible for implementing the programs upon which it comments in this report. This fact enables the Board to have a degree of objectivity and impartiality which is difficult for program managers to achieve about the impacts of their own programs.

An equally important consequence is that the Board is able through this report to bring to the attention of Congress and the President issues involving extremely sensitive programs--"sacred cows" which no agency having operating responsibility for can realistically be expected to criticize.

#### **TESTING REALITY--THE CONCEPT OF THE STUDY**

As a consequence of the succession of funding limitations and hiring freezes which followed close on the heels of CSRA, the task of reviewing and analyzing the "significant actions" of OPM fell onto an extremely small staff; less than one full-time equivalent employee was available during FY 1980 to develop and implement the study upon which this report is based.

Faced with the reality of that limitation, it was obvious that the Board could not hope to comment meaningfully on every action of OPM which might be arguably labelled "significant." Therefore, we decided that the report should address only the most critical issues which we could identify **and which were not already the subject of other special studies being conducted by the Office of Merit Systems Review and Studies.**

These critical issues, discussed in the remainder of the report, were initially selected in an ad hoc way, then refined as the study progressed and information was developed. Some issues which looked promising originally were dropped from the study, while others were added.

Our strategy for studying these issues was fairly simple. We first identified as best we could what the "official position" of OPM was on the issues: what did OPM's senior staff think its "significant actions" had been and what were the consequences of those actions? This was accomplished by means of a series of briefings given our staff in November and December of 1980, and by subsequently putting to OPM a rather detailed set of questions about the issues with which we were concerned. Visits were also made to three Regional Offices of OPM (Dallas, Atlanta, and San Francisco) where senior OPM staff were interviewed about these issues.



We then set out to test the reality of OPM's own perceptions against the real world on which its actions impact. To do this, our staff personally interviewed the Directors of Personnel (or equivalent civilian officer) of all of the cabinet and military departments, the three largest independent agencies, a consortium of smaller agencies, and regional personnel directors and their staffs of a number of agencies in Dallas, Atlanta and San Francisco. We also talked to or corresponded with third party groups, including employee unions, groups interested in special emphasis programs such as affirmative action, and public interest organizations. (See Appendix for a complete list of our interviews.)

Finally, we selected and surveyed a sample of senior personnel officials throughout the country to obtain their perceptions about the issues. Preliminary data from that survey has been used in this report, and a more detailed final report on that survey will be issued within the next several months.

### **METHODOLOGY OF OUR SURVEY**

Using a nationwide questionnaire survey, we asked senior personnel officials to rate the state of the merit system and OPM's impact upon it during 1980.

Our target population consisted of those individuals in professional personnel occupations at grade 15 and above in Washington, D.C. and grade 13 and above outside Washington. We selected these grade levels as cut-off points in order to reach personnel officers and chiefs of personnel program areas--those people who would be in the best position to make judgments about the issues we were investigating. Our survey sample covered all agencies except those excepted from the civil service such as FBI. Agencies were sampled at different rates which roughly depended on their size. A list of agencies and sampling rates appears in the Appendix. Our sample size was 1754, which constituted about three fourths of the total target population of 2439. Over half of the sample consisted of persons from agencies sampled at 100%.

We extensively pretested our questionnaire in Washington, D.C. and in the field. Pretesting helped us to firm up the sample by clarifying who could answer our questions, to refine the issues by determining those areas about which our participants were most knowledgeable, and to construct an instrument such that we could achieve maximum candor from respondents. The questionnaire was sent to participants in April 1981. A copy of the questionnaire appears in the Appendix.

Over 73% of the individuals in our sample responded to the questionnaire, and of these about 80% wrote extensive narrative comments about the issues addressed in the survey and other personnel management areas of concern to them. The high response and comment rate indicates that participants gave our survey careful thought and gives us confidence that our findings reflect the views of our target population.

This report utilizes selected data from the questionnaire survey. We will issue a detailed final report on the questionnaire survey itself within the next several months. Also, we should note that this questionnaire is the first in a series of surveys which the Board will direct to the senior personnel community regarding the health of the merit system and the significant actions of OPM.

## EXECUTIVE SUMMARY

This report is not a "report card" on the Office of Personnel Management. Nor is it a detailed review of the internal operations of the OPM. The legislative history of the law requiring this report makes clear that it was intended to be neither.

It is rather a report on and analysis of significant action--and lack of action--taken by OPM during calendar year 1980 related to the merit system.

There are innumerable actions taken by an organization as large and powerful as OPM which one might call "significant." Our task was to refine from all of the many areas upon which we might have reported the most important of those which were within the grasp of our resources, and which have not already been the subject of other studies by MSRS (such as merit pay, the Senior Executive Service, sexual harassment, and reprisal against employees for disclosing waste, fraud and mismanagement).

The issues upon which we report here were refined through a process which began with a subjectively derived ad hoc list and ran through a long and exhaustive process of consultation and field-testing. Our final cuts were based on one principle: That is, which of the potential issues we might explore present the greatest potential for conflict with merit principles or problems with prohibited personnel practices?

If the issues we address in this report do not represent all of the "significant actions" of the OPM during 1980, we are nevertheless confident that they do represent all of those which the consensus of Federal officials affected by OPM's actions think to be the most important.

These issue areas are:

- What OPM itself has done to promote merit principles and prevent the commission of prohibited personnel practices.
- How successfully has OPM delegated and decentralized authority and responsibility for personnel management.
- Whether the Federal Equal Opportunity Recruitment Program has been implemented so to improve the representativeness of the Federal work force without conflict with other merit systems goals.
- Whether OPM programs and statutory safeguards for the SES were sufficient deterrents against political manipulation during the transition.

A final word about the nature of a report such as this. It rather naturally addresses "problems" which means "bad news" for those who have the day to day responsibility for implementing the programs upon which we comment. **Without a single significant exception, those who commented to us about the performance of OPM's staff gave it very high marks. Therefore, to the extent**

that we describe problems and less than successful efforts on the part of OPM, those comments should be taken only to reflect the enormous difficulties which any staff--no matter how competent and dedicated--would have had during the tumultuous period of the last three years of reform.

## **THE ISSUES, OUR FINDINGS, AND OUR RECOMMENDATIONS**

### **What has OPM done to promote merit principles and prevent the commission of prohibited personnel practices?**

No question is more central to an analysis of whether OPM's actions are "in accord with merit principles and free from prohibited personnel practices." For OPM itself must play an active role in preserving the balance Congress struck in CSRA if those precepts are to have real meaning.

To answer this central question, we explored two major issues:

- How does OPM view its responsibilities toward promoting the merit principles and avoiding prohibited personnel practices in the civil service?
- How effective has OPM been in promoting merit principles and preventing prohibited personnel practices? In particular, what has been the role of OPM's "enforcement" arm, its Agency Compliance and Evaluation function? How is it regarded in this respect by its principal constituency, the Federal personnel management community? In sum, does OPM have a "deterrent presence" strong enough to positively affect the actions of agency managers?

We found that although OPM does not substantially disagree with our view of its responsibilities in the merit system, it has not established a credible presence as a firm and effective monitor of the adherence of agencies to the merit mandates in their personnel management activities. Although this is in part the result of OPM's having devoted a substantial part of its oversight efforts during the last several years to assessing the implementation of CSRA reform, it is also the result of policy decisions as to how OPM should carry out its compliance and evaluation function.

**OPM should strengthen its agency compliance and evaluation activities, and should more directly monitor merit questions within those activities.**

### **How Successfully has OPM Delegated and Decentralized Authority and Responsibility for Personnel Management?**

One principal intention of the architects of CSRA was to increase "management flexibility" by expanding the amount and type of personnel management authority delegated from OPM to the individual agencies, and within each individual agency to its subordinate units.

The proponents of this view hoped, in effect, that a hundred flowers would bloom. Where the old Civil Service Commission had dictated detailed, uniform procedures for the entire Government, the new OPM would allow each agency to tailor such major programs as the SES, merit pay, and the new performance appraisal system to meet its individual needs.

At the same time, Congress was mindful of the balance it had struck between "management flexibility" and the precepts of the merit system. Because increased delegation of authority increased the risk of abuse, it imposed on OPM the duty of carefully monitoring the effects of its delegations. At the same time, OPM has stated that it needs "to resist pressure to recentralize authorities or to increase the levels of its controls over specific personnel actions in agencies." 1/

OPM must therefore tend a careful garden. It is required to let the flowers bloom while at the same time watching out for the growth of unhealthy weeds which might threaten the health of the merit system.

In examining OPM's stewardship of this responsibility, we explored several issues:

- Have the promised benefits of delegation of personnel authority emerged? Do agency personnel at working levels feel they have adequate authority to take personnel actions? Do agencies see the promises of reduced paperwork, faster processing, and greater ability to tailor programs to agency needs as being realized?
- How well has the delegation program worked? Have any systemic obstacles or problems emerged, especially any related to OPM's activities?

We found a number of emerging trends:

- It does appear that some of the promised benefits of delegation of examining authority such as reduced timelags, improved representation of women and minorities, and improved ability to support agency mission needs are beginning to be realized.
- At the same time, however, micromanagement--early changes in developing programs--threatens confidence in those programs, in senior agency personnel staff responsible for them, and in OPM itself.
- OPM's Agency Relations Staff is most highly praised by personnel directors. Yet many personnel directors feel that their credibility has been weakened in the years since passage of CSRA by their exclusion from the program of "building communications networks" among line managers in which OPM's highest executives engaged.

---

1/ U.S. Office of Personnel Management Briefing Book, V-10 (Nov. 15, 1980).  
(Hereinafter cited as Briefing Book.)

- The directors of personnel of many agencies feel that neither they nor OPM have adequate resources to conform Federal selection procedures--including examining under delegated authority--to the Guidelines on Employee Selection Procedures. Moreover, many concede that they are vulnerable to attacks on their selection procedures based on those Guidelines.

In a sense, the hundred flowers have budded. But forces exist which could wilt those flowers as fiercely as fire or drought.

**OPM should:**

- **Avoid ambiguous guidance and abrupt changes in its policies regarding major delegated programs;**
- **Keep personnel directors informed of advisory opinions and commitments made in direct dealings between OPM and senior agency managers;**
- **Be aware (along with the Congress) of the impact which early changes in controversial or highly visible programs has in all developing program areas.**
- **Devote special attention to the problems inherent in delegating examining authority to agencies which are ill-prepared to deal with legal consequences following from the Uniform Guidelines, focusing in particular on the agency costs and resources required to satisfy those Guidelines.**

**Is the Federal Equal Opportunity Recruitment Program Being Implemented So As To Improve the Representativeness of the Work Force Without Conflict With Other Merit Systems Goals?**

No single program area better illustrates the potential conflicts inherent within the merit principles themselves, and between the merit principles and the practical realities of the world, than that of affirmative employment programs.

One of the main tools for achieving the representative Federal workforce called for in the merit principles is the minority recruitment program established by the CSRA. This program, now known as the Federal Equal Opportunity Recruitment Program or (FEORP), is jointly administered by OPM and the Equal Employment Opportunity Commission (EEOC). We set out to determine:

- Do agencies feel that FEORP has materially increased the supply of qualified minority and women applicants for their positions?
- How helpful have OPM's FEORP policy guidance and technical assistance efforts been?

- Is FEORP being implemented in a way that improves workforce representation without conflict or denigration of other merit system goals?
- How well is the joint OPM-EEOC stewardship of FEORP working?

We found:

- Most agency personnel directors, and working level personnel professionals feel that FEORP has not significantly contributed to increasing the number of qualified women and minority applicants.
- The measures of underrepresentation used in the FEORP program are widely thought to be unrealistic and to result in distortions.
- The majority of agency personnel directors say that underrepresentation currently exists in at least some areas in their agencies, and is likely to continue well into the future, because of hiring freezes, shortages of qualified candidates in certain occupations and geographic areas, and the difficulty of overcoming longstanding imbalances in a static or declining Federal workforce.
- There is no systematic, long range planning which matches projected Government recruitment needs with the supply of candidates who are actually qualified for and interested in working for the Government.
- Agency directors of personnel see more promise of achieving a representative work force in programs which stress developing pools of qualified candidates where there are deficiencies of minority and women candidates in the available labor market than in programs which stress reporting on unrealistic and unattainable numerical goals.

**OPM should:**

- Study and recommend to the Congress legislation which would amend the law to provide more realistic measures of EEO performance by Federal managers than the current "underrepresentation index." At a minimum, such a measure should take into account demographic variables such as the relative ages, geographic distribution and educational experiences of the relevant groups.
- Take the lead in developing long range strategies by the Federal Government as a national employer to identify the future employment needs of the Government and the availability of qualified women and minorities to fill those needs. Where it is apparent that there will be shortfalls in the supply of qualified women and minorities, programs should be developed which will encourage the timely expansion of the supplies of such candidates.

**Are OPM programs and statutory safeguards for the SES sufficient deterrents against political manipulation during transitions?**

Changes in Presidential administrations are significant opportunities to see how well the checks and balances for sustaining a merit based civil service system work. As a protection against the inefficiencies and abuses of a "spoils system," the vast majority of jobs in all agencies are career positions which can only be filled through fair and open competition. Neither the outgoing nor the incoming administrator is permitted to distort the competitive process to protect or reward old colleagues, or bring in a "new" team.

Our limited resources did not permit us to directly monitor or investigate personnel actions in the line agencies during the transition. Instead, we focused our attention on the quality of OPM's leadership in protecting the merit system during this sensitive period. We were also able to survey a sample of the Senior Executive Service to assess the apparent impact of the transition on its members.

We looked specifically at the following issues:

- How well were the special provisions in the CSRA to protect SES members from arbitrary reassignments and evaluations during transitions working?
- Did agency personnel directors see OPM as having taken effective steps to discourage partisan political manipulation of personnel actions during the transition? Was OPM viewed as a point of support to them with respect to resisting any such partisan pressures as may have existed?
- Do senior personnel professionals see politicization of personnel actions as a problem?

We found:

- No significant problems with the statutory restrictions on reassignment and evaluation of SES members were reported.
- With only a few exceptions, agencies rated the support and assistance they received from OPM during the transition period favorably.
- Overall, agency personnel directors felt that politicization of personnel actions rarely occurred. Where there were problems, they appeared to involve individual cases rather than systemic practices.
- Senior personnel professionals also expressed a high degree of confidence in the merit system's protections against political abuse. However, slightly less than one in ten reported having observed events suggesting appointment to the competitive service as a result of political affiliation.

**OPM should improve its role in preventing political abuse of the merit system by instituting tighter oversight controls during transition periods. In general, however, OPM deserves credit for its positive support of the merit system during the latest transition.**



### **What merit systems problems lie ahead for the Federal personnel program?**

During the course of our research, the personnel directors we interviewed and the groups with which we pre-tested our questionnaire pointed up additional matters they felt we should explore. While these issues were not a part of our original study design, several of them could pose problems for the merit system in the future. They are:

- **Performance Appraisal:** The costs of developing and implementing performance appraisal systems are very high. A great deal of attention has been focused on getting agency systems in place by the statutory deadline. However, a number of individuals we spoke to asked: "What will we have once the system is up and working?" What will the returns be on this investment?
- **Multiple Policy Authorities:** The Civil Service Commission acted as the final authority on most Federal personnel matters before CSRA. Now agencies must deal with OPM, FLRA, MSPB and the EEOC. What implications does this new structure have for rational policy making?
- **Cost of Administering Employee Protections:** Many we talked to complained of an increasing tendency toward greater formality and legalism in all areas of Federal Personnel Management. They complained that the costs of these legalistic procedures are excessive. Who, if anyone, knows what these costs are, and what tradeoffs are being made in order to fund them?
- **Labor-Management Issues:** Unions understandably try to get the best deal they can for their bargaining unit members. Are there potential conflicts between the merit principles, and policies and procedures stemming from negotiated bargaining on matters affecting working conditions?

We found:

- While most personnel directors feel that the statutory deadline for implementation of performance appraisal will be met, our survey group saw problems in performance appraisal systems. Nearly half of those in our survey group who rated the progress of performance appraisal say that the new performance appraisal system in their agency will have no impact on, or will actually impede, their organization's productivity three years from now. There was also little confidence that managers are taking action to remove poor performers. OPM plans for evaluating the linkage between performance appraisal and productivity may need to be improved.
- Those responsible for making personnel management decisions must consider, in addition to policy and guidance from OPM, the decisions and policies of MSPB, EEOC, FLRA, the Comptroller General, and the Federal courts. There currently is no central reporting system which integrates these multiple and changing policy constraints to provide

up-to-the-minute information for the operating level user. Beyond these purely operational concerns, there is a perception among some observers that the Executive branch lacks an effective means of defining an overall direction and set of priorities for the Federal civil service system and that this could be a serious problem in the future.

- The costs agencies incur in relation to the procedures set up to guarantee employee rights are not separately funded. The money spent on these functions translates directly into reduced resources available for service to the public. There is no concerted effort underway at this time to accurately measure or try to systematically reduce these costs.
- Many agency personnel directors feel that there is at least a potential for conflicts between merit principles and such union proposals as limiting competition to bargaining unit members or introducing the arbitrary use of seniority as a factor in personnel decisions. However, few saw this as a significant problem at this time.

**OPM should:**

- **Prior to the October 1, 1981 deadline for implementation, thoroughly review present plans to evaluate the results of performance appraisal to insure that there will be an adequate system in place for evaluating the performance appraisal--productivity linkage, and for making cost/benefit assessments of the performance appraisal process.**
- **Take the lead in forming an interagency task force to promptly develop a system for the centralized, integrated reporting of decisions and issuances of the central personnel authorities and other bodies which affect personnel management decisions.**
- **Initiate a project to develop uniform measures of agency costs related to the protection of employee rights, identify techniques for reducing agency costs in this area, and recommend to Congress and the President any legislative changes necessary to achieve these objectives.**
- **Closely monitor trends in negotiations to identify potential conflicts with merit principles, and develop overall Executive branch strategies for addressing any that arise.**

## CHAPTER ONE

### THE RESPONSIBILITY OF OPM TO PRESERVE THE BALANCE

#### **What has OPM Done to Promote Merit Principles and Prevent the Commission of Prohibited Personnel Practices?**

No question is more central to an analysis of whether OPM's actions are "in accord with merit principles and free from prohibited personnel practices." For OPM itself must play an active role in preserving the balance Congress struck in CSRA if those precepts are to have real meaning.

To answer this central question, we explored two major issues:

- How does OPM view its responsibilities toward promoting the merit principles and avoiding prohibited personnel practices in the civil service?
- How effective has OPM been in promoting merit principles and preventing prohibited personnel practices? In particular, what has been the role of OPM's "enforcement" arm, its Agency Compliance and Evaluation function? How is it regarded in this respect by its principal constituency, the Federal personnel management community? In sum, does OPM have a "deterrent presence" strong enough to positively affect the actions of agency managers?

We found that although OPM does not substantially disagree with our view of its responsibilities in the merit system, it has not established a credible presence as a firm and effective monitor of the adherence of agencies to the merit mandates in their personnel management activities. Although this is in part the result of OPM's having devoted a substantial part of its oversight efforts during the last several years to assessing the implementation of CSRA reform, it is also the result of policy decisions as to how OPM should carry out its compliance and evaluation function.

**OPM should strengthen its agency compliance and evaluation activities, and should more directly monitor merit questions within those activities.**

### OPM'S ENFORCEMENT MANDATE

#### The New Balance

The central argument for civil service reform was that the Federal personnel system had evolved into an array of ornate safeguards and complex organizational structures which denied managers legitimate flexibility to manage effectively, and were ineffective in preventing partisan assaults on the merit system. <sup>1/</sup> Recognizing the inevitable "tension between protections established

---

<sup>1/</sup> Senate Report at 3.

to insure that employees are hired and fired solely on the basis of their ability, and the need of managers and policymakers to have flexibility to perform their jobs," the Congress sought to strike in CSRA a balance which would "allow civil servants to be able to be hired and fired more easily, **but for the right reasons.**" 2/

The proponents of reform were also concerned about the "role conflicts" inherent in the responsibilities and authorities assigned to the Civil Service Commission, namely, advising a partisan chief executive while at the same time being responsible for protecting the system from political abuse, and implementing personnel programs while simultaneously serving as adjudicator of disputes between employees and the agencies. 3/

To meet that concern, the Civil Service Commission was abolished and the Office of Personnel Management established to provide a new, more management-oriented authority without the earlier role conflicts. The Director of OPM was to be "the President's Chief Lieutenant in matters of personnel administration." 4/ At the same time, the Merit Systems Protection Board and its Special Counsel were established to "assume principal responsibility for safeguarding merit principles and employee rights." 5/ Finally, principal responsibility for individual personnel actions was to be delegated to the departments and agencies. 6/

The new Reform Act organizational alignments did not relieve OPM from responsibility for helping to preserve the management flexibility/employee rights equilibrium. On the contrary, logic alone dictates that without a direct and vigorous OPM enforcement and compliance role, that balance cannot be adequately maintained.

The Board and the Special Counsel are principally involved in resolving individual problems. The conflicts which come to them are by their very nature after-the-fact disputes involving the balance between employee and management rights. Although the remedial and precedential effects of their decisions help

---

2/ Id. at 4. (Emphasis added.)

3/ Id. at 5.

4/ Id.

5/ Id. at 6.

6/ Id.

to preserve that balance in similar situations, to rely solely on these institutions would be like locking the barn door after the horses have already run away. 7/

And, in fact, the law recognizes this logic.

#### **OPM's Responsibility Under Law 8/**

The responsibilities of individual managers, the Board and the Special Counsel are a complement to, rather than a replacement for, a vital OPM effort to ensure that agency personnel policies and operating personnel programs are in accord with merit principles and avoid prohibited personnel practices. Specific provisions in the law and the legislative history impose such responsibility on OPM. 9/ OPM therefore has an affirmative obligation to help construct and preserve the balance of CSRA in its programs, policies and operations. 10/

**Promotion of Merit Principles.** CSRA contemplates that OPM will be guided by the merit principles in its role as personnel policymaker and adviser to the President. 11/ The Congress intended that OPM take care to integrate the

---

7/ Even though one of the Board's principal responsibilities is to conduct special studies of the civil service and other merit systems, 5 U.S.C. Section 1205(a)(3), and the Special Counsel has authority to seek corrective action where it believes there is a pattern of prohibited personnel practices, 5 U.S.C. Section 1206(h), neither function can realistically be expected to serve as prophylaxis for the entire Federal Government. Only OPM among the CSRA agencies has the resources to do so on a meaningful scale.

8/ This discussion of relevant provisions of law is provided as context considered essential to the analysis which this report is required by law to provide the Congress and the President. It is therefore not an advisory opinion prohibited by 5 U.S.C. Section 1205(g). Memorandum from General Counsel Evangeline W. Swift to Vice Chair Ersa H. Poston (January 8, 1980) at 2. **Nevertheless, readers are specifically cautioned that these statements regarding OPM's responsibility under law are made for context only. Different conclusions could be reached in the context of an adjudication, and this text therefore has no precedential value in proceedings before this Board.**

9/ See e.g., 5 U.S.C. Sections 1103 (a)(5)(A), 1103(a)(7), 1104(b)(2), 2301(b), 2301.

10/ Even if OPM could legally concern itself only with maximizing "management flexibility," such a course of action would ultimately be counterproductive. A workforce alienated from its management, querulous and distrustful, would not be the "productive Federal work force" contemplated by CSRA. Pub. L. 95-454, Section 3(1), 92 Stat. 1112 (Oct. 12, 1978).

11/ OPM is responsible for "advising the President on actions which may be taken to promote . . . a systematic application of the merit system principles . . .", 5 U.S.C. Section 1103(a)(7).

principles into its policy development, program planning and program implementation. 12/ A corollary proposition is that OPM has an affirmative obligation to promote the application of the merit principles in line agency programs. 13/

**Avoidance of Prohibited Personnel Practices.** OPM has an obligation under CSRA to actively prevent the commission of prohibited personnel practices, as opposed to merely relying upon such external institutional mechanisms as MSPB to detect, correct or prevent such practices. 14/ It thus has a responsibility when developing policies, programs and operations to anticipate areas in which prohibited personnel practices might occur, and to take necessary steps to discourage or prevent the commission of such practices. In short, it is not enough that OPM policies, programs and operations be merely "neutral" on their face.

A passive role in which OPM merely tries to avoid causing prohibited personnel practices when regulating, and enforces the law by simply relying on others to call violations to its attention is not enough. OPM's significant actions--its programs, policies and operation--must be judged not only by whether they are successful in a pragmatic sense, but also by whether they:

- Help construct and preserve the balance between management flexibility and employee rights which was struck in the CSRA;
- Actively promote the statutory merit principles; and
- Actively prevent the commission of prohibited personnel practices.

One of the most important ways in which OPM can meet these several objectives is through the activities of its "enforcement" arm, the Agency Compliance and Evaluation function. Thus, the proponents of CSRA recognized

---

12/ "Federal personnel management should be implemented consistent with the . . . merit system principles . . .", 5 U.S.C. Section 2301(b). See also 5 U.S.C. Section 2301(c), which provides that the "President shall . . . take any action . . . which the President . . . determines is necessary to ensure that personnel management is based on and embodies the merit system principles."

13/ This proposition is further supported by the mandate that where OPM delegates personnel management authority to agencies, it "shall establish and maintain an oversight program to ensure that activities under any authority delegated . . . are in accordance with the merit systems principles . . .," 5 U.S.C. Section 2302(c).

14/ OPM is responsible for "executing, administering and enforcing . . . the laws governing the civil service." 5 U.S.C. Section 1103(a)(5)(A). Among those laws is the provision that the head of each agency, including OPM, "shall be responsible for the **prevention** of prohibited personnel practices . . .," 5 U.S.C. Section 2302(c) (emphasis added).

that after its passage "OPM will continue to have a personnel management evaluation role to conduct personnel program audits, review activities under performance agreements, **and investigate agency actions in order to determine compliance with OPM regulations and civil service laws.**" 15/

## HOW OPM VIEWS ITS RESPONSIBILITIES

### A New Role for OPM

With the passage of the CSRA, OPM clearly saw itself as having a mandate to pursue a new role as an advisor to management. For example, an OPM document developed shortly after passage of the Act states:

The Office of Personnel Management is the President's principle staff arm on human resource management and related matters. Under OPM's leadership, human resources management will be elevated to a higher level of importance and will be integrated more closely into the day-to-day management of the Executive branch. Close working relationships between OPM and line managers will be encouraged to ensure that managers are aware of and effectively use OPM assistance and the flexibilities of the Federal personnel system to achieve their program objectives and resolve their management problems.

The new management orientation of the OPM coincides with the establishment of the Merit Systems Protection Board, a new independent agency that is basically responsible for safeguarding the merit system and protecting individual employees against abuses and unfair personnel actions . . . **The assignment of these functions to the MSPB will free the OPM to be a more positive, mission-oriented agency . . .** 16/

This freedom notwithstanding, the statutory language describing OPM's new advisory role nevertheless requires that the Director of OPM advise the President " . . . on actions which may be taken to promote an efficient civil service **and** a systematic application of the merit principles." 17/

---

15/ Senate Hearings at 165 (emphasis added).

16/ Office of Personnel Management, Organizational Change Goals for the Office of Personnel Management (1979) (emphasis added).

17/ 5 U.S.C. 1103 (a)(7) (emphasis added).

Since a number of observers we had talked to in developing our study expressed concern that in "freeing" itself to be a "more positive" advisor to management, OPM had unduly weakened its "enforcement" responsibilities, we asked OPM to furnish copies of any current statements of policy describing how it saw its continuing responsibilities for promoting and preventing prohibited personnel practices within the context of its new management orientation.

### **No OPM Policy**

We found it surprising, and think it significant, that OPM had no such statement of policy. We think that an authoritative statement from the central personnel management agency as to its role in this basic facet of merit protection is essential to the guidance of its own staff, as well as to the informed conduct of personnel programs by line agency managers. <sup>18/</sup> Such a statement for the record would also assist the Congress in its oversight of OPM's stewardship of the merit system.

### **Promoting Merit Principles**

That deficiency notwithstanding, the statement which OPM provided us did affirm that it also sees itself as having major responsibilities with respect to promoting the merit principles:

OPM is obligated by law and legislative intent to assure that personnel management is based on the statutory merit principles and that those responsible for exercising personnel management authority understand and carry out this responsibility in accordance with those principles. OPM shares the responsibility for preserving and protecting the merit system with various other agencies, but remains the primary organization for promoting merit-based personnel systems in the Federal sector.

### **Avoiding Prohibited Personnel Practices**

However, OPM's response with respect to its obligation to prevent prohibited personnel practices was somewhat less forceful:

While OPM has a responsibility to promote the prevention of prohibited personnel practices, the Civil Service Reform Act clearly placed the responsibility for preventing prohibited personnel practices with agency

---

<sup>18/</sup> OPM did inform us that its "plans to issue such a policy statement coincided with a major revision of Executive Order 9830," originally scheduled to be issued in June 1980. It explained that the clearance process delayed issuance, and that the change in Presidential administrations might cause further revisions in the Executive Order, and--presumably--in the policy statement.



management. 5 U.S.C. Section 2302(c) states that the head of each agency (and anyone to whom such responsibilities are delegated) shall be responsible for the prevention of prohibited personnel practices, for compliance with and enforcement of applicable civil service laws, rules, and regulations, and for other aspects of personnel management. It is a major accomplishment of CSRA that agency managers are now accountable for merit behavior in agencies in accordance with statutory principles.

We think that although the distinction between OPM's responsibilities and that of agency managers implicit in this statement may be literally correct in terms of the letter of the law, it does little to promote the spirit of CSRA. The responsibility of managers to refrain from committing prohibited practices should not lessen OPM's responsibility to actively seek to prevent prohibited practices as well.

The merit principles are general statements of policy, while the prohibited personnel practices are specific bars to management actions which would result in a violation of these principles. If prohibited personnel practices are occurring, the merit principles are not being observed. OPM's self-acknowledged role as ". . . the primary organization for promoting merit-based personnel systems in the Federal sector" of necessity therefore includes a responsibility for preventing prohibited practices.

That being so, the question then becomes: How effective are the policies and programs of OPM to prevent prohibited practices and promote the achievement of merit principle objectives?

### **HOW EFFECTIVE HAS OPM BEEN?**

#### **OPM General Approach**

In its response to us, OPM described its approach for promoting merit principles and preventing prohibited practices in the following general terms:

OPM "protects employee rights" by advocating merit-based personnel systems and by assuring that all its regulations, guidance, advice and assistance are based on the merit principles and do not cause or contribute to the commission of prohibited personnel practices. OPM's role is broad and programmatic--a "before-the-fact" responsibility to assure that personnel programs are structured in such a way as to minimize ways in which they can be abused, to educate those responsible for carrying out such programs, to instill a merit consciousness in all employees, and to build in accountability at all levels of management. OPM advocates the integration of merit concepts into all aspects of personnel management.

We asked OPM several questions intended to elicit information as to exactly how it carries out the generalities of the foregoing statement, both in its internal operations and in its oversight of agency personnel programs, particularly through the Agency Compliance and Evaluation function.

### **OPM Internal Operations**

In order to give OPM an opportunity to go on the record as to how precisely it took the merit mandates into account in developing its programs and policies, we asked the following questions:

Are there ongoing institutional mechanisms to consider prohibited personnel practices and statutory merit principles in the development, clearance, and evaluation of OPM policies, programs, and guidance and direction to other agencies? If so who does it? When, where and how does it take place? Please provide at least three or four examples which illustrate how consideration of these factors had a substantive impact.

OPM chose not to directly reply to these questions. Instead, it provided the following omnibus response:

OPM always strives to ensure that all of its programs, regulations and policies, as well as its guidance and direction to agencies, are consistent with the statutory merit principles and do not cause or contribute to the commission of prohibited personnel practices. In order to achieve this objective, the various OPM offices that are responsible for developing, clearing, and evaluating OPM actions work closely with other program and policy offices. All OPM regulations and policy issuances are reviewed by our Office of the General Counsel to assure legal sufficiency. This review, of course, includes full consideration of the impact of that OPM action on merit principles and prohibited personnel practices.

We think it significant that, notwithstanding these general assurances as to the universality of OPM's consideration of the merit mandates in its operations, OPM was unable to provide us with a **single** specific example of how that consideration had affected any particular program or policy. OPM claimed that the 30 days we had allowed for reply to our inquiry was insufficient for it to find such an example.

### **Compliance and Evaluation Activities**

In considering the initial proposals to abolish the Civil Service Commission and replace it with OPM, MSPB and the FLRA, Congress directed numerous questions to the Administration seeking assurances that there would

continue to be a vigorous and independent OPM program of onsite inspections of agency personnel policies and practices to insure that merit principles were being followed. 19/

The enforcement arm of the Civil Service Commission had been the Bureau of Personnel Management Evaluation. In the reorganization following the abolishment of the Commission, evaluation and enforcement activities were combined with workforce information, agency liaison and other functions under OPM's Associate Director for Agency Relations. The key sub-office with responsibility for OPM's compliance and evaluation program is Agency Compliance and Evaluation (ACE).

While one might argue that all of OPM's contacts with agencies present opportunities to call attention to personnel management problems, ACE is the office within OPM whose primary responsibility is to design, monitor, and orchestrate OPM's Government-wide compliance and evaluation effort. Further, because ACE is the most clearly defined successor to the previous Bureau of Personnel Management Evaluation, OPM top management's resource and policy commitment to the ACE function is widely viewed by many outside the organization as symbolizing its commitment to compliance and evaluation overall.

During our initial briefings at OPM, we had been told that OPM was following a so-called "balanced approach" in its agency evaluation program. We were curious as to how this "balanced approach" worked, and what place there was in the approach for specific attention to the merit principles and prohibited personnel practices. Accordingly, we asked these questions, among others:

- How does this (balanced) approach actually work out in practice?
- Are prohibited personnel practices distinct items in OPM reviews? Is there a specific determination made that they do or do not exist at sites being audited? If not, please explain exactly how they are covered in OPM evaluations. Also please furnish copies of any guidelines or procedures in this area which field personnel follow during evaluations of agency programs.

In its reply, OPM explained that the "balanced approach" referred to ". . . OPM's attempts to maintain a proper balance between positive assistance aimed at program improvement and determinations of statutory and regulatory compliance."

---

19/ Hearings on Reorganization Plan No.2 of 1978 Before the Legislation and National Security Subcommittee of House Committee on Government Operations, 95th Congress, 2d Session 57-62 (1978).

OPM did not respond directly to the question of **how** merit principles and prohibited practices are covered in evaluations, observing only, that "(w)henever improper personnel practices are discovered during evaluations, they are documented in written reports to agency managers. Specific improper personnel actions are listed in evaluation reports with required corrective actions and OPM follows up to assure compliance." 20/

Our conclusion, buttressed by additional discussions with regional OPM staff, is that a **specific** review of how agencies' programs comport with the statutory merit principles and whether they avoid prohibited personnel practices is not a discrete, on-going, regular part of OPM's compliance and evaluation activity.

### **HOW DO OPM'S CLIENTS RATE ITS ENFORCEMENT EFFORTS?**

The acid test of OPM's programs is not how they go about reaching their goals, but rather whether or not they produce the hoped for results. To determine how effective these approaches of OPM for promoting merit and preventing prohibited practices have been, we asked personnel professionals to assess the state of the merit system in their agency and OPM's impact on it.

#### **Balance in Agency Approach?**

To establish a baseline against which we could compare participant's ratings of OPM, we asked our survey group how they felt about the amount of emphasis their own agencies placed on supporting management flexibility, protecting employee rights and enforcing the personnel laws, rules and regulations. Nearly three quarters of those surveyed (74%) said the amount of emphasis their organization placed on employee rights and enforcing personnel laws and regulations was about right. A majority said the emphasis on management flexibility was also about right (67%).

Only one participant in five said there was too much emphasis on management flexibility (20%), or not enough emphasis on enforcing personnel laws and rules (21%). These findings would tend to indicate that **the majority of respondents see their own agency's personnel management program as having a "balanced approach"**.

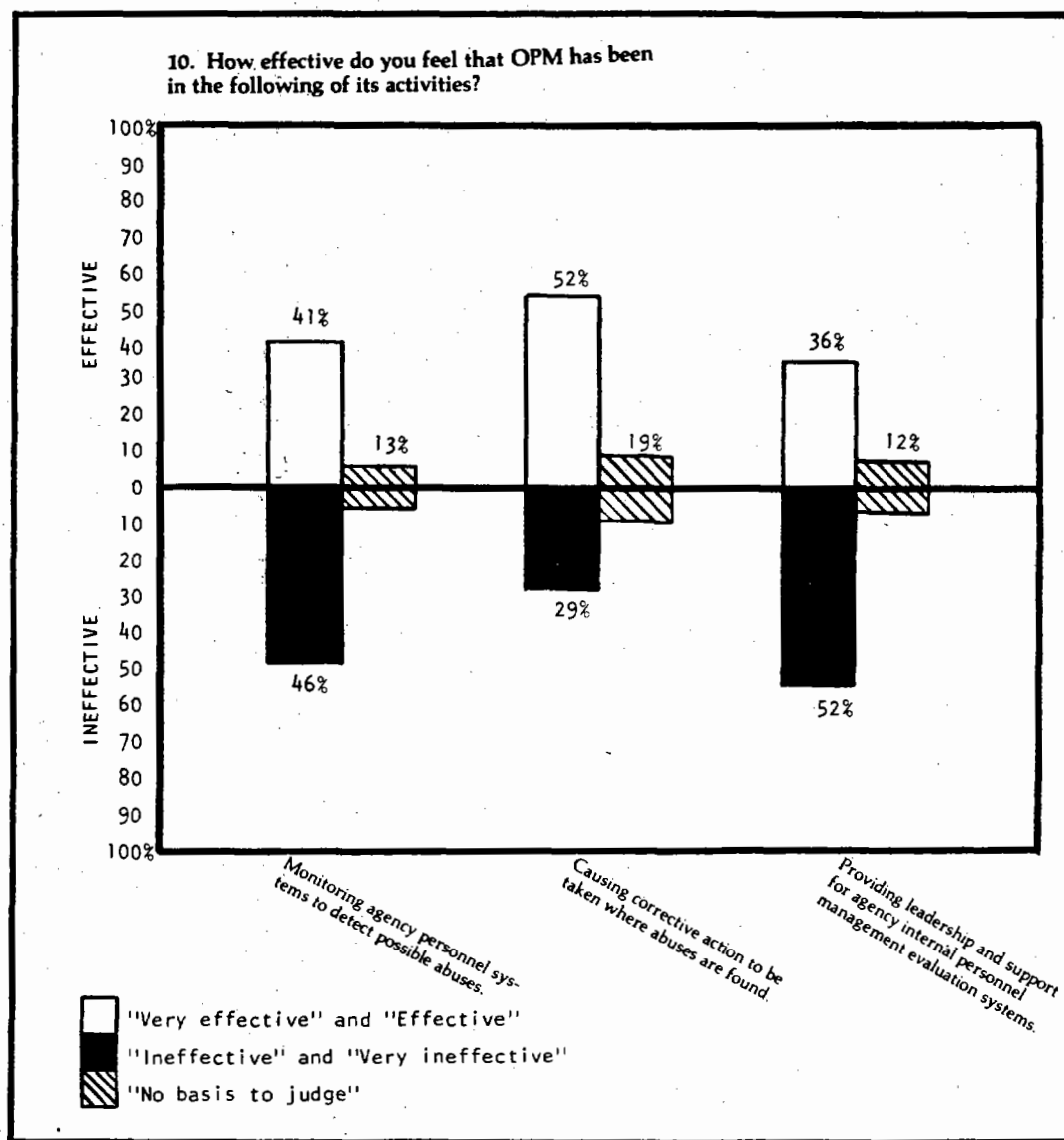
#### **OPM Enforcement Sufficient for Balance?**

We asked respondents to rate OPM's effectiveness on a number of factors related to statutory compliance. We found:

---

20/ OPM made the further point that the last two years have been an atypical period in terms of its evaluation program. "Since enactment of CSRA, the evaluation program has concentrated on evaluating the progress and effectiveness of CSRA implementation in agencies, while meeting its other responsibilities. We hope that we can provide more resources in FY 82 to strengthen the overall OPM personnel management evaluation program. However, at this time we cannot predict what changes will be made because a new Director has not yet been confirmed."

- There were very mixed ratings on OPM's effectiveness in monitoring agency personnel systems to detect possible abuses. Only four out of ten respondents (41%) said that OPM had been effective to very effective. Nearly half (46%) said OPM had been ineffective to very ineffective in monitoring to detect abuses.
- Ratings were equally low in terms of providing leadership and support for agency internal personnel management evaluation systems. Just over three employees in ten (36%) rated OPM positively; half said OPM had been ineffective (52%).



- OPM got better marks for its handling of abuses it does find. Slightly over half (52%) said OPM was effective in causing corrective action to be taken where abuses were found.

### **Management Assistance Role**

In our discussions with agency personnel directors, a number of them indicated that they felt that OPM's compliance activities had consciously been deemphasized. They saw this as part of the effort to finance new programs and establish a new image for OPM as a source of quality management assistance and advice rather than the "cop on the beat."

To find out what agency personnel professionals thought of OPM's management assistance efforts, we asked our survey group to rate OPM's effectiveness in a number of roles. These included OPM's effectiveness in:

- Evaluating how agency use of "human resources" affects success of line programs.
- Providing general management consulting services.
- Providing technical assistance and support on CSRA implementation.
- Evaluating the results of CSRA programs.

### **Knowledge of OPM Management Assistance Work was Uneven**

Roughly one participant in ten said they had no basis to judge OPM effectiveness in providing management consulting services (13%) or support on CSRA implementation (10%). Roughly two respondents in ten (23%) said they had no basis to judge OPM effectiveness in evaluating the impact of agency use of human resources on line programs.

**Those who did rate OPM management assistance programs were divided in their assessments. We found:**

- **Just over half (52%) said OPM had been effective in providing technical assistance and support on CSRA implementation.**
- **Assessment of OPM's general management consulting services was fairly evenly divided.** About four out of ten (46%) rated these services as effective, about the same number said they had been ineffective (42%).

Ratings in the remaining areas were not as favorable.

- **Those who said they did have a basis to judge OPM's evaluation of the results of CSRA programs rated OPM ineffective in this area by a margin of almost two to one (44% vs. 26%; 30% no basis to judge).**
- **Despite OPM's attempts to shift to a "management oriented role", over half of all respondents (57%) said OPM had not been effective in evaluating how agency use of human resources affects the success of line programs.**

### Comparison with Other Review and Oversight Mechanisms

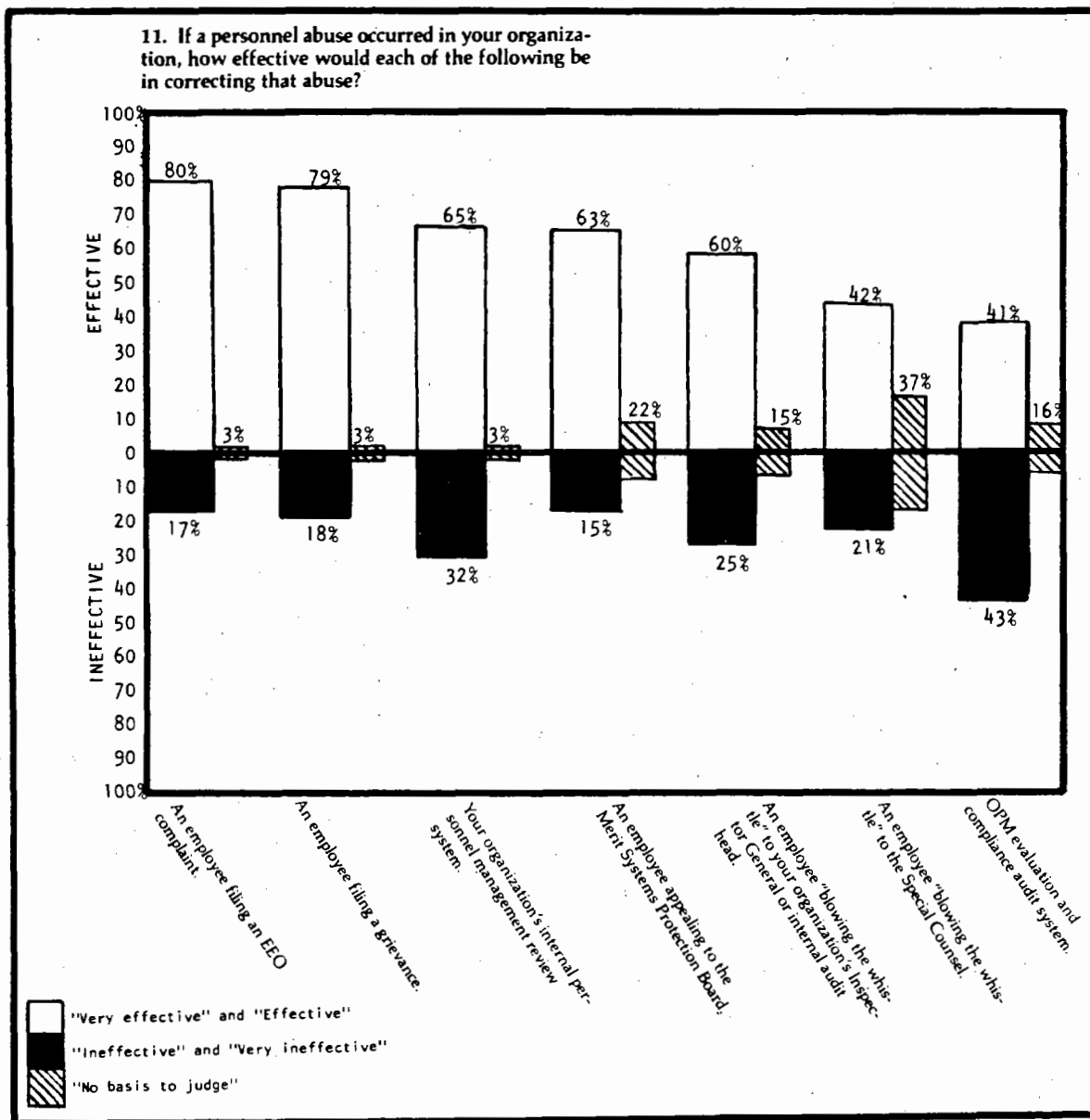
In addition to OPM's evaluation and compliance audit system, there are a number of other oversight authorities and appeals mechanisms designed to help minimize and correct personnel abuses. These include:

- Agency internal personnel management review systems;
- An employee "blowing the whistle" to his or her agency's Inspector General or internal audit head;
- An employee "blowing the whistle" to the Special Counsel;
- An employee appealing to the Merit Systems Protection Board;
- An employee filing a grievance;
- An employee filing an EEO complaint.

We asked the personnel professionals in our survey how effective they thought each of these systems would be in correcting personnel abuses in their agency if they were occurring. We found:

- **OPM was seen as the least effective of all these authorities and mechanisms.** About four respondents out of ten (41%) felt OPM would be effective in correcting personnel abuses occurring in their agency. A nearly equal number (43%) disagreed, a less favorable rating than for any other authority or mechanism.
- **By comparison, more than six out of ten (63%) said MSPB would be effective in correcting personnel abuses.**
- **Of those who did rate the Special Counsel, just over four out of ten (42%) said they thought that office would be effective in correcting abuses.**
- **Agency internal systems were generally rated highly in terms of correcting personnel abuses.** Nearly six out of ten respondents felt that their agency's internal personnel management review system (65%) and Inspector General or internal audit function (60%) would be effective in correcting personnel abuses if they were occurring in the agency.

- **The EEO complaints system and an employee filing a grievance were seen as the most effective mechanisms.** Nearly eight out of every ten respondents said these systems would be effective in getting corrective action (EEO, 80%; Grievance, 79%).



### Is it OPM's job?

We asked our survey group how helpful OPM programs had been in preventing or eliminating some specific types of problems which could occur in their agency. These included:



- Managers rigging competition to favor specific applicants;
- People doing the same work being paid differently because of misclassification;
- Managers not acting to improve or remove poor performers;
- Employees being coerced for partisan political reasons;
- Employees being afraid to report abuses because they fear reprisals.

One of the possible responses in this section was to indicate that it was not OPM's job to prevent or eliminate these problems in the respondent's organization. **Only about one participant in ten said they did not feel OPM had a responsibility to help their agency prevent or eliminate these problems.**

- **OPM was not seen as having a major impact on these problems.** Six out of ten respondents (61%) said OPM had had no impact on or had hurt more than helped with the problem of managers rigging competition. Half of those in the survey (50%) said OPM had no impact or had hurt more than helped in the area of unequal pay because of misclassification.
- **Six out of ten respondents (65%) saw OPM as having no impact or as hurting more than helping the problem of managers not removing poor performers.**
- **A large number of respondents felt they had no basis for judging OPM's helpfulness in protecting employees from partisan political coercion (30%), and reprisal for reporting abuses (19%). Even so, those who did rate OPM judged it as having no impact or hurting efforts to eliminate or prevent these problems by a margin of nearly two to one in the area of political coercion (42% vs. 22%) and a margin of nearly three to one in the area of reprisal (54% vs. 18%).**

#### **HOW DEPARTMENT-LEVEL PERSONNEL DIRECTORS SEE THE OPM COMPLIANCE EFFORT**

In our discussions with agency directors of personnel we asked:

- How effective have OPM's compliance and evaluation efforts been over the last year? Has OPM generated a sufficient "compliance presence" within the Executive branch to be a significant deterrent to abuse?

#### **Shifting Priorities**

Overall, the agency personnel directors we spoke to indicated they saw a conscious shift away from compliance and enforcement in OPM's evaluation program. Attempting to balance compliance activities with positive assistance to help agencies improve their personnel programs is not new. Previous directors of the compliance function within the Civil Service Commission had

made this approach a centerpiece of the Federal Government's central personnel management evaluation program. What was seen as new was the extent of the movement away from the "cop on the beat" role in the effort to establish OPM as an "advisor to management."

A large number of the directors we spoke to said OPM ought to increase its "compliance presence." Several said they had had to step-up their in-house evaluation programs to fill what they saw as a gap in the enforcement area caused by the OPM retrenchment. Others said they had been forced to channel all available resources into CSRA implementation and were unable to compensate for OPM's change in priorities. In short, they weakened their own internal compliance and evaluation functions at the same time that OPM was de-emphasizing its role in this area. As a result, a number said they did not have as much solid data as they would have liked on how well subordinate offices in their agency were executing the basics of day-to-day personnel management.

Despite the widespread feeling that OPM may have de-emphasized compliance too much, none of the directors we spoke to said there had been any dramatic increase in abuses or violations as a result of OPM's rechanneling of its efforts. In fact, many directors, including those who felt that compliance activities should be increased, said that the "assistance" orientation was clearly preferable to a "procedural nitpicking" approach or an "adversarial" mindset. Several directors specifically stated that they hoped a rethinking of OPM's evaluation program would not result in an overreaction which would merely create new problems of a different kind.

The following comments are from our interviews:

It's really too soon to tell whether OPM is actively promoting merit principles, but since CSRA their evaluation function has atrophied considerably, and has been buried organizationally.

\* \* \* \* \*

The compliance function is badly in need of "pumping up." Managers have gotten the word from OPM on flexibility. However, the "but" of legal limitations has not been stressed. A lot of people start out under the old mind set-- "they're only personnel rules." We need strong leadership in the Executive branch which says "No," violations in the personnel area are violations of **law**. It can be very difficult to get top level managers to accept this.

\* \* \* \* \*

People are scratching their heads and asking: "What is OPM's evaluation and compliance program?" There's a scatter gun approach--no discernible theme. Activity in the field varies from region to region.

\* \* \* \* \*

OPM's more management oriented approach is very good and very helpful. But, it's almost as though the pendulum has swung too far. The word is out that the "cop" is no longer there. Our personnel officers no longer feel they can say: "Hey, if you do that, OPM is going to come in and dun us for it." We used to get a lot more information from OPM on regulatory compliance of subordinate offices. We've had to make up deficiencies through increases in our internal evaluations program.

\* \* \* \* \*

I don't really see OPM as retaining responsibility for merit protection. They do have the responsibility for technical checks on things such as appointing authorities, etc., though. Given their priorities, OPM has not been able to do this since the passage of the Reform Act.

\* \* \* \* \*

OPM is not a deterrent. There is more value in compliance evaluation than there is in management evaluation.

\* \* \* \* \*

OPM has so stripped its ACE function of funds that OPM's evaluation program has very little impact. There have been significant reductions in the number of inspections and audits formerly performed. I doubt whether OPM really knows if the merit system is working because of the reductions in the evaluation program. I don't think the problem is malfeasance. MSPB and the Special Counsel are looking out for actual abuses. OPM's lowered role in evaluation does mean less emphasis on improving the way personnel systems work--particularly the nitty gritty aspects of operating personnel.

\* \* \* \* \*

OPM is passive rather than active in preventing abuses. The OPM evaluation presence is shrinking compared to five years ago. Long term, this is not a good thing. A director of personnel is frequently on the firing line. It's important to know if push comes to shove you would have support from the agency that wrote the regulations. I don't feel supported by OPM. I feel more like I'm out on the edge of a diving board.

\* \* \* \* \*

I question OPM's ability to do an evaluation of complex program management. While such a program review may be useful, OPM's doing it may not be useful. If those involved don't understand all of the programs, how the hell can OPM?

\* \* \* \* \*

OPM's compliance role had been deemphasized but it's not a problem. Understandably, since passage of the Reform Act, their first priority has been on getting out necessary guidance. OPM is primarily concerned with looking at the impact of FLRA and MSPB decisions on management prerogatives. Decisions of the central personnel authorities are now the prime mechanism for defining the acceptable parameters of personnel practices. OPM's enforcement is no longer the dominant factor.

\* \* \* \* \*

Solely management oriented reviews would be useless. There needs to be a certain amount of regulatory control. If you go too far in being responsive, you forget you have the basic mission to regulate as well. OPM really hasn't gone as far toward management reviews as they'd like you to believe. Overall, I'm comfortable with the present balance, it avoids nickle and dime stuff.

\* \* \* \* \*

We had some experience with a "management review" by OPM. They did a better job than we expected. The report was more useful than a CSC regulatory review. However, in the 20 page report there were only about two and a half sentences that dealt with personnel matters. There needs to be a balance. OPM needs to be doing some regulatory review. If no one is looking, managers tend to do things for their own convenience. It helps to be able to waive the spectre of third party review.

What OPM is doing now is better and more useful to us than the old case oriented inspection and compliance review. Most of OPM's visible presence in this area has been in classification. I don't think that much has changed from a compliance standpoint since CSRA.

\* \* \* \* \*

We have very aggressive unions. They serve as an effective monitoring presence in-house. Our labor agreement includes most personnel management matters. Any violations are quickly surfaced.

## CONCLUSIONS AND RECOMMENDATIONS

The period since the passage of the Reform Act has been an atypical one for the Office of Personnel Management. OPM has had the formidable task of trying to simultaneously work out its internal organization structure, develop strategies and guidelines for implementing a wide range of groundbreaking new programs, monitor and assist in agency implementation of CSRA and collect baseline data for the long term evaluation of the results of the reform effort.

Given these competing demands and the efforts of a new agency to shape a new role for itself, it is not surprising that OPM would review and reassess all of its activities, including its traditional role in enforcing the personnel laws, rules and regulations. However, over two and a half years have elapsed since the effective date of the Reform Act. It is an appropriate time to begin to judge the effect of OPM decisions on its role, allocation of resources, and priorities for the compliance and evaluation program.

Based upon the data we have gathered from the individuals in agencies who actually have to work with OPM programs, we see a need for change. Our survey of senior level personnel professionals indicates that this group has serious reservations about OPM's compliance and evaluation program. Nearly half of those we surveyed said OPM had been ineffective in monitoring agency personnel systems to detect abuses, and in providing leadership and support for agency internal personnel management evaluation systems. Our interviews with agency directors of personnel also indicated much support for a more active OPM enforcement and compliance role.

With the change in political administrations and resulting change in OPM top leadership, OPM itself is reassessing its commitment to compliance and evaluation. The new director of OPM has already stated during his confirmation hearings that enforcing the personnel laws will be a top priority for OPM in the future:

Finally, and I think most importantly, a priority for Director of Office of Personnel Management is to uphold the civil service rules and regulations of the Government. I think, in the excitement of the Civil Service Reform Act, we have emphasized other things. I think we need a reorientation back to the basic job of the Office of Personnel Management, which is to exercise effective oversight over agency actions, and especially over delegations of personnel actions given to agencies. 21/

The question facing OPM--and the Congress and the President--is not whether the pendulum will swing back to a greater emphasis on evaluation and compliance activities but: "How far, and in what form?"

---

21/ Testimony of Donald J. Devine, Director-Designate, Office of Personnel Management; Hearing before the Committee on Governmental Affairs, United States Senate, 97th Congress, March 11, 1981, p. 18.

We believe, as do many of the agency personnel directors we spoke to, that a drastic swing away from an assistance orientation on OPM's part would be as serious a mistake as an abandonment of its enforcement role. Compliance audits by OPM must be more than what one director described as "coming in and rechecking the arithmetic on our promotion actions." The renewed emphasis on enforcement should therefore be more than an adversarial exercise.

#### **RECOMMENDATION**

- **OPM should review its enforcement and compliance programs with an eye toward increasing its "compliance presence" within the Executive branch.**
- **The redefined OPM compliance program must seek to transcend a "checklist" or merely procedural orientation, and also seek to retain the best of the agency assistance orientation established since reform.**

## CHAPTER TWO

### DELEGATION OF AUTHORITY

#### **How Successfully has OPM Delegated and Decentralized Authority and Responsibility for Personnel Management?**

One principal intention of the architects of CSRA was to increase "management flexibility" by expanding the amount and type of personnel management authority delegated from OPM to the individual agencies, and within each individual agency to its subordinate units. 1/

The proponents of this view hoped, in effect, that a hundred flowers would bloom. Where the old Civil Service Commission had dictated detailed, uniform procedures for the entire Government, the new OPM would allow each agency to tailor such major programs as the SES, merit pay, and the new performance appraisal system to meet its individual needs.

At the same time, Congress was mindful of the balance it had struck between "management flexibility" and the precepts of the merit system. Because increased delegation of authority increased the risk of abuse, it imposed on OPM the duty of carefully monitoring the effects of its delegations. At the same time, OPM has stated that it needs "to resist pressure to recentralize authorities or to increase the levels of its controls over specific personnel actions in agencies." 2/

OPM must therefore tend a careful garden. It is required to let the flowers bloom while at the same time watching out for the growth of unhealthy weeds which might threaten the health of the merit system.

In examining OPM's stewardship of this responsibility, we explored several issues:

- Have the promised benefits of delegation of personnel authority emerged? Do agency personnel at working levels feel they have adequate authority to take personnel actions? Do agencies see the promises of reduced paperwork, faster processing, and greater ability to tailor programs to agency needs as being realized?

---

1/ Pub. L. No. 95-454, Section 3(5), 92 Stat. 1112 (1978); Senate Report at 5-6.

2/ U.S. Office of Personnel Management Briefing Book, V-10 (Nov. 15, 1980). (Hereinafter cited as Briefing Book.)

- How well has the delegation program worked? Have any systemic obstacles or problems emerged, especially any related to OPM's activities?

We found a number of emerging trends:

- It does appear that some of the promised benefits of delegation of examining authority such as reduced timelags, improved representation of women and minorities, and improved ability to support agency mission needs are beginning to be realized.
- At the same time, however, micromanagement--early changes in developing programs--threatens confidence in those programs, in senior agency personnel staff responsible for them, and in OPM itself.
- OPM's Agency Relations Staff is highly praised by personnel directors. Yet many personnel directors feel that their credibility has been weakened in the years since passage of CSRA by their exclusion from the program of "building communications networks" 3/ among line managers in which OPM's highest executives engaged.
- The directors of personnel of many agencies feel that neither they nor OPM have adequate resources to conform Federal selection procedures--including examining under delegated authority--to the Guidelines on Employee Selection Procedures. Moreover, many concede that they are vulnerable to attacks on their selection procedures based on those Guidelines.

In a sense, the hundred flowers have budded. But forces exist which could wilt those flowers as fiercely as fire or drought.

**OPM should:**

- ✓ ● **Avoid ambiguous guidance and abrupt changes in its policies regarding major delegated programs;**
- ✓ ● **Keep personnel directors informed of advisory opinions and commitments made in direct dealings between OPM and senior agency managers;**
- ✓ ● **Be aware (along with the Congress) of the impact which early changes in controversial or highly visible programs has in all developing program areas.**

---

3/ Briefing Book at VII-2.



- Devote special attention to the problems inherent in delegating examining authority to agencies which are ill-prepared to deal with legal consequences following from the Uniform Guidelines, focusing in particular on the agency costs and resources required to satisfy those Guidelines.

#### HOW WELL HAS THE DELEGATION PROGRAM WORKED?

The question of what is "delegation" must be viewed from several different perspectives.

At the broadest level of meaning, increasing delegation means giving to line agencies both the authority and the responsibility for developing major new programs themselves, to meet their own needs. This sort of "delegation" is not effected by means of formal agreements or written delegations of authority. It exists only to the extent that OPM allows agencies discretion in developing and managing major personnel programs, as well as responsibility for both the good and bad results of those agency programs.

This "informal" or "implicit" sort of delegation is illustrated by excerpts from the testimony of former Director Alan K. Campbell on the subject of performance appraisal systems during Congressional oversight hearings on that subject:

The Office of Personnel Management has concluded that agencies must be permitted to determine not only what their needs are but what will best serve those needs. In effect, agencies have several options.

\* \* \* \* \*

(W)e believe there should be a great deal of discretion on the part of the agencies in the kind of performance appraisal systems they put in place.

\* \* \* \* \*

(I)t is the agencies' responsibility to make sure their system is (sic) working. 4/

More narrowly defined, "delegation" encompasses only those forms of delegation which are evidenced by formal instruments of delegation or agreement among OPM and the line agencies. OPM last year reported the following with respect to these formal delegations of authority:

---

4/ Civil Service Reform Oversight, 1980--Performance Appraisal: Hearings Before the Subcomm. on the Civil Service of the House Committee on Post Office and Civil Service, 96th Cong., 2d Session 7, 10, 17 (1980), Statement of Alan K. Campbell.

Since the Act (CSRA) was passed in October 1978, the Office of Personnel Management has delegated 31 personnel authorities to all agencies, plus another 24 agency-specific authorities. In addition, OPM has negotiated several agreements with agencies whereby they can hold examinations for job applicants, a function previously performed exclusively by OPM. 5/

### **How Long a Leash?--The Views of the Personnel Community**

One point became very clear in our interviews with personnel directors and in our several pretests of our survey instrument with senior personnel officials. With the single important exception of delegated examining authority, most regard both the blanket and agency-specific delegations from OPM as "cats and dogs"--relatively unimportant or infrequently used technical and procedural authorities. (In this respect it is perhaps significant that after its very early delegation of the authorities described above, OPM has not expanded the list). 6/

The "action," we were told, lies principally in two areas: the informal, implicit delegation contemplated by CSRA, and the formal delegation of examining authority.

Nevertheless, most respondents in our survey group felt current levels of delegation of authority were about right. Only one individual in five (22%) said his or her organization had too little authority to take personnel actions without prior approval from OPM. Redlegation of authority was also seen as appropriate. Two-thirds of those in the survey (64%) said they had enough authority to carry out their job without prior approval from higher level personnel authorities in their organization.

---

5/ Briefing Book at V-10.

6/ OPM has made two major sets of delegations to agencies. Phase I was effective on February 15, 1979. It covered the delegation of 26 personnel authorities to agencies on a blanket basis. Included were authority to take a variety of personnel actions without prior OPM approval, e.g., extending details of employees beyond 120 days, and appointment of severely handicapped or mentally retarded sons and daughters (of civilian employees) for summer or student employment. On April 16, 1979 OPM made a second major set of delegations to agencies. There were five blanket delegations to all agencies of authority for actions such as assignment of excepted employees to competitive positions. In addition, OPM identified 24 other authorities that agencies could request be delegated to them under the terms of a formal delegation agreement with OPM. These included authorities such as establishing Schedule C positions, and making exceptions to restrictions on training Federal employees in non-Government facilities without prior OPM approval.

## SYSTEMIC PROBLEMS

### Delivering on the Promise--Delegated Examining Authority

The "flagship" of the formal delegations which it was envisioned would grow out of CSRA was to be the delegated examining authority. It is the authority singled out for specific mention in the law, 7/ and was prominent in the legislative history. 8/ This was the clearest case in which delegated systems would produce significant improvements in agency management by reducing time and paperwork, producing better quality candidates, and aiding in the recruitment of women and minorities.

To find out how well these hoped-for gains had been secured, we discussed the subject with those whom we interviewed, and asked our survey group about the results of delegated examining in their agencies.

A consistent theme among the personnel directors was their dissatisfaction with what they perceived to be OPM's drive to "dump" examining responsibility in their laps, **without surrendering a pro rata share of the resources required to carry out the function.** Many pointed out that when the examining function was centralized a number of years ago, agencies were required to surrender to the Civil Service Commission their examining resources. Some of these directors stated that they had resisted, and would continue to resist, accepting delegations of examining authority because they did not have the necessary resources to effectively use the authority.

Some also thought that OPM was motivated to "get rid of" the examining function because it saw that the problem of validating examining techniques was insurmountable, and wished to avoid the expense of defending itself against attacks on the examining system.

### Guaranteeing Equitable Results--The Uniform Guidelines

Federal agencies must comply with the Uniform Guidelines on Employee Selection Procedures (Uniform Guidelines) 9/ in all personnel actions affecting employees, but particularly in those concerned with examining for appointment and promotion. The Uniform Guidelines assume great significance in the context of increased delegation of examining authority from OPM to the agencies, since such examinations are the principal selection device for entry into Federal employment.

---

7/ 5 U.S.C. Section 1104 (a)(2).

8/ E.g., Senate Report at 5-6, 24.

9/ 43 Fed. Reg. 38290 (August 25, 1978), reprinted in FPM Supp. 271-1, App. A (1979) (hereinafter cited Guidelines Reprint).

These "complex and technical" guidelines are based on the principle that "employer policies or practices which have an adverse impact on employment opportunities of any race, sex, or ethnic group are illegal . . . unless justified by business necessity." 10/

Adopted to establish a uniform Federal position in the area of such prohibited discrimination, the Uniform Guidelines establish a "rule of thumb" as "a practical means of determining adverse impact." 11/ Where an employer's selection procedures (including those of Federal agencies) result in adverse impact under the rule of thumb, that impact must be justified on grounds of business necessity. This is done by "validation" which demonstrates the relation between the suspect selection procedure and performance on the job. Validation, a "highly technical and complex . . . set of concepts in industrial psychology," 12/ may be established by any one of several different procedures. In addition, however the employer must consider available alternatives which would achieve its legitimate business purpose with lesser adverse impact.

In any event, determining whether adverse impact exists and whether it can be justified as a business necessity requires the establishment and maintenance of data bases from which the relevant statistics (concerning employee and candidate populations, and the various outcomes affecting them) can be drawn.

Although nearly all of the personnel directors we talked to felt that their selection procedures were valid from the standpoint of being job-related and serving agency mission needs by identifying people who performed well on the job, most also felt that this would probably not be enough to defend their selection procedures in court, or against attacks based on the Uniform Guidelines. Many said that if the (Professional and Administrative Career Exam) PACE exam could not be defended after the extensive research and validation effort which was a part of its development, they doubted that **any** selection system could withstand such an attack. While some agencies had cooperated with OPM on the validation of the PACE exam, or had done limited validation work for their major screening exams, most said it would be impossible for them to try to conduct Guidelines type validation studies for all of their selection mechanisms.

A number also complained of the difficulty of their conducting the kind of analyses called for under the Uniform Guidelines when until only recently agencies could not gather the kind of race, sex and ethnicity data concerning applicants which is required for analyses of adverse impact. In any event, it was the consensus that agencies in general have inadequate data bases to draw from for such analyses, even for employee populations.

The directors did not feel that OPM was the solution to their problems in this area. There were several cases in which agencies had received help from

---

10/ Guidelines Reprint at A-1.

11/ Id. at A-2.

12/ Guidelines Reprint at A-3.

OPM in designing exams and setting up examining units, particularly on examinations which agencies were assuming under delegations of authority from OPM. However, this OPM assistance was by and large not seen as a guarantee that the agency systems would withstand Uniform Guideline challenges. Overall, most felt that OPM does not have the resources and personnel to allow it to serve as a central place which agencies could turn to for the validation of their examining systems.

The director of one cabinet agency summed up the problem by admitting that his agency simply would not hire professionals at entry levels, thereby avoiding entirely the "insurmountable" problem of developing selection procedures which could satisfy Uniform Guideline standards in occupations most subject to challenge.

It seems obvious and inevitable that the multiple pressures of delegation of examining authority, the strictures of the Uniform Guidelines, inadequate resources in the agencies and OPM to meet those strictures, and unabated attacks on selection procedures by those adversely affected will place great stress on the merit system in coming years.

Since the problem is not likely to simply go away, OPM should devote substantial resources to resolve the problem inherent in delegating examining authorities to agencies which are ill-prepared to deal with legal consequences following from the Uniform Guidelines.

## **SURVEY RESULTS**

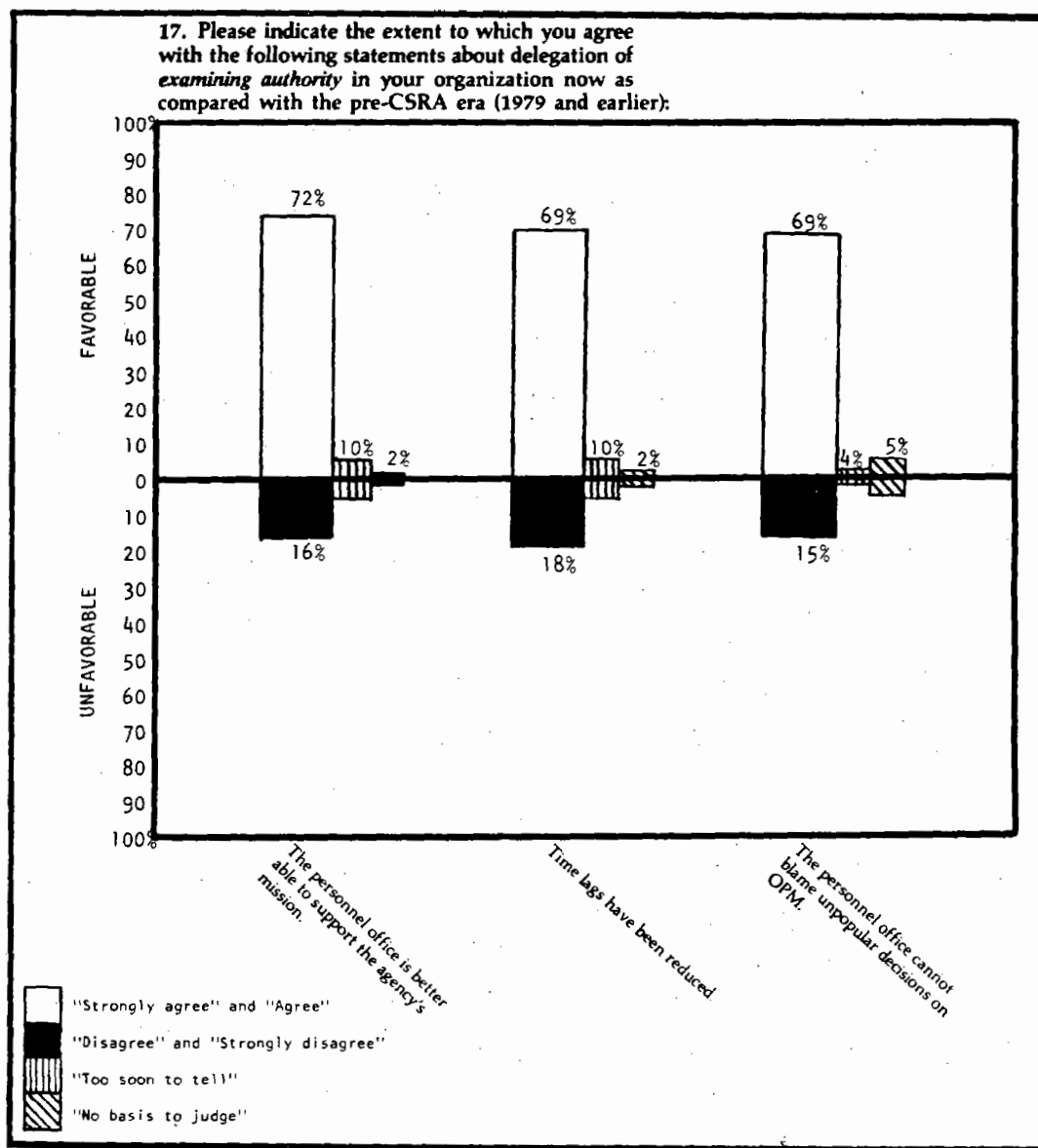
Assisting management to recruit, screen, and select people for jobs is at the heart of the personnel function. The delegation of examining authority thus presents the most important opportunity to see if the promised benefits of delegation--such as reduced paperwork, fewer time lags, better opportunity to tailor programs to agency needs, and more involvement and support from agency line officials--have resulted.

In this section of our survey (and all others where knowledge about specific programs was required in order to make informed judgments) we first asked individuals to indicate how familiar they were with the programs being studied. About four respondents out of every ten in our survey (39%) said that delegated examining was part of their job and they were very familiar with it. Another three out of ten (27%) said that delegated examining was not part of their job but they were somewhat familiar with it. The remaining individuals in the survey group either did not feel that they knew enough to comment on delegated examining, or did not think that OPM had delegated examining authority to their agency. They skipped the questions in this section.

We presented the subgroup which responded to this question with a number of statements describing possible results of delegation of examining authority under CSRA. We then asked respondents to what extent these statements described their agency's experience with delegated examining authority.

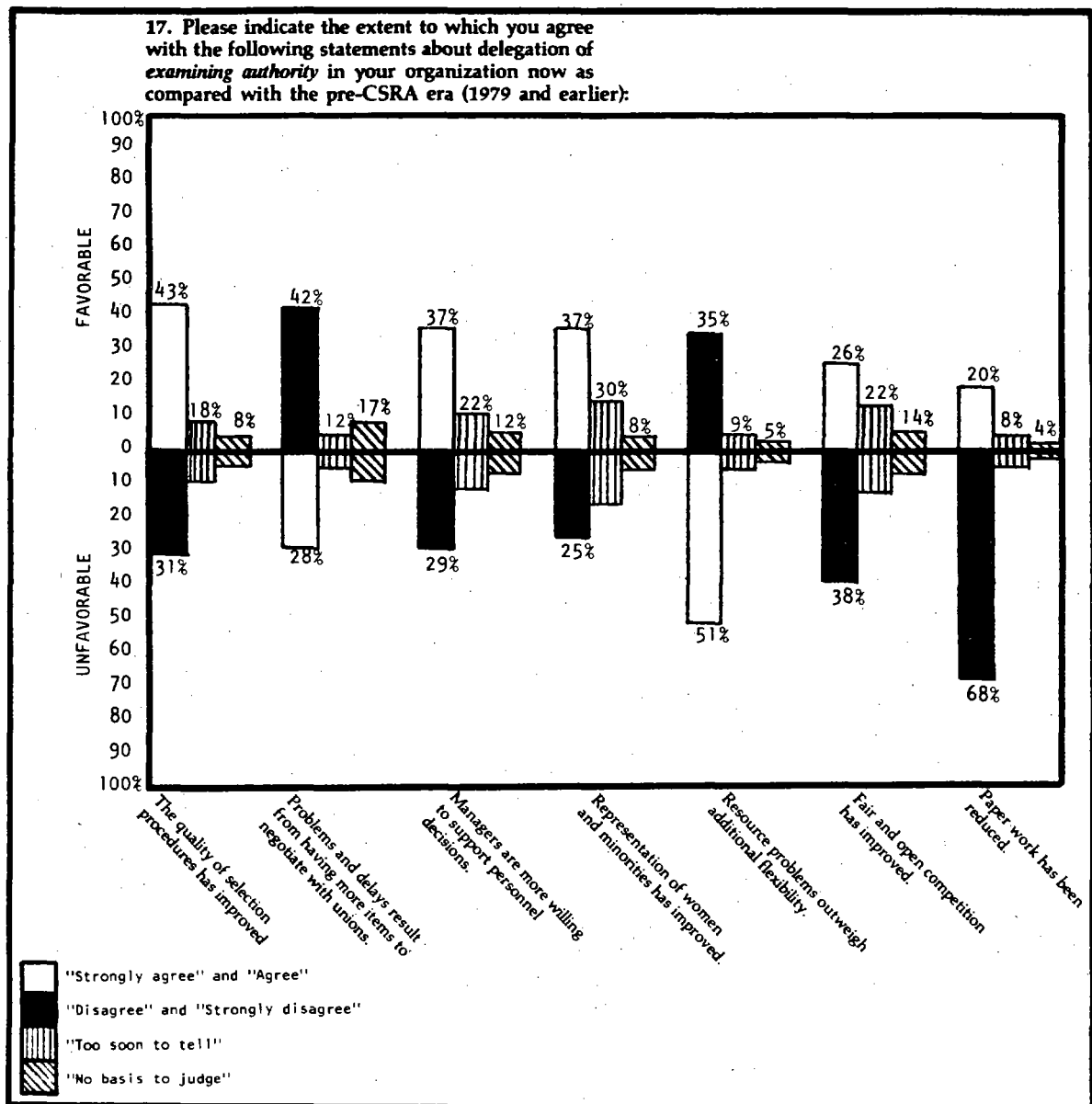
It appears that some of the expected benefits of delegated examining authority are already beginning to emerge. The senior personnel professionals in our survey group cited these positive results:

- The personnel office is better able to support the agency's mission (72%).
- Time lags have been reduced (69%).
- Personnel office accountability is increased because unpopular decisions cannot be blamed on OPM (69%).



It is too soon to tell whether other hoped-for benefits will result. Judgments were mixed on whether there had been improvements (and there may be problems) in the following areas:

- **Representation of women and minorities** (37% agree improvements versus 25% disagree).
- **Quality of selection procedures** (43% agree improvements versus 31% disagree).
- **Willingness of managers to support personnel decisions** (37% agree managers more willing versus 29% disagree).
- **Problems and delays from having more items to negotiate with unions** (28% say problems result versus 42% disagree).
- **Fair and open competition** (26% not improved versus 38% disagree).
- **Paperwork** (68% say not reduced).
- **Resource problems of delegated examining outweigh the additional flexibility** (51% agree).



The observation on resource problems is particularly important. As noted earlier, many personnel directors we spoke to also said that they felt that delegated examining had resulted in the transfer of significant new workloads without additional resources. In its briefings for MSRS staff, OPM indicated that it expected that many of the single agency occupations currently covered by the PACE or other OPM centralized exams would eventually be assumed by agencies under delegations of examining authority. With agency budgets likely to be facing cutbacks rather than increases in the future, it will be particularly important for both OPM and agencies to realistically assess the costs as further delegations are authorized.

### **Uncertainty in Program Guidance**

The subjects of the extent to which increased delegation of personnel management authority is being achieved and how well OPM is monitoring the effects of that delegation were prominent in our original list of issues to examine in this report.

The single issue regarding delegation which turned out to be pre-eminent in the minds of a majority of the personnel directors (and of great concern to others) that we talked to was not included at all in that original list: their perception that OPM has repeatedly allowed agencies to take the lead in developing new programs and then, by design or default, had "jerked the chain back," pulling agencies up short at the last minute. <sup>13/</sup>

Several directors claimed that this had happened, for example, during the early implementation of the SES, with what the directors described as "disastrous" results.

The CSRA guaranteed individuals who were in positions that were identified for inclusion in the new SES written notification of this designation and an opportunity to accept or decline joining the new service during the initial conversion. OPM initially indicated that agencies were to have substantial discretion in deciding which of the six pay levels in the SES was appropriate for executives converting into the new system. In its guidance of March 8, 1979, OPM told agencies that individuals who were previously above the third step of GS-16:

. . . may be offered ES-4, ES-5, or ES-6 as agency management decides based on considerations such as individual contribution to the organization, individual potential, and current or proposed level of responsibilities.

---

<sup>13/</sup> Several personnel directors also complained of a related aspect of OPM's program. In their view, OPM has retained close control over supposedly "delegated" program development, through the means of disapproving non-conforming agency plans.



However, on March 22, 1979, the Director of OPM sent a memo to agencies, followed by OPM guidance on March 30, 1979, which in essence reversed the earlier policy of flexibility. OPM exhorted agencies to balance their decisions on proper SES conversion levels against the President's concern for avoiding any actions which might give the impression of fueling inflation--a not so subtle call for arbitrary limits on conversions to the upper levels of the SES pay scale.

Several directors we spoke to said that by the time this latter advice was received, conversion plans for their agencies were in clearance or had already been given final approval by top management. In some cases, letters with conversion offers which specified SES pay levels had already been sent out. The OPM's sudden reversal of policy guidance meant that these directors had to go back to their undersecretary or agency head for decisions on whether the original plan would be adhered to. In some cases, agencies were confronted with the unpalatable prospect of having to renege on earlier letters to employees in order to conform to the new policy.

A more recent example of OPM policy reversal cited by personnel directors concerned the number of specified performance levels required in performance appraisal systems.

In the latter part of 1979 and early in 1980, OPM staff observed that a number of the performance appraisal systems plans submitted for OPM approval had more than three levels for evaluating performance, but only one specified standard of performance.

In June of 1980, this phenomenon was formally raised with OPM top management. By that time, about 35 of the plans which had already been approved used more than three levels with only one specified performance standard. OPM then began noting in its approval letters that the single performance standard approach introduced more subjectivity into the appraisal process than was desirable and could be difficult to defend.

By October 1980 the OPM staff responsible for performance appraisal had drafted FPM guidance recommending that agencies using more than three levels for assigning element ratings also have more than one specified standard of performance. In January of 1981, OPM's Office of General Counsel issued a written opinion that this guidance to agencies was incorrect. In the opinion of OPM's General Counsel, the CSRA **required** that there be more than one written performance standard in systems having more than three levels for assigning element ratings. The effect of this OGC opinion was therefore to make the multiple standards change mandatory, rather than discretionary.

OPM held two meetings with the agency personnel directors on the Executive Committee of the Interagency Advisory Group during January 1981. On February 9, 1981, OPM circulated a new draft of FPM guidance on this issue. Final guidance making multiple standards mandatory was issued in March of 1981. Agencies were instructed that they would have to revise their systems--even if they had earlier been approved by OPM--in order to make them conform to this new interpretation of 5 U.S.C. 4302(b)(1).

This timing could have accounted to some extent for the prominence of the issue during the course of our interviews. Even allowing for the possibility that the issue's topical interest may have caused it to loom large in some directors' minds, the fact that a majority of them agreed that the phenomenon has been a problem in several contexts caused us to inquire further.

Specifically, we wanted to know:

- Why has it occurred?
- What are implications of this phenomenon for the health of the merit system?

### Views of Personnel Professionals

We asked the personnel professionals in our survey group if reversals in OPM guidelines had been a problem in their organization. One respondent in four said it had been a problem to a considerable or great extent. Overall, **six out of every ten respondents (60%)** indicated they **had experienced this problem** at least to some extent. On the whole, then, it appears that such untimely changes in program direction from OPM have been a significant problem. Why has this occurred?

**Causes of the Problem.** The roots of this problem are multiple and complex. Some are beyond the control of OPM itself. Others are the inevitable corollaries of the "start up" of programs on the scale of the Senior Executive Service, merit pay and performance appraisal systems. Certainly it would be an extreme and unfair oversimplification to attribute these difficulties solely to incompetence, mismanagement, or an inability of OPM to "make up its mind."

In the view of the senior professionals we talked to, the following have been the major causes of the phenomenon:

- Normal "start up" problems.
- "Micromanagement" by the Congress.
- "Bulletproofing" attempts by OPM.
- The collision of "academic expectations" with "real world" difficulties.

**Start Up Problems.** The magnitude of the systems changes which were mandated by CSRA is too often only dimly appreciated. Without increases in resources, agencies and OPM were directed to develop and implement several completely new major personnel systems, while at the same time continuing on-going personnel management programs. In addition, these program changes were to be developed and implemented in the context of a greatly enhanced union involvement and an entirely new organization of the central personnel agencies.

Neither the line agency staffs nor the staff of OPM had extensive experience in most of these new systems. Indeed, some of the CSRA concepts--such as merit pay--have had only scattered application in the private sector, and none of any magnitude in the public sector. Nevertheless, the new systems were required to be implemented within strict, statutorily-imposed deadlines. (Whether those deadlines are, or ever were, realistic is a point which is not addressed in this report.)

As a result, OPM and the agencies alike were required to start from a base of zero and accelerate to 100 percent within very tight schedules.

Overlaid on these conditions was a clear attitude on the part of the leadership of OPM that the individual agencies should be primarily responsible for developing the several systems themselves, so as to best fit their individual needs. This new independence was greeted with varying degrees of enthusiasm by the agency staffs. Some felt swamped with the new responsibility; others wanted more independence.

On the other hand, OPM clearly was unwilling (indeed, would have been remiss) to allow agencies complete freedom to make absolutely independent program decisions. An irreducible centripetal tendency remained.

Under these conditions, with so many trails being blazed at the same time in territory which was often entirely foreign, it was inevitable that there would come points at which mistakes would be made, lessons learned, and errant trailblazers called back to the pale.

Many of those who raised the problem of "signal changes" with us conceded on reflection that to some degree the phenomenon merely reflected inevitable adjustments which were incident to the development of new programs. To that extent, we do not regard the problem as one which has great significance for the health of the merit system.

However, several other causes do have adverse implications over the long term for the health of the specific systems and of the merit system as a whole. We turn to a discussion of them next.

**"Micromanagement."** This graphic term was coined by one of the personnel directors we interviewed to describe an ill that he felt was best illustrated by the Congress' treatment of the award of bonuses in the Senior Executive Service. The views of this person were widely shared by those we talked to during our study. It was the consensus of those persons that the action of the Congress in limiting bonuses was precipitous and has implications far beyond the single issue of bonuses in the SES.

The issue regarding SES bonuses is by now a familiar one. With the goal of encouraging "excellence in performance by career appointees," the CSRA established a system of "performance awards" or bonuses for the Senior Executive Service, authorizing such awards for up to 50% of the total number of SES

positions in an agency. 14/ The Act also gives agency heads broad authority to determine the amount of individual performance awards, up to 20% of an individual executive's base pay. 15/

In October of 1979 OPM issued guidance to agencies on establishing and administering bonus programs. Although CSRA granted OPM authority to limit the distribution and amount of bonuses, OPM did not establish by regulation any restrictive conditions on the basis for approving bonuses at that time.

Although there were no deviations from the letter of what the CSRA had actually provided for, there was great congressional reaction in the spring of 1980 to the numbers and amounts of bonuses that were paid out by the first agencies to exercise their new performance award authority. There was fear in some quarters that the Congress would eliminate the SES performance award program altogether. On July 2, 1980, Congress added language to the Fiscal Year 1980 Supplemental Appropriations Act which cut the number of executives who could receive performance awards from the 50% originally authorized by the CSRA to 25%.

The persons we talked to who were critical of this series of events thought the reaction to be precipitous because the SES bonus system was new and the awards which sparked the Congressional reaction were the first under that new system. Even if these initial awards were excessive (and there is strong disagreement with that proposition among some observers), these persons felt that the Congress should have accepted the fact that mistakes might be made during this period of "sea trials" for the new system. A more deliberate response, it was suggested, might have been to hold oversight hearings, without revising the entire program on the basis of its first experience.

Wholly aside from the merits of the SES bonus issue (which are still being debated at this writing), a broader concern is the chilling effect that "micromanagement" could have on the willingness of agency managers to take risk and be innovative in the development and implementation of other programs.

In the words of one director:

The same thing is going to happen to merit pay. Hearings will be followed by cutting back merit pay programs. This is not supportive of the merit system. Congress talking out of both sides of its mouth creates cynicism and loss of respect for the systems involved.

**"Bulletproofing."** The institutional equivalent of this inhibiting effect is what another personnel officer described to us as attempts by OPM to "bulletproof" new programs, i.e., to make them invulnerable to criticism or attack from whatever source and wherever challenged.

---

14/ 5 U.S.C. 5384(a)(1), (b)(3).

15/ 5 U.S.C. 5384(b)(2).

The proponents of this view feel that the changes in direction, or tightened restrictions, which OPM has enforced on these programs are the result of OPM's reacting to criticisms of the Congress or complaints of particular interest groups about the directions which one or more agencies took in developing programs independently. Implicit in this analysis is the criticism that OPM has not been willing to take the risk of letting the "hundred flowers bloom."

Instead, these critics maintain, OPM has "ratcheted back" programs to a common denominator which offends no one--a "bullet proof" program.

One example given in this regard was the guidance which OPM issued on multiple performance levels (described above). Another frequently cited example was OPM's reaction to congressional limitations on SES bonuses. Quickly following on the heels of the July 2, 1980 congressional action, OPM on July 21, 1980 issued guidance requesting agencies to adhere to an even lower ceiling on bonuses--20% of eligible career executives--and to also reduce the computational base. (Instead of using their total number of SES positions to calculate their bonus pools, agencies were now instructed to apply the percentage limitations to the number of positions actually occupied by career executives whose performance had been appraised.)

In addition to prescribing reductions in the number of individuals who could receive bonuses, OPM's guidance stratified the amounts that should be awarded. No more than 10 percent should receive bonuses ranging from 17% to 20% of base pay. No more than 25% should receive bonuses of 12% to 20% of base pay. There was no stratification in the original CSRA authorization or in the subsequent congressional cut.

In both the performance standards and the SES bonus incidents, critics maintain that OPM preferred "bulletproofing" the programs involved to allowing agencies to exercise their own judgments and, if necessary, defend themselves from the fire of criticism.

**"Collision with Reality."** A final explanation offered by some was that the schedule for implementing CSRA was simply too ambitious. They felt that the schedule reflected an element of naivete among "academics" at OPM who developed the reform programs, but had no experience in the real world problems of the Federal bureaucracy which would be encountered in implementing those programs.

#### **VIEWS OF AGENCY PERSONNEL DIRECTORS ON COSTS**

**Effects on Merit System.** The directors we spoke to identified two principal deleterious effects as a result of the "policy reversal" phenomenon we have described. These are:

- Increased costs in implementing the programs involved.
- Erosion of the credibility of those responsible for the programs, and of the programs themselves.

**Increased Costs.** Although it was beyond our resources to quantify the costs involved, there is little doubt that untimely changes and reversals of

decisions made and actions taken result in increased costs of program administration.

Taking the implementation of performance appraisal systems as an example, several personnel directors of agencies whose systems will be changed as a result of OPM's latest guidance maintained that great costs would be incurred in retraining employees who had already been trained in the agency's "old system."

**Eroded Confidence.** Such costs, however, are by nature only one time costs. Certainly more lasting, and perhaps more damaging, is the erosion of confidence which many saw to be the ultimate result of such "last minute changes in signals."

This diminution of confidence effects first of all the personnel directors themselves. The personnel directors of several major departments told us similar stories of spending considerable amounts of time and effort in "selling" their agency heads and other executives on given programs, only to suffer extreme embarrassment when they were required later to go back to these same officials and explain to them that their earlier advice had either been wrong or was now changed because of decisions from OPM which they had not anticipated.

These directors felt very strongly that their personal credibility had been damaged, since--as they explained the problem--their agency chiefs were caused to wonder whether the personnel director knew in the first place what was correct and permissible, or had such poor contacts with OPM as to be unable to clarify what elements of new programs were in doubt (and should therefore be left open), or to be forewarned of potential changes.

Others pointed out that such events have only exacerbated the skepticism and suspicion with which many Federal employees view important new personnel programs.

We have seen such skepticism in other studies. For example, one study which the Office of Merit Systems Review and Studies has conducted indicates that about half of Federal employees in grades GS-13 through GS-15 would probably or definitely not choose to be covered by merit pay if they were given the choice. Similarly, we asked Federal employees in grades GS-13 through GS-15 if the incentives in the SES were sufficiently attractive to make them want to join if they were offered a job they would like to have. Only one employee in ten said definitely yes--40% said probably or definitely no. One in ten of the current SES members we surveyed said they would seriously consider leaving the SES to accept a GS-15 position in their agency in the same kind of work if the opportunity arose.

## CONCLUSIONS AND RECOMMENDATIONS

There is no objective measure by which one might state the extent to which OPM has, in fact, caused problems for agencies developing programs under the enhanced delegation of authority called for by CSRA by changing its program direction. Nor can one easily determine whether Congress has through "micro-management" unwittingly chilled the management flexibility it sought to encourage in CSRA.

But it is clear that a substantial number of senior agency personnel managers feel that these phenomena have occurred. It is also true that the examples which they gave to support their arguments are at least consistent with their perceptions.

We strongly recommend that OPM review its internal procedures and its relations with line agencies in the matter of how it provides guidance in their development of delegated programs, with a particular view toward preventing the kind of last minute changes in policy of which it is widely perceived as being guilty within its primary constituency.

We would also urge that both the Congress and OPM be aware of the hazards to the total personnel management program in Government which overzealous oversight can cause, and is thought to have caused by a number of thoughtful observers close to these programs.

**OPM'S RELATIONSHIP WITH PERSONNEL OFFICERS--"IT ALL  
ENDS UP ON MY DESK ANYWAY"**

Closely related to the question of delegation is that of the relationship between the central personnel management agency--OPM--and the line agency personnel officers. We found two very strong sets of feelings on this issue, one quite positive and the other negative, among the personnel officers with whom we spoke.

On the positive side, we found almost uniform satisfaction, indeed high praise, for OPM's Agency Relations staff. A great many of the agency personnel officers with whom we spoke singled out both the idea of having agency relations officers **and** the performance of their agency relations officers for praise. Many felt that having this effective liaison was the single best change which CSRA had brought about.

Many personnel officers, however, expressed a contrary sentiment with respect to the channels of communication which had been utilized during the last administration between OPM's highest level staff and the line agencies. According to these persons, OPM's most senior executives clearly preferred to communicate directly with agency Assistant Secretaries for Administration (or equivalent), rather than through personnel officers (as had been done in the past). In fact, many contended, it appeared that OPM desired to freeze personnel officers out of the line of communications.

The results, they argue, were damaging in several ways.

First, said a number, failing to communicate directly with the personnel officers merely delayed and confused the implementation of whatever matters were being communicated to the Assistant Secretaries, since most of them preferred not to involve themselves directly in personnel matters and simply re-routed the communications to their personnel officers anyway.

Second, said some, the process tended to undermine their own credibility, not only because they were sometimes "the last to know" about the matters involved, but also because (they felt) OPM's executive leadership portrayed personnel staffs as regulation-bound bureaucrats who were impediments to the increased management flexibility OPM was trying to bring about.

### **CONCLUSIONS AND RECOMMENDATIONS**

It is important to effective administration of the merit system that the credibility of personnel officers and personnel offices within each agency be maintained. While it is true that personnel management is ultimately the responsibility of the manager, it is equally true that, as one Defense director pointed out, "our managers still think their job is to build planes and win wars."

Eroding confidence in the personnel staffs can only makes it more difficult for them to function as members of the "management team." While OPM may not be in a position to totally eliminate the problem of policy swings, it should avoid contributing to the problem by failure to resolve its internal philosophical disputes. OPM must also make sure that the personnel infrastructure which will have to deal with the "fall-out" from OPM decisions is informed early of what may be coming down the pike.



## CHAPTER THREE

### THE FEDERAL EQUAL OPPORTUNITY RECRUITMENT PROGRAM (FEORP)

#### **Is the Federal Equal Opportunity Recruitment Program Being Implemented So As To Improve the Representativeness of the Work Force Without Conflict With Other Merit Systems Goals?**

No single program area better illustrates the potential conflicts inherent within the merit principles themselves, and between the merit principles and the practical realities of the world, than that of affirmative employment programs.

One of the main tools for achieving the representative Federal workforce called for in the merit principles is the minority recruitment program established by the CSRA. <sup>1/</sup> This program, now known as the Federal Equal Opportunity Recruitment Program or (FEORP), is jointly administered by OPM and the Equal Employment Opportunity Commission (EEOC). We set out to determine:

- Do agencies feel that FEORP has materially increased the supply of qualified minority and women applicants for their positions?
- How helpful have OPM's FEORP policy guidance and technical assistance efforts been?
- Is FEORP being implemented in a way that improves workforce representation without conflict or denigration of other merit system goals?
- How well is the joint OPM-EEOC stewardship of FEORP working?

We found:

- Most agency personnel directors, and working level personnel professionals feel that FEORP has not significantly contributed to increasing the number of qualified women and minority applicants.
- The measures of underrepresentation used in the FEORP program are widely thought to be unrealistic and to result in distortions.
- The majority of agency personnel directors say that underrepresentation currently exists in at least some areas in their agencies, and is likely to continue well into the future, because of hiring freezes, shortages of qualified candidates in certain occupations and geographic areas, and the difficulty of overcoming longstanding imbalances in a static or declining Federal workforce.
- There is no systematic, long range planning which matches projected Government recruitment needs with the supply of candidates who are actually qualified for and interested in working for the Government.

---

<sup>1/</sup> 5 U.S.C. Section 7201.

- Agency directors of personnel see more promise of achieving a representative work force in programs which stress developing pools of qualified candidates where there are deficiencies of minority and women candidates in the available labor market than in programs which stress reporting on unrealistic and unattainable numerical goals.

**OPM should:**

- Study and recommend to the Congress legislation which would amend the law to provide more realistic measures of EEO performance by Federal managers than the current "underrepresentation index." At a minimum, such a measure should take into account demographic variables such as the relative ages, geographic distribution and educational experiences of the relevant groups.
- Take the lead in developing long range strategies by the Federal Government as a national employer to identify the future employment needs of the Government and the availability of qualified women and minorities to fill those needs. Where it is apparent that there will be shortfalls in the supply of qualified women and minorities, programs should be developed which will encourage the timely expansion of the supplies of such candidates.

**NOBLE GOALS**

Federal laws and programs touch the lives of every citizen. Because Federal jobs are a public trust, it is essential that individuals selected for the career service be as competent as the public demands and deserves. The merit personnel system exists to fulfill that public trust.

Fundamental to the merit personnel system are the concepts that selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, 2/ all employees and applicants must be guaranteed fair and equitable treatment, and personnel actions must be made without regard to race, color, national origin, sex or other non-merit factors. 3/

Equally compelling, however, is the goal of insuring that those who run Federal programs are representative of the society as a whole. 4/ This, too, is a public trust. The law requires that affirmative steps be taken to give women, minorities, and other groups who were historically excluded from the policymaking structure of Government a greater opportunity to participate at all levels of the Federal workforce so that they will have an equal opportunity to shape the policies and programs which affect them.

---

2/ 5 U.S.C. Section 2301(b)(1).

3/ 5 U.S.C. Section 2301(b)(2).

4/ 5 U.S.C. Section 2301(b)(1).

While these two goals may not conflict in concept,<sup>5/</sup> tensions inevitably arise in the day-to-day implementation of the programs established to achieve them. On the one hand, selections must be made without regard to factors such as the race and sex of applicants. Yet, progress toward a more representative Government can only be measured in terms of these very factors.

Regulations and reports do not fill vacancies--managers do. If real progress is to be made in achieving a workforce which is both competency based and representative of the nation's diversity, the legal and administrative mechanisms established to reach these goals must recognize and address the limitations and obstacles which selecting officials face.

To do otherwise serves neither the interests of the intended beneficiaries of equal employment opportunity programs nor the nation as a whole. Unrealistic and ineffective systems breed resentment on the part of managers, disappointed expectations among the intended beneficiaries, and cynicism among both.

### **THE MECHANICS OF BUILDING A REPRESENTATIVE WORKFORCE**

CSRA enacted the concept of "underrepresentation" into Federal personnel law, and directed the establishment of an ambitious program to eliminate the condition of "underrepresentation." Briefly stated, that condition exists whenever the percentage of members of certain minority groups (those designated by EEOC in consultation with OPM), or of women, in given categories of Federal employment is less than the percentage of those same groups within the United States labor force. <sup>6/</sup>

To eliminate conditions of "underrepresentation," CSRA imposed specific responsibilities for minority recruiting programs on OPM, EEOC, and the agencies.

---

<sup>5/</sup> "Where some have previously conceptualized equal employment opportunity and merit selection as competing goals, the reform act correctly melds the two." Civil Service Reform Oversight--1980, Equal Employment Opportunity: Hearing Before the Subcommittee on the Civil Service of the House Committee on Post Office and Civil Service, 96th Congress, 2d Session 5 (1980) (Statement of Eleanor Holmes Norton, Chair, Equal Employment Opportunity Commission). (Hereinafter, FEORP Hearings)

<sup>6/</sup> 5 U.S.C. Section 7201(a)(1). The question of precisely what constitutes the "United States labor force" is open to interpretation. See, U.S. General Accounting Office, Achieving Representation of Minorities and Women in the Federal Work Force (December 3, 1980).

EEOC was charged with developing overall guidelines for the conduct of the minority recruitment program, 7/ and making and transmitting to Congress, OPM and agencies determinations of underrepresentation which were to be used initially in the program. 8/ OPM was made responsible for issuing regulations to implement the program within the Executive Branch, providing program assistance to agencies, and monitoring and evaluating agency progress. 9/

Each agency is required to develop and conduct a continuing program to recruit women and members of the designated minority groups, consistent with the guidance of OPM and EEOC, with the objective of eliminating "underrepresentation." 10/ Neither the Act nor the applicable regulations impose specific sanctions on agencies which fail to eliminate "underrepresentation" within their work forces. Indeed, OPM regulations make clear that the FEORP program is a **recruitment** program, not a selection program. 11/

Nevertheless, it is clear that agency managers are under great pressure to, in effect, employ women and members of the designated minority groups in such numbers as to eliminate "underrepresentation." 12/ Thus, the former Deputy Director of OPM testified with respect to agency plans for implementing FEORP that "(OPM) will review them, **but the real action in this business has to be**

---

7/ On January 23, 1981 the Executive Director of the EEOC sent agency directors of personnel and directors of EEO advance copies of a new management directive (EEO-MD 707) governing Federal agency affirmative action programs. The new directive provided for a number of significant changes in the coordination of FEORP and affirmative action planning. However, on May 6, 1981 EEOC was advised that the National Archives and Record Service, which must approve all interagency reporting requirements, would not clear the new directive. On June 15, 1981, the Acting Chairman of the EEOC sent a letter to all heads of Federal agencies advising them of the clearance problem. Given the unclear status of MD 707, we have not included it in our discussion of FEORP.

8/ 5 U.S.C. Section 7201(d). EEOC has also integrated FEORP into the affirmative action planning process required by Section 717 of the Civil Rights Act of 1974, as amended.

9/ 5 U.S.C. Section 7201(c). OPM's regulations are found at 5 CFR Part 720 (1980).

10/ 5 U.S.C. Section 7201(c)(1).

11/ 5 CFR Section 720.206 (1980).

12/ "I want to know what has been achieved thus far to reduce or eliminate underrepresentation . . . I also want to know what more can be done and will be done to achieve representation . . . " FEORP Hearings at 3 (statement of Cong. Robert Garcia).

at the hiring level. We will use those reviews as clues to where we need to go for further inspection." 13/

Thus, although FEORP is in theory a recruitment program, in fact the obligation to conduct specialized recruiting continues, presumably until statistical underrepresentation is eliminated. Barring shifts in the census data, or a decrease in the number of non-minority males in an agency's workforce, underrepresentation can only be eliminated if more women and minorities are actually hired. Thus are inevitable tensions established within the merit system. We are particularly interested in how well FEORP is working in the context of these difficult tensions, from the point of view of those closest to "the real action" of hiring: OPM and its principal constituency, the Federal personnel community.

### FEORP IN THE REAL WORLD

We found considerable dissatisfaction with FEORP among those whom we interviewed and surveyed, and a number of problems which appear to result from the collision of FEORP's underpinnings with their perceptions of the real world.

**Before discussing these findings, it is important to point out that they do not include the views of a substantial constituency of the FEORP program, the community of Equal Employment Opportunity Specialists (and other Federal employees assigned collateral duties in the area) who share responsibility for implementing the program with the Federal personnel community.**

These groups were not included in this study for two reasons.

First, our mandate is not to study and report on equal employment opportunity programs per se, but rather on OPM's significant actions. 14/ To the extent that OPM has an important responsibility in this program area, it is legitimate for us to inquire into OPM's stewardship of that responsibility. And following the overall design of our study, we were particularly interested in the perceptions of OPM's principal constituency, the Federal personnel community.

It was our judgment on a conceptual level that had we expanded our inquiry to include other groups, such as EEO specialists (and, indeed, members of the

---

13/ Oversight Hearing on the Federal Enforcement of Equal Employment Opportunity Laws, Hearing Before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor, 96th Congress, 2d Session 16 (1980) (Statement of Jule Sugarman) (emphasis added).

14/ Moreover, the General Accounting Office has only recently issued a comprehensive report on FEORP from that more global perspective. See, n. 6 supra.

groups intended to be served by FEORP), the study would have grown to a scope far beyond our legitimate area of inquiry.

Second, even had we wished to survey EEO specialists as a part of our survey groups (and we did seriously study the question), the technical problems of drawing our sample and administering the survey would have been enormously complicated. It would have been extremely difficult to identify from among the GS-160 (Equal Employment Opportunity) classification series those employees whose responsibilities are focused on civil rights administration **external** to the agency, and those whose responsibilities are focused on **internal** EEO matters. And it would have been impossible, within the time and resources available to us, to identify and adequately sample the population of collateral duty managers involved in the program.

Beyond these problems of survey methodology, there was the simple fact that most of our questionnaire was addressed to other issues which would have been outside of the scope of these specialists' work place responsibilities.

Accordingly, we decided to assess this program principally from the point of view of OPM and agency personnel staffs. The criticisms and reservations they expressed present an entirely legitimate perspective, since that community is directly involved in the hiring function, which is the ultimate goal of FEORP. On the other hand, it is not a **complete** perspective, and we specifically caution on readers on that point.

Nevertheless, we did interview a cross section of Directors of EEO in cabinet level agencies to get a preliminary look at how they assess the FEORP program.

Several of the EEO officials we spoke to felt that FEORP had been successful both in authorizing and in stimulating innovative recruitment programs within their agencies. However, a number were critical of the program because they felt that it did not go far enough. One described FEORP as a "Cadillac without a clutch." He stressed that regardless of how good FEORP recruitment efforts are, little forward progress can be made to eliminate underrepresentation without a mechanism to link recruitment to hiring.

The following comments are typical of problems identified:

The real problem is getting managers to consider new ways of doing business. Agencies are accustomed to just posting internally when vacancies occur. We tell women and minorities that they should apply for jobs with the Federal Government, then we close the door on them by restricting consideration to people who already have civil service status when vacancies do occur. We need to open up the recruiting system beyond entry level jobs.

\* \* \* \* \*

Most of our offices are not really past the paper part of the program. People are blaming the barriers to achieving representation which are outside their control such as the PACE exam and veterans' preference, instead of using the flexibility that is within their control.

\* \* \* \* \*

Whoever was putting FEORP together didn't talk to us. We've done the easy stuff, cooperative education programs, targeted recruiting, encouraging high school students to major in scientific disciplines related to this agency's mission. That's the easy part. Credentials are not the major deterrent, it's attitudes. The Federal Government needs to take an honest look at the cultural, and sociological barriers to achieving a representative workforce and begin to deal with them.

\* \* \* \* \*

It's the paper process. For several years now we've been in this cycle where it takes so long to develop and get clearance for your EEO plan that by the time you have approval it's time to start preparing the next year's plan.

**Our interviews with EEO directors were only intended as a preliminary sounding of the EEO community about the FEORP program. We would caution against judgements or recommendations beyond those which we reach in this report unless and until a comprehensive inquiry is made of the attitudes and perceptions of EEO specialists, and collateral duty program managers who share responsibility for FEORP.**

#### **PROBLEMS IDENTIFIED BY OPM AND GAO**

OPM has itself reported on the technical problems that FEORP poses for agencies. This analysis is contained in OPM's second report to Congress on the FEORP program. OPM described the major problems agencies were encountering as:

- Hiring freezes;
- Lack of resources allocated to the program;
- Limited turnover in underrepresented occupations;

- Inability to perform necessary analyses without substantial investment in developing or modifying personnel data systems;
- Use of undifferentiated civilian labor force as the basis for calculating underrepresentation;
- Limited availability of minorities and women in scientific and engineering fields and intense competition with the private sector for them;
- Provisions in negotiated labor agreements which limit agency flexibility in carrying out the program;
- Limited availability of minorities and women on registers resulting from OPM examinations.
- Some overlapping responsibilities and confusion over the relationship between OPM and EEOC guidelines and reporting requirements.

The General Accounting Office in its recent report, "Achieving Representation of Minorities and Women in the Federal Workforce," identified many of the same problems and suggested that in light of these problems Congress may want to clarify its intent on how representation should be defined and achieved.

Our study confirms that these and other problems exist, and that FEORP is widely regarded as an ineffective program by many of those whose efforts are key to its success.

#### **REACTIONS AMONG SENIOR PERSONNEL STAFF**

If the goal of a representative workforce is to be achieved, it will be achieved through the efforts of the thousands of individuals at working levels in agencies who must try to make programs such as FEORP work in the everyday world. To find out if FEORP was achieving its goals and if potential conflicts with other merit objectives were being successfully avoided, we addressed a variety of questions to our survey group. The key issues were:

- Is FEORP merely a paper program, or is it really seen as increasing the numbers of qualified women and minority applicants for positions in your agency?
- Does FEORP produce high quality candidates, or are there pressures to select individuals who may not be the best qualified of those competing for a particular position?
- To what extent have hiring freezes hurt the program?



- How effective have OPM's FEORP guidelines and technical assistance been?
- Do women and minorities have different perceptions of FEORP's effectiveness than non-minority males?

### **"WHAT BASIS TO JUDGE?"**

To insure that we were obtaining reasonably informed judgments, we asked respondents to describe their familiarity with the FEORP program in their agency. Over half of the survey group (57%) said that FEORP was a part of their job and they were very familiar with it. Another third (32%) said that FEORP was not part of their job but that they were somewhat familiar with it. About one respondent in ten (11%) felt they knew too little to comment and skipped this section of the questionnaire. 15/

### **A PAPER PROGRAM**

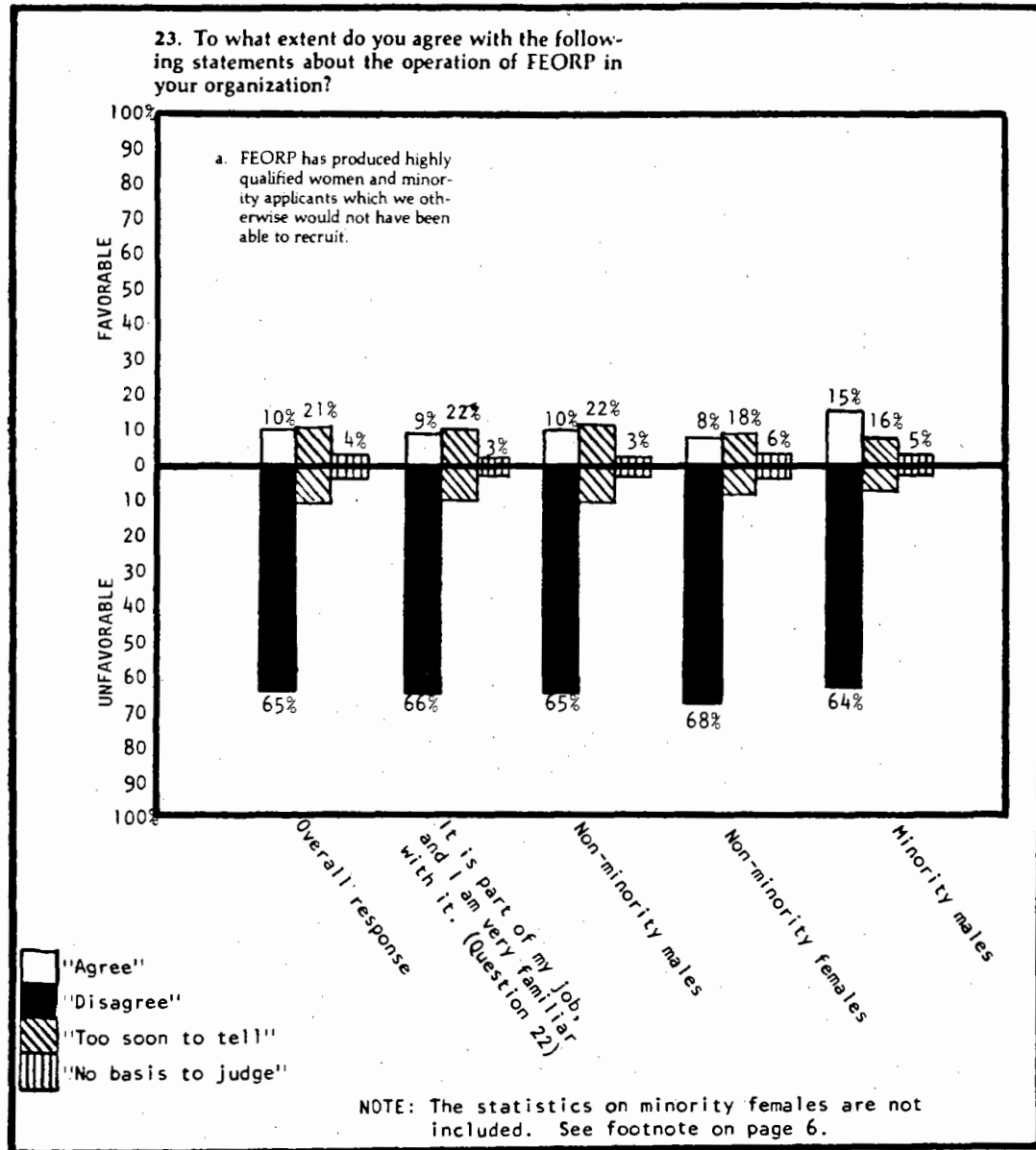
The goal of FEORP was to authorize and stimulate targeted recruitment programs to identify new sources and greater numbers of highly qualified women and minority applicants for Federal jobs. There were strong feelings among the personnel professionals we surveyed that FEORP was not achieving this objective.

---

15/ The number of minority female respondents in our survey data was too small to provide reliable ratings. Therefore they are not discussed as a separate subgroup in this chapter. We do however note the responses of non-minority males, non-minority females and minority males where they differ from the aggregate rating for all respondents, and in some instances compare the perceptions of all males and those of all females.

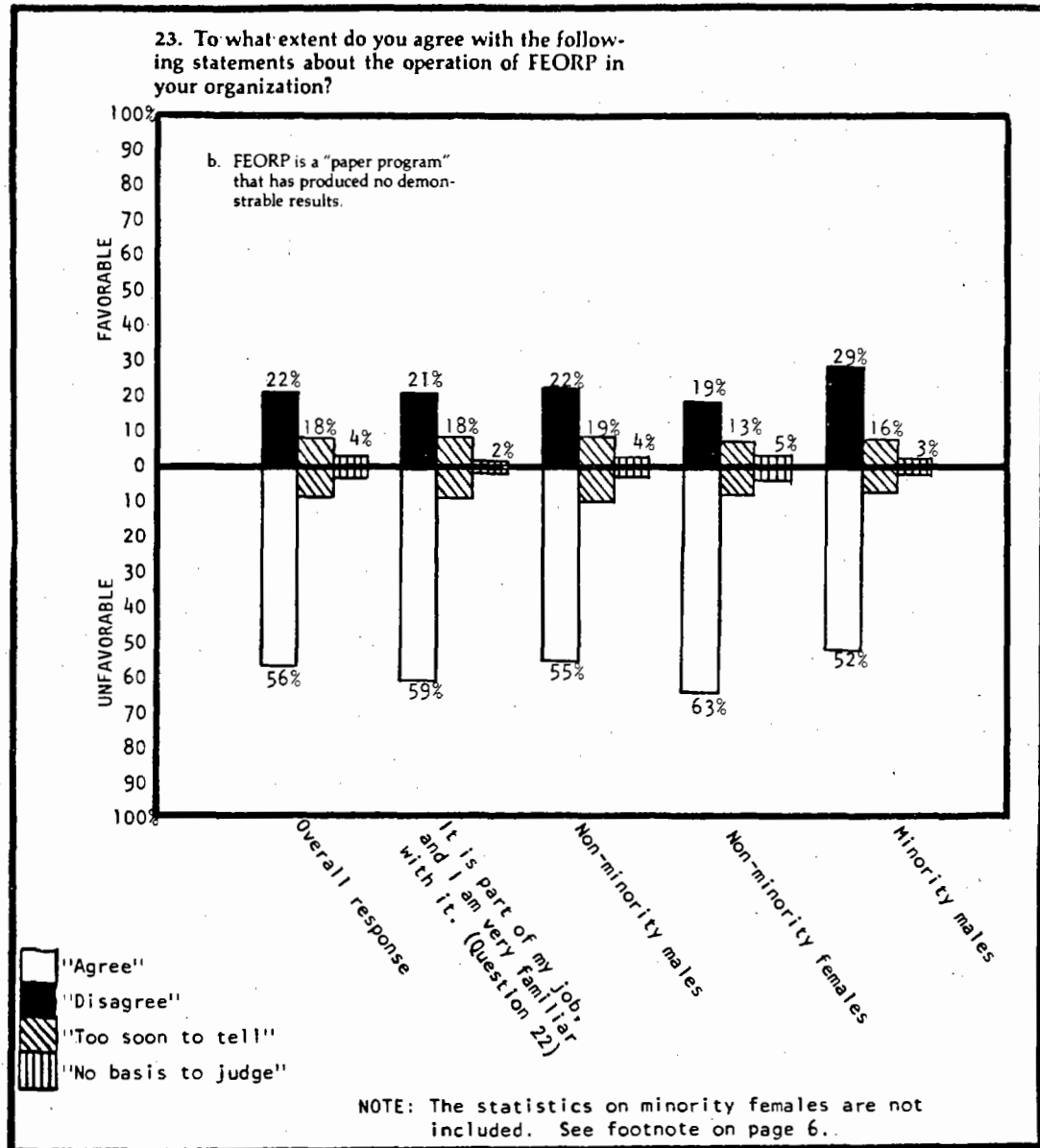
We found:

- Six out of every ten respondents (65%) disagreed that FEORP has produced highly qualified women and minority candidates that the agency otherwise would not have been able to recruit.



- In general, those who said FEORP was a part of their job, and those the program is supposed to serve--women and minorities--were as critical as other groups regarding FEORP's failure to identify additional highly qualified women and minority applicants.

- Over half of those rating FEORP (56%) said that it is a paper program which has produced no demonstrable results. The proportion was even higher among those who said they work on FEORP (59%), and among non-minority females (63%).



FEORP is not the only affirmative action program in the Federal sector. The targeted recruiting called for in FEORP had been used by many agencies for a number of years before the CSRA made it a statutory requirement. There have been upward mobility programs for internal development as well. We asked respondents about the effectiveness of such affirmative action programs other than FEORP. We found:

- **Eight out of ten (79%) said that their agency had affirmative action programs in place before FEORP which continue to produce good results.** Among minority males and non-minority females the numbers were somewhat lower, but still a majority (non-minority females--73%; minority males--60%).

One of the frequently cited obstacles to achieving progress under FEORP and other affirmative action programs is the problem of hiring freezes. An agency may impose a hiring freeze internally for budgetary reasons, or Congress or the President may impose Government-wide freezes on hiring. There have been several Government-wide freezes imposed since the passage of CSRA.

Typically, during hiring freezes agencies totally or partially limit the filling of vacancies, or restrict recruitment to the in-house workforce. If an agency's current workforce is not already representative, it will find it difficult if not impossible to increase its percentage of women and minority employees during hiring freezes. While freezes obviously have had an impact on the FEORP program, there was a lack of unanimity among those in the survey on how great that impact has been. We found:

- **Judgments were about evenly divided on whether FEORP has not had a chance to work because of hiring freezes.** While overall, about four out of ten (44%) said that freezes had kept the program from working, an equal number disagreed. Among those who do not work directly with FEORP, a slightly smaller number (37%) blamed freezes for the failure of the program.

One of the most controversial aspects of FEORP is its numerical recruitment goals. Under the CSRA and implementing regulations, agencies may make "meeting affirmative action goals and achievement of equal opportunity requirements" one of the critical elements in the performance appraisal system for its senior executives. <sup>16/</sup> Critics of the program charge that managers at all levels are pressured by numerical goals to hire women and minorities even if they are not the best of the available candidates for a job. We found:

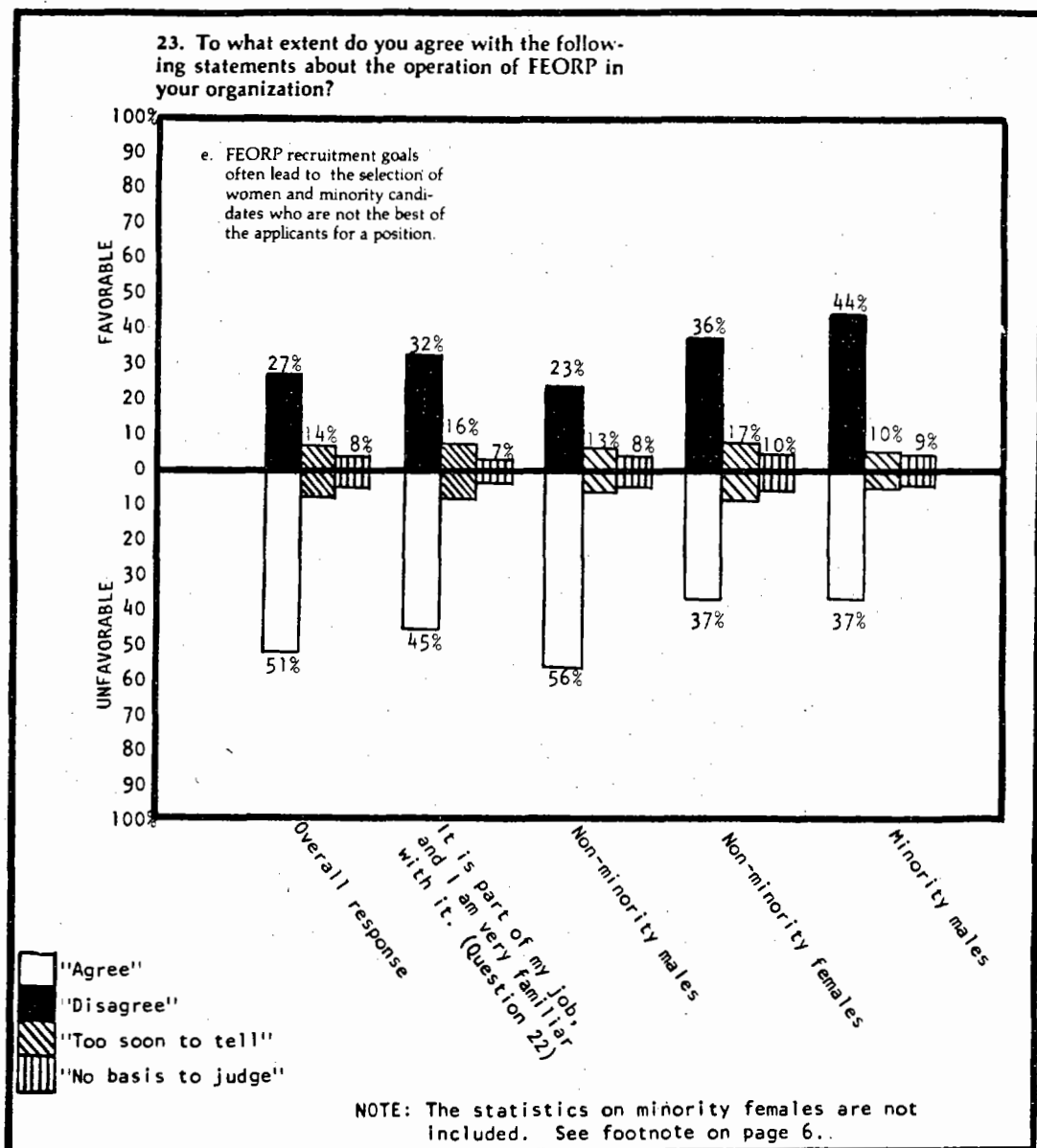
- **Half (51%) of all respondents on FEORP agreed that FEORP recruitment goals often lead to the selection of women and minority candidates who are not the best of the applicants for a position.**
- **Among those who aren't directly responsible for FEORP, the proportion who said better candidates are passed over was even higher, six out of ten (62%).**
- **Even among those who said FEORP was a part of their job, nearly four out of ten (45%) said that FEORP goals often lead to the selection of women and minorities when they were not the best of the available candidates.**

---

<sup>16/</sup> 5 U.S.C. 4313(5).

There were variations along sex and ethnic lines on this issue. We found:

- Half (56%) of non-minority males said FEORP recruitment goals lead to the selection of women and minorities who are not the best candidates.
- Minority males disagreed that recruitment goals led to the passing over of better candidates by a small margin (37% leads to passing over versus 44% disagree).
- Non-minority females were almost evenly divided on this issue (37% agree versus 36% disagree).



### OPM MANAGEMENT OF FEORP

We asked those responding to this section on FEORP to rate the quality of OPM management of FEORP over the last year in terms of specific factors: policy guidance; technical assistance and consulting services; program oversight; and coordination with the EEOC on overall program direction. Overall, ratings were unfavorable. We found:

- **Six out of ten respondents (65%) rated OPM's policy guidance on FEORP as fair to poor.**
- **Six out of ten (60%) also rated the technical assistance and consulting services OPM provided their organization only fair to poor.**
- **Less than two respondents in ten (17%) rated OPM's oversight of FEORP effective. A third (35%) said they had no basis to judge OPM oversight.**
- **Seven out of 10 (69%) said that OPM and EEOC policies were only sometimes or rarely well coordinated.**

### DIFFERENCES IN PERCEPTION BETWEEN MEN AND WOMEN

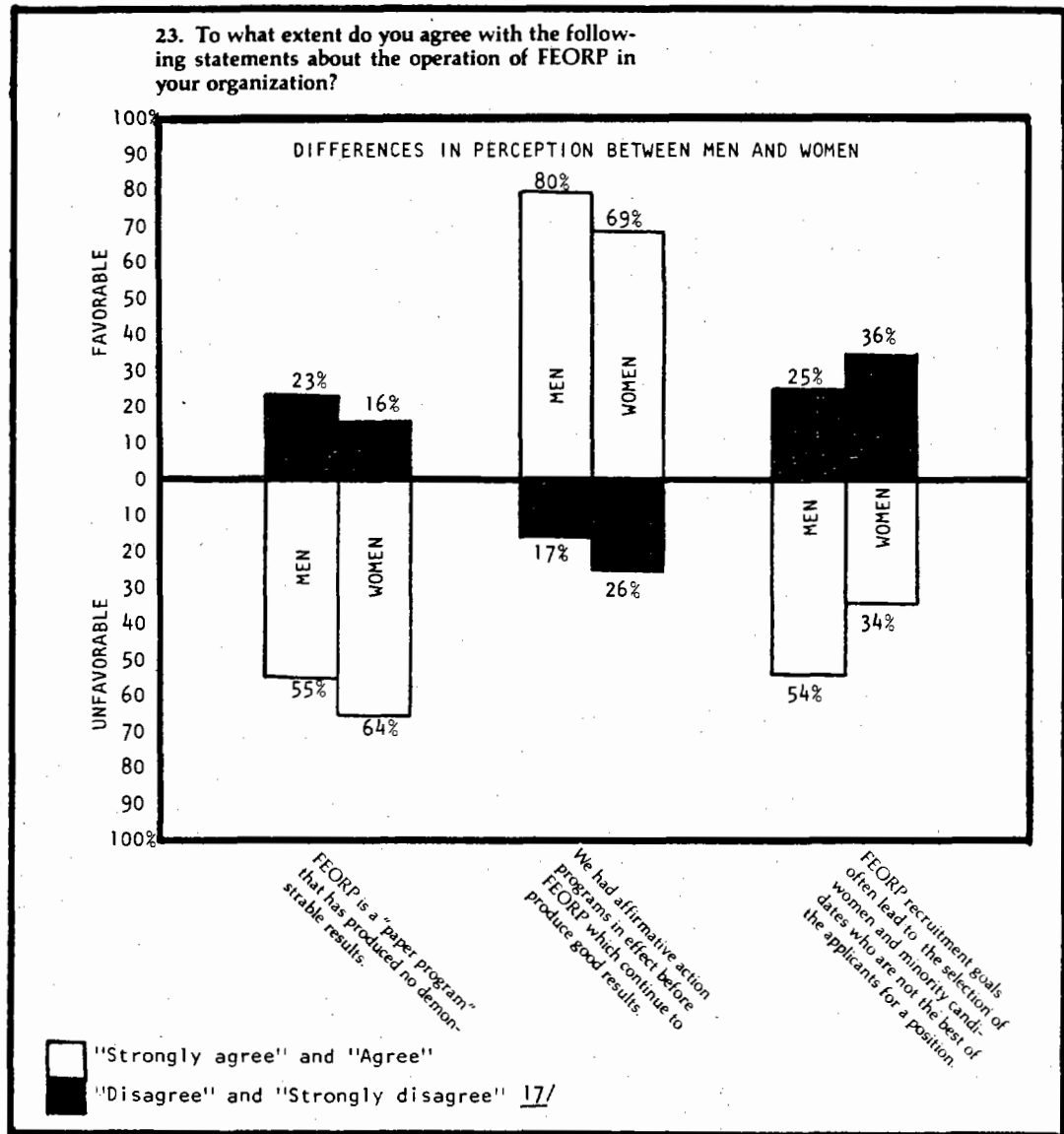
In addition to the differences in responses between non-minority males, non-minority females, and minority males noted above, there were some differences in the responses of men versus women. We found: 17/

- **While overall ratings were nearly equal, women disagreed somewhat more strongly than men that FEORP had produced additional candidates.** (Men: disagree 43%, strongly disagree 22%, total 65% disagree. Women: disagree 37%, strongly disagree 29%, total 66% disagree.)
- **A higher percentage of women rated FEORP a paper program than did men.** (Favorable: Men 23% versus women 16%. Unfavorable: Men 55% versus Women 64%.)
- **Women felt much less strongly than men that their agencies had programs in place prior to FEORP that were still producing good results.** (Favorable: Men 80% versus Women 69%. Unfavorable: Men 17% versus Women 26%).

---

17/ Totals for women as a group include responses of minority females.

- **Women felt less strongly than men that recruitment goals lead to the passing over of better candidates** (leads to passing over: Men 54% Women 34%, disagree: Men 26% Women 36%).



In sum, it appears that women not only have less confidence in FEORP than men, but also have less confidence in earlier programs.

18/ To simplify this chart, no basis to judge and too soon to tell responses are omitted. This is the reason that columns do not add to 100%.

## **ORGANIZING TO CARRY OUT SPECIAL EMPHASIS PROGRAMS**

FEORP is both a personnel staffing and an equal employment opportunity program. A frequent question with programs like FEORP is: "How should program leadership be structured?" We asked participants in our overall survey group if their organization split program responsibility for affirmative action and special emphasis programs between the Personnel Office and the Office of Civil Rights/EEO Office. We found:

- **Seven out of ten respondents (71%) said in their organization responsibility for affirmative action and special emphasis programs was split between the Personnel Office and the Office of Civil Rights/EEO Office.**

We asked this group what impact this split had on achieving results in these programs. We found:

- **Nearly half (49%) of those in organizations where responsibility was split said that it hindered or greatly hindered achieving program results.**

## **OVERALL ASSESSMENTS BY AGENCY PERSONNEL DIRECTORS**

Eliminating underrepresentation means nothing less than reengineering the composition of the Federal workforce. To get a top level assessment of where agencies stand in terms of meeting FEORP's goal of eliminating underrepresentation we discussed with agency directors of personnel questions such as the following:

- Does the FEORP program work? Has it increased the pool of qualified women and minority applicants for your agency's positions?
- How well is this joint responsibility of OPM and EEOC working in terms of its impact on your agency's personnel program?
- Is anyone doing long range workforce planning in the EEO area? If yes, who? If no, should it be done? Who should do it?

**Inability to reach compliance.** With only a few exceptions, the directors we spoke to indicated they felt confronted by a "no-win" situation in terms of meeting EEO program goals. Many described very active FEORP related efforts to recruit and advance minorities and women which were backed up by high level commitment from top level agency officials. Nonetheless, virtually all said their agencies now have and would continue to have areas of "underrepresentation" well into the future, because of such factors as:

- unrealistic statistical goals
- hiring freezes



- shortages of candidates in certain occupations or geographic regions
- the difficulty of overcoming long standing imbalances

The personnel director of one cabinet agency told us that his staff had developed a computer model to forecast the agency's future workforce turnover and staffing needs. Using this model, it was determined that even if every available vacancy for the next five years were exclusively reserved for women and minority candidates, it would make only very small percentage change in the overall level of underrepresentation in their mainline occupations. These are precisely the areas where the department is under the greatest pressure to show immediate and dramatic improvement.

This observation very closely tracks the testimony of the former Deputy Director of OPM on the same point:

As a result of this career system, changing the overall composition of the work force is by its nature a long term proposition. For example, if we were filling jobs right now and in future in accordance with the proportions of the population, each segment of the population in the workforce, it would be approximately 15 years before we would really achieve distribution in the work force equal to the current labor force. 19/

Many of those we spoke to felt that the inclusion of the minority recruitment/FEORP provisions in the law had the positive effect of giving the EEO program greater impetus, and had reemphasized the need to insure that selection systems were job related. At the same time however, few directors felt that FEORP had actually contributed to increasing the number of qualified women and minority candidates for jobs in their agencies. One director's comment was characteristic: "FEORP is a lot of new reports, with no new ideas. We have been doing targeted recruitment of women and minorities for years."

Many of the problems and difficulties identified in the FEORP program stemmed from what individuals felt were inconsistencies in the law itself:

There are so many special programs and protected classes that it makes the definition of what constitutes "merit" much more complex. You have to factor in certain social purposes into the definition of merit. FEORP hasn't helped. Essentially it was a political ploy. The basic approach is 10-15 years behind the times. Agencies were already aware of the need to locate minorities and women. Those framing the legislation most likely meant hiring rather than recruitment, in which case it becomes a quota

---

19/ EEO Oversight Hearings at 13 (Statement of Jule Sugarman).

system. If that was the goal, the law should have provided Schedule A hiring authority to be used where a certain percentage of underrepresentation occurred. That would have been more sensible and direct.

\* \* \* \* \*

You have to start with the law and not OPM. The law is 'technically' a disaster. It's not clear how the law intends agencies to relate measurements recorded to the real life flow of applicants. FEORP and the consent decrees (on the PACE exam) are just a lot of numbers that don't bear any relationship to the true market, true applicant flow. In some of the occupations, there are just not many minorities available to us. This type of program doesn't advance the cause of affirmative action, it merely created credibility problems and a lot of unrealistic expectations. . . . Those who sincerely want to do the right thing are the most frustrated.

\* \* \* \* \*

You can't meet FEORP goals in a declining workforce. OPM should take the lead and go to the Hill to explain the realities of the conflict between reduced employment and minority recruitment goals.

\* \* \* \* \*

The problem with FEORP is that it's only a recruiting mechanism. We still have to use the OPM registers. What we need is appointing authority.

**OPM-EEOC.** Another frequently cited problem was the fact that OPM's responsibilities under FEORP parallel--some say overlap--EEOC's responsibility for administering the affirmative employment provisions of the Civil Rights Act. Many felt this situation had caused problems with coordination of reporting requirements and philosophy:

Disagreements between EEOC and OPM have made implementing the FEORP program more difficult. . . Both agencies seem most intent on imposing reporting requirements.

\* \* \* \* \*

Responsibility for affirmative action must go to either OPM or EEOC. The historic hostility between the two agencies still exists. It causes 'shopping around.' There

needs to be a single focal point for affirmative action programs. . . .

\* \* \* \* \*

There is a conflict in roles between OPM and EEOC. We got a request for an affirmative action plan from EEOC and a request for a FEORP plan from OPM. The requirements were almost parallel. This generates duplication of effort.

\* \* \* \* \*

Nobody knows who the hell is in charge. There hasn't been a hell of a lot of enforcement. . . .

\* \* \* \* \*

OPM and EEOC are 180 degrees apart. They cannot get together on affirmative action programs. The problems are not OPM's fault. On the other hand EEOC is not at fault.

\* \* \* \* \*

OPM and EEOC's guidance is confusing. Any increases in our applicant pools are a result of our own effort. Neither OPM or EEOC have contributed.

\* \* \* \* \*

No one person is in charge of the game. No one is doing any thinking about the problem. The area needs cleaning up badly. EEOC exists, but just churns out a lot of paper demanding impossible things.

**Are these problems real?** In concept, an agency would not have to worry about FEORP at all if it could simply just hire enough women and minorities to eliminate underrepresentation. In practice, Federal managers say they are fully willing to take this step but find themselves unable to, contending that many of the same problems which OPM and GAO have documented impede their efforts to achieve a representative workforce.

But there are implementation problems in nearly every program. Why have the problems in this particular area proven so difficult to overcome?

**Supply versus Demand.** The FEORP program is based on and driven by a statistical measure: "underrepresentation." To implement the statute, OPM has developed an "underrepresentation index," which is arrived at by dividing an agency's employment percentage of a particular minority or sex group in a given

employment category by the percentage of that same group and category in the local or national civilian labor force (whichever is higher) 20/ and multiplying by 100.

However, as OPM's own guidelines point out, "determinations of underrepresentation made in support of FEORP are based on civilian labor force data **without regard to the availability of minorities in the labor force identified as having (or potentially having) the skills needed to perform in various occupations and pay grades.**" 21/

It is this conscious disregard of the realities of the recruiting marketplace which discredits FEORP in the eyes of many of the personnel directors we spoke to. These persons pointed out that there are a number of occupations which the Government has a hard time recruiting qualified candidates, regardless of sex or race. This occurs because of a general undersupply of qualified candidates for those occupations, or because the Government cannot compete effectively with other prospective employers in the marketplace. Even where the general marketplace provides an adequate pool of candidates for those jobs, the obligation of private employers to balance their workforces means that competition for qualified minority and female candidates is particularly great, and one which it cannot be assumed Government managers can win.

In addition, because the FEORP "underrepresentation index" does not take account of demographic realities (such as age, population distribution, education patterns), it leads to peculiar distortions.

Thus, while even the most enthusiastic proponents of the program (such as former Deputy Director Sugarman) concede that the immutable truth of the demographic realities is such that FEORP's representation goals cannot be met for years, the statistical mechanics produce vagaries which there is no doubt are the precise opposite of the intentions of the program.

A graphic example is the fact that by applying this methodology to the Federal workforce on September 30, 1980 OPM was forced to show in its second annual report to Congress on the FEORP program that **white males were an underrepresented group in the Federal workforce.**

Were FEORP not specifically limited to the recruitment of minorities and women, **following the logic of the program would mean that Federal agencies would have to take remedial steps to increase their recruitment of white males.**

---

20/ Agencies can use a lower local percentage for jobs at GS grades 4 or below and corresponding blue collar positions. They can use local percentages which are lower than national percentages for professional jobs only after consultation with OPM.

21/ Attachment 1 to FPM Ltr. 720-2 (8). See also EEOC's proposed Management Directive 707 which states: "Under law, FEORP determinations of underrepresentation are based on undifferentiated CLF data" (MD-707 at 43).

This sort of anomaly undermines the credibility of the program and gives managers the impression that the deck is "stacked" against them in the FEORP program. Further, if FEORP standards are perceived as unfair, it is more difficult to get higher level managers to hold working level selecting officials accountable for meeting them.

### NO STRATEGIC PLANNING

The problem built into FEORP's conceptual underpinning--basing the program on statistical measures which do not relate to real world facts--is compounded by the fact that **no one in the Federal personnel community is directing the Federal Government's resources to programs which could measure the imbalances in supply of candidates and job opportunities and then implement remedial steps to improve that balance.**

We asked OPM, for example, to identify any studies planned or currently underway which provide information on future staffing needs and the potential availability of qualified women and minority applicants. In response, OPM told us:

In view of a series of hiring freezes and major cutbacks in Federal programs, personnel ceilings, and agency budgets, **we do not believe it is worthwhile at this time to develop comprehensive long-range plans for staffing the Federal service.** As the future of Federal programs becomes clearer, agencies will be able to develop more realistic plans for attracting a qualified and representative workforce. **Based on past experience, short-range planning (1 year) has been both effective and practical for meeting agency needs by competitive examinations** (emphasis added).

We also asked OPM whether it has a long-range strategy for developing pools of women and minority candidates in career fields and geographic areas where it appears that there will be insufficient candidates to achieve a balanced work force in the future. We were told in response:

In light of the many uncertainties regarding proposed cuts in Federal budget and staffing levels, **it is difficult to plan, at this time, such a long-range strategy.** However, our Office of Affirmative Employment Program (OAEP) is considering amplifying the provision in its basic FEORP guidance, FPM Letter 720-2, on establishing and using Equal Opportunity files. (See Attachment No. 4-1, FPM Letter No. 720-2, Federal Equal Opportunity Recruitment Program, September 19, 1979.) We believe that the use of this information can help make agency targeted recruitment programs more productive. We are also working with other Federal agencies on such efforts as identifying sources of female applicants for occupations where they have not traditionally been employed. (emphasis added)

The responses tend to bear out the criticism of many managers that OPM has been more concerned with plans, statistics and reports than with real world solutions to long-range problems. We asked personnel directors what efforts they were making in this kind of global strategic planning, and whether they thought more attention was needed in this area. Few were doing strategic planning, but most felt that this is precisely the most constructive role which OPM and the Federal Government as a whole can play: developing sources of qualified candidates through long range programs.

### CONCLUSIONS AND RECOMMENDATIONS

The FEORP program represented the best hopes of the architects of CSRA to achieve the national goal of a representative workforce established in the first merit principle. Yet it is clear that the program is in trouble among a major part of the constituency responsible for administering this best hope, even among women and minorities who are themselves intended beneficiaries of the program.

The challenge is to move beyond these criticisms, to find mechanisms which will achieve the program's noble goals in ways that are realistic and effective.

It is as unrealistic as it is undesirable to contemplate an abandonment or lessening of the national commitment to provide all individuals an equal opportunity to compete for Federal jobs. At the other extreme, even the imposition of quotas or goals will not result in achievement of a more representative workforce if real world obstacles to reengineering the composition of the workforce are not acknowledged and addressed.

Agency directors indicated that there are some approaches that do seem to have promise. Primarily they involve much more precise forecasting of agency workforce needs, and a coordinated Government effort to actually increase the numbers of qualified women and minority candidates, not just escalate the recruitment competition for the number available.

In addition, long range forecasting and matching of Government recruitment needs with the relevant labor market supply of qualified women and minority candidates available for and interested in working for Federal agencies must be done. It is not enough, however, to stop there.

The method by which the Government holds its managers accountable needs to have a better base in reality. There have been numerous recommendations by GAO and others on how to make the FEORP underrepresentation indexes fairer and more accurate. This should be done, but it is time to look beyond these mechanics. A more perfect index might be a fairer tool for measuring progress. But progress, not measurement, is the objective.

Thus, once accurate supply and demand data have been gathered and forecasts made, the problem of **developing** candidates where the normal labor market will not fill Federal needs should be addressed. Programs should be developed to encourage qualification and skill-building where potential pools of minorities

and women are inadequate. Such programs could include cooperation with colleges, universities and other institutions to develop curricula which match Federal needs, increased funding for developing the on board workforce, e.g., through apprenticeship programs, long term work study programs, etc. The emphasis in such programs would be on developing in individuals the skills needed to be competitive, rather than simply trying to foreordain the outcome of the competitive process. This effort could begin with the highly specialized occupations for which the Government finds it difficult to recruit presently.

## CHAPTER FOUR

### REFORM SYSTEMS AND POLITICAL TRANSITION

#### **Are OPM Programs and Statutory Safeguards for the SES Sufficient Deterrents Against Political Manipulation During Transitions?**

Changes in Presidential administrations are significant opportunities to see how well the checks and balances for sustaining a merit based civil service system work. As a protection against the inefficiencies and abuses of a "spoils system," the vast majority of jobs in all agencies are career positions which can only be filled through fair and open competition. Neither the outgoing nor the incoming administrator is permitted to distort the competitive process to protect or reward old colleagues, or bring in a "new" team.

Our limited resources did not permit us to directly monitor or investigate personnel actions in the line agencies during the transition. Instead, we focused our attention on the quality of OPM's leadership in protecting the merit system during this sensitive period. We were also able to survey a representative sample of the Senior Executive Service to assess the apparent impact of the transition on its members.

We looked specifically at the following issues:

- How well were the special provisions in the CSRA to protect SES members from arbitrary reassignments and evaluations during transitions working?
- Did agency personnel directors see OPM as having taken effective steps to discourage partisan political manipulation of personnel actions during the transition? Was OPM viewed as a point of support to them with respect to resisting any such partisan pressures as may have existed?
- Do senior personnel professionals see politicization of personnel actions as a problem?

We found:

- No significant problems with the statutory restrictions on reassignment and evaluation of SES members were reported.
- With only a few exceptions, agencies rated the support and assistance they received from OPM during the transition period favorably.
- Overall, agency personnel directors felt that politicization of personnel actions rarely occurred. Where there were problems, they appeared to involve individual cases rather than systemic practices.



- Senior personnel professionals also expressed a high degree of confidence in the merit system's protections against political abuse. However, slightly less than one in ten reported having observed events suggesting appointment to the competitive service as a result of political affiliation.

**OPM should improve its role in preventing political abuse of the merit system by instituting tighter oversight controls during transition periods. In general, however, OPM deserves credit for its positive support of the merit system during the latest transition.**

### **OPM SAFEGUARDS**

The Director of OPM, as advisor to the President on personnel management, has both the opportunity and responsibility to prevent abuses from occurring through the proper design, implementation and oversight of Executive branch personnel programs.

During times of political transition, directors of personnel in the line agencies are in particularly difficult positions. Pressures may be exerted to distort the competitive process in forms which are technically legal and do not allow intervention by the MSPB or the Special Counsel, yet nonetheless pose significant threats to the merit system. It is particularly critical for the Director of OPM at these times to exercise authority as a presidential counselor by counseling political officials to follow responsible, as well as technically legal, courses of action.

What actions did OPM take during the transition to discharge its responsibility to help prevent political abuse?

**"Burrowing-in."** Political appointees in non-career Federal jobs are often individuals with excellent qualifications and backgrounds who can also make a positive contribution in positions under the career civil service. However, personnel actions which result in non-career appointees being given career status must be--and must be perceived to be--wholly free of partisan influence. This is especially true during periods of transition from one political administration to another. The most effective means to the ends of both interdiction and public confidence is close monitoring of the movement of incumbents from such sensitive classes of positions as non-career SES positions and those excepted from the competitive service (such as Schedule C positions) to career positions.

We looked into the feasibility of examining the movement of employees from Schedule C positions into positions in the competitive service during the six months preceding and following the Presidential inauguration, as part of our original planning for this phase of our study. Had an adequate data base been available, we could have, for example, compared the rates of movement during this critical movement with the same movements during a "politically neutral" control period. However, we found that the OPM data bases upon which we would

have had to rely did not contain the sort of information which would have been necessary to do this kind of careful tracking, either historically or during the recent transition itself.

Although OPM chose not to put into place any overall system for monitoring such movements as these, 1/ it did take several actions to prevent prohibited political practices.

Thus after Presidential elections in November, OPM issued guidelines to agencies instructing agency personnel directors to carefully review all proposed actions to place incumbents of excepted positions into regular civil service positions. This guidance prohibited the practice of "blanketing in" political employees by the artifice of removing the "technically" confidential and policy determining characteristics of their jobs for the purpose of converting the position along with the incumbent to the competitive service.

OPM emphasized that reinstatements of individuals who were eligible to move back into the competitive service on the basis of previous experience would have to be processed through competitive promotion procedures if the reinstatement was to a higher grade than the employees last held in the competitive service. OPM also reminded agencies that conversions based upon White House or congressional service were not designed to reward these employees for past service. It announced its attention to closely monitor agency requests for lists of candidates at mid and senior levels (GS-9 through 12; and GS-13-15) to insure that there was adequate competition.

Notwithstanding the fact that we were not able to monitor specific actions in the agencies, we did develop information that suggested the possibility that some such prohibited practices had taken place. When we asked OPM about the specific cases involved, we found that OPM was also aware of them and had in fact completed its investigation and forwarded its report to the Special Counsel.

OPM also issued guidance with respect to SES movements. In January of 1980, the Director of OPM sent a memorandum to the heads of departments and agencies which stated that "while there is no statutory bar prohibiting noncareer appointees from competing for career SES appointments, such appointments are contrary to the spirit of reform and should only be made under the most extraordinary circumstances." 2/ OPM put agencies on notice that it would pay "particular attention" to the nomination of former noncareer appointees in its review of managerial qualification of proposed candidates for

---

1/ At our original briefing by OPM Senior staff, we were told by a senior member of OPM's Office of the General Counsel that monitoring for political abuse was not OPM's responsibility, but that of the Special Counsel. In fact, however, OPM as an institution took a broader view of its responsibilities, and one more in accord with its overall obligation to the merit systems.

2/ Memorandum for Heads of Departments and Agencies from Alan K. Campbell (January 14, 1980).

the SES to make sure that any such proposed appointments were free from any "stigma of impropriety," and urging agencies to avoid "even the appearance of political favoritism."

OPM's Agency Compliance and Evaluation group investigates allegations it received regarding improprieties in conversions to career status. In the critical area of conversions to executive positions, OPM reported in its response to our inquiries that no one had moved from a noncareer or limited position into an SES career appointment since the effective date of the SES without going through a merit staffing process. This process includes open announcement, merit screening of competing candidates, and evaluation by a Qualifications Review Board. All actions in which individuals have moved from noncareer appointments to career SES appointments are recorded in OPM's executive personnel information system.

### SURVEY RESULTS

The Board's survey of senior agency personnelists was conducted after the Presidential elections, during the peak of the transition period. If widespread partisan political pressure had been exerted on the individuals we surveyed at any time during the previous year, it is likely that these experiences would have been reflected in their responses. On the contrary, **the senior level personnel professionals in our survey indicated a very high level of confidence in the safeguards against political manipulation of the personnel system.**

**Seven out of every ten (69%) personnel professionals we surveyed said that career employees were protected against politically motivated actions to a considerable or very great extent. Less than 1% of all respondents said they had observed events suggesting that employees in their organization were being pressured to contribute to a political campaign, or participate in partisan political activities.**

**Less than 3% of respondents said they had observed events suggesting that an employee in their organization was actively seeking partisan political office or raising funds on behalf of a partisan political candidate. Also less than 3% reported observing events suggesting that a career employee had been pressured to resign, transfer, or accept reassignment on account of his or her political affiliation.**

Notwithstanding these general indications of confidence in the working of the protections against political abuse, **slightly less than one employee in ten (8%) said they had observed events suggesting the possibility that an appointment to the competitive service had been made as a result of political party affiliation. Of these, individuals observing problems were twice as likely to be located in Washington, D.C. Only about 2% said they had observed events suggesting the possibility that an employee in their organization had been denied a job or job reward on account of their political affiliation.**

## VIEWS OF AGENCY DIRECTORS OF PERSONNEL

Agency directors of personnel are at the front line in the struggle against political abuse of the merit system. Pressures to abuse the system come in the form of specific requests--or orders--to move real people into specific jobs. We were particularly interested in knowing whether these "front line generals" felt that they were receiving adequate support from OPM during the transition.

We asked specifically if they were satisfied with the steps OPM took during both phases of the transition period to support them and to help insure that personnel actions were free--and perceived as being free--of partisan influence.

**Overall, agency personnel directors rated OPM's performance during the transition period favorably. Partisan pressures appear to be the exception rather than the rule.** Few directors of personnel said they had been subjected to any pressure. None of the agency regional personnel directors or OPM regional staff we spoke to recounted problems with partisan pressures. The agency regional executives we spoke with felt that partisan political considerations were more likely to occur in Washington, D.C. than in agency field offices. Directors of personnel in military departments indicated that the presence of career military officers at top levels in each of the services tended to discourage partisan manipulation, and was thus not a problem for them.

Several of the department level Directors of Personnel in civilian agencies in Washington, D.C. did describe difficult experiences with personnel actions which they thought could be "politically sensitive." Most often, though, these were individual cases which the directors involved felt they had been able to handle in an appropriate manner. No widespread patterns of abuse, or flagrant violation of law were cited.

**A number of agency level directors in Washington, D.C. cited as particularly helpful an interagency meeting at OPM prior to the inauguration.** At that session, the present director of OPM (then acting as head of President-elect's OPM transition team) personally assured agency personnel directors that the new administration would support them if they were subjected to partisan pressures regardless of whether outgoing or incoming political officials were involved. These assurances, together with a declaration by OPM's Associate Director for Agency Relations of an "open door" policy for anyone experiencing problems, were regarded as giving any Director who needed it an avenue of appeal inside the management structure if partisan pressures threatened to become overwhelming.

**By far, the strongest deterrent cited by department level Directors of Personnel was support from top management within the agency itself, usually at the Undersecretary or Assistant Secretary for Administration level.** A number of directors cited their advisory role to their department's Executive Resources Board as having helped them establish a close working relationship with these key officials. This gave greater weight to their recommendations to avoid personnel actions of questionable propriety.

**Some Problems.** Even though the response by personnel directors to OPM's performance during the transition was good overall, two problems were identified which bear noting.

One individual said that while OPM's bulletins had been helpful, "distinctly unhelpful" was OPM's practice of talking directly to the political leadership in that agency about possible actions in specific cases without keeping the personnel office informed. This personnel director had taken a tough line on partisan placements and had "taken a lot of grief for it," in several instances having "OPM's words crammed down my throat." This individual said the problem was symptomatic of the OPM top leadership style during the last administration-- cutting personnel directors out of the line of communication. This director felt that failure to touch base with agency personnel directors leaves them vulnerable to suspicions of political people, who are receiving conflicting advice which OPM offers based on an incomplete picture of the facts.

A second director indicated that he had received good support from OPM on selected cases but OPM had actually made it more difficult to resist what he considered unreasonable conversions in other instances. He said his experience had been that OPM's position was that best qualified applicants cannot be penalized simply because they happen to be Schedule C appointees. Following this reasoning, OPM field offices had certified directly to regional offices in his agency several candidates for career jobs which he felt would have been regarded as patently political placements by those inside the agency.

He argued that even though the mechanics of competition are observed in such a situation, there is a chilling effect on real competition where an individual who is acting in a political role enters the competition for a career position which is only technically different from the one that individual is already performing, or which it appears has been "targeted" for that person. He believed this was the situation in these instances. The fact that OPM had approved these individuals for selection and would not rescind that approval made it very difficult for him when he argued to higher management that these appointments should not be made. It also obviously did not help efforts to discourage this type of action by field managers.

Neither of these phenomena appear to be widespread problems. Nevertheless, we believe that the Director of OPM should take steps to insure involvement and consultation with agency directors of personnel on means of reducing these types of problems where they do occur.

#### **TRANSITION TESTING OF THE SENIOR EXECUTIVE SERVICE**

We must encourage better performance in ways that are used widely and effectively in private industry. Top Federal workers are ready and willing to respond to the risks and rewards of competitive life, and public service will be healthier when they have that chance. 3/

---

3/ President Jimmy Carter, speech to National Press Club, March 2, 1978.

One far-reaching change brought by civil service reform was the creation of a new personnel system for the Government's top executives. A key theme of the reform movement had been that the procedures which protected career employees from possible political manipulation had over time become so cumbersome they were now actually a source of abuse--a barrier which denied elected political leaders and their appointees the legitimate flexibility needed to manage effectively.

With the creation of the Senior Executive Service, the Government's highest level career managers traded some traditional protections in return for the chance to compete for greater compensation under a system in which rank and pay are based on individual performance rather than rigid classification of duties and positions.

The 1980 election and resulting transition is the first real test of how well the new balance struck in the SES between flexibility and protections is working.

**The view from the agencies.** We asked personnel directors how well the 120 day moratorium on reassigning and evaluating SES members was working. Although several said that their political leaders had inquired in a general way about what flexibilities were open to them, none cited any specific abuses. This corresponds to the findings of a telephone survey which the Board conducted with 100 SES members during the second and third weeks of March 1981.

In that survey, SES members were asked about whether they had experienced any political pressures during the transition period. Of the one hundred executives interviewed, none had been personally pressured to accept an involuntary reassignment or detail, or expected to be subjected to a politically motivated performance appraisal during the 120 day moratorium period.

There were apprehensions among some executives that they might be involuntarily reassigned after the 120 period was up. However, in nearly all cases these misgivings were based upon rumors, media stories, or general speculation about the impact of proposed program cutbacks.

The following are representative comments from personnel directors:

You are always going to have problems at executive levels with such things as personality clashes. SES should help in dealing with these kinds of problems without being destructive to people . . . . Someone with a conspiratorial mind could have used the old system for "political" purposes. I have no sense that is happening now . . . By and large, OPM does a good job in this area.

\* \* \* \* \*

I've seen no problems with the 120 day notice periods, but it may be too soon to tell. . . . Ultimately, SES protections are a function of the integrity of the managers involved. "Protections" are something that only invites people to get around them.

\* \* \* \* \*

As far as I can tell right now, the political types are well aware of the 120 days. It is also clear that there will be some reassignments after the 120 days is up. (But none during that period.) There is no hint that any arbitrary or capricious performance evaluations will be made.

\* \* \* \* \*

SES was founded for the "risk takers". The 120 day moratorium and the 10 percent limitation (on noncareer appointees) are effective prohibitions. . . . One of the most damaging thing is what Congress is doing: collecting details, spending more money in reviewing than on the programs being reviewed.

\* \* \* \* \*

I've had some inquiries in this area, but no signals that massive changes are planned.

\* \* \* \* \*

I was asked whether or not we could give people their 120 day notices 120 days in advance. I was able to turn this off quickly by explaining that that would clearly violate the intent of the law and that we would probably lose if anyone decided to contest the action.

\* \* \* \* \*

I have no sense of any attempts to circumvent the 120 day provisions or to exert political pressure. However, what you read in the newspapers (about a rumored plan for mass shifts of SES members) is scary. As an individual SES member, I have an uneasy feeling that if someone is out to get me I will probably end up standing alone. There is no evidence either way though, its too soon to tell. The way it is written and interpreted the 120 day delay is not that significant a protection.

\* \* \* \* \*

Its too soon to tell if SES protections are working. Our agency has no top appointee at present. I hope that MSPB is concerned and will provide support if problems do arise. The question of political pressure being exerted has been much easier to handle in this transition because of Don Devine's warning (as head of the OPM transition team) that the new administration would not tolerate abuses. It's where nothing is said that the personnel director has problems.

### **CONCLUSIONS AND RECOMMENDATIONS**

We conclude from our study of the area that although there were isolated instances of questionable conduct during the transition, there is no evidence that organized or widespread abuse of the personnel system generally, or of the SES in particular, occurred on either side of the transition.

Although OPM took a minimal role during the transition (consistent with its general view of delegating responsibility to the line agencies), limiting itself to providing general written advice and scrutinizing SES movements rather more closely than usual, agency directors of personnel seemed comfortable with this arrangement, and felt that they had been able to cope with whatever pressures existed.

Nevertheless, we are troubled by the observations of those senior personnel officials who reported having observed instance of possible appointments to the career service based on political affiliation. Since these observations are derived from the survey instrument, we cannot say whether these observations report actual abuses, nor on whose part any such abuses may have occurred. A comprehensive data base for tracking movements between Schedule C and other excepted positions and positions in the competitive service would greatly increase the feasibility of detecting any possible abuses which these observations may represent, as well as serve as a further deterrent to any future such conduct.

Accordingly, we recommend that OPM take a more positive role in future transitions, and that in particular it develop a more sophisticated system for tracking movement of persons from political type appointments to career type appointments. An effective means for OPM to establish its bona fides in this area would be for it to issue guidance and install monitoring systems well before the heat of partisan campaigns and the sensitivities of actual transitions.



## CHAPTER FIVE

### PROBLEMS ON THE HORIZON

#### What Merit Systems Problems Lie Ahead for the Federal Personnel Program?

The issues which we have discussed in previous chapters have in common that they are present realities. During the course of our research, the personnel directors we interviewed and the groups with which we pre-tested our questionnaire pointed up additional matters they felt we should explore. While these issues were not a part of our original study design, several of them could pose problems for the merit system in the future. We outline them in this chapter. They are:

- **Performance Appraisal.** The costs of developing and implementing performance appraisal systems are very high. A great deal of attention has been focused on getting agency systems implemented by the statutory deadline. A number of individuals we spoke to asked: "What will we have once the system is up and working?" What will the returns be on this investment?
- **Multiple Policy Authorities.** The Civil Service Commission acted as the final authority on most Federal personnel matters before CSRA. Now agencies must deal with OPM, FLRA, MSPB and the EEOC. What implications does this new structure have for rational policy making?
- **Costs of Administering Employee Protections.** Many we talked to complained of an increasing tendency toward greater formality and legalism in all areas of Federal Personnel Management. They complained that the costs of these legalistic procedures are excessive. Who, if anyone, knows what these costs are, and what tradeoffs are being made in order to fund them?
- **Labor-Management Issues.** Unions understandably try to get the best deal they can for their bargaining unit members. Are there potential conflicts between the merit principles, and policies and procedures stemming from negotiated bargaining on matters affecting working conditions?

We found:

- While most personnel directors feel that the statutory deadline for implementation of performance appraisal will be met, our survey group saw problems in performance appraisal systems. Nearly half of those in our survey group who rated the progress of performance appraisal say that the new performance appraisal system in their agency will have no impact on, or will actually impede, their organization's productivity three years from now. There was also little confidence that managers are taking action to remove poor performers. OPM plans for evaluating the linkage between performance appraisal and productivity may need to be improved.

- Those responsible for making personnel management decisions must consider, in addition to policy and guidance from OPM, the decisions and policies of MSPB, EEOC, FLRA, the Comptroller General, and the Federal courts. There currently is no central reporting system which integrates these multiple and changing policy constraints to provide up-to-the-minute information for the operating level user. Beyond these purely operational concerns, there is a perception among some observers that the Executive branch lacks an effective means of defining an overall direction and set of priorities for the Federal civil service system and that this could be a serious problem in the future.
- The costs agencies incur in relation to the procedures set up to guarantee employee rights are not separately funded. The money spent on these functions translates directly into reduced resources available for service to the public. There is no concerted effort underway at this time to accurately measure or try to systematically reduce these costs.
- Many agency personnel directors feel that there is at least a potential for conflicts between merit principles and such union proposals as limiting competition to bargaining unit members or introducing the arbitrary use of seniority as a factor in personnel decisions. However, few saw this as a significant problem at this time.

### RECOMMENDATION

#### OPM should:

- Prior to the October 1, 1981 deadline for implementation, thoroughly review present plans to evaluate the results of performance appraisal to insure that there will be an adequate system in place for evaluating the performance appraisal--productivity linkage, and for making cost/benefit assessments of the performance appraisal process.
- Take the lead in forming an interagency task force to promptly develop a system for the centralized, integrated reporting of decisions and issuances of the central personnel authorities and other bodies which affect personnel management decisions.
- Initiate a project to develop uniform measures of agency costs related to the protection of employee rights, identify techniques for reducing agency costs in this area, and recommend to Congress and the President any legislative changes necessary to achieve these objectives.
- Monitor closely trends in negotiations to identify potential conflicts with merit principles, and develop overall Executive branch strategies for addressing any that arise.

## PERFORMANCE APPRAISAL

One of the key problems cited during the reform process was that the previous civil service appraisal systems had become meaningless. While there was supposed to be, at a minimum, an annual determination that an employee was performing at an acceptable level of competence, this process had become basically a pro forma exercise. Within grade raises (step increases), which were supposed to be withheld from poor performers were nearly automatically awarded. Agency in-house appraisal systems were regarded as overly subjective, and focused on character traits rather than program achievement.

To correct this situation, the CSRA requires agencies to develop performance appraisal systems which identify and communicate to each employee critical job elements, and the standards of performance required to meet those elements. Those new systems are required to be implemented in all agencies no later than October 1, 1981. The agency level directors of personnel we spoke to generally agreed that they would have their systems in place by the statutory deadline.

We also asked our survey group about the implementation of performance appraisal in their agencies, focusing in particular on performance appraisal for individuals not covered by the SES or merit pay. We found a number of interesting perceptions which will be addressed in our final report on the personnel survey. However, one result we found so disturbing as to report here:

- **Nearly half (49%) of those rating performance appraisal say that the new general employee performance appraisal systems in their agency WILL HAVE NO IMPACT OR WILL ACTUALLY IMPEDE THEIR ORGANIZATION'S PRODUCTIVITY THREE YEARS FROM NOW.**

A great deal of attention has been focused on simply getting performance appraisal systems in place by the statutory deadline. However, appraisals of employee performance are not an end in themselves. The principal justification for the cost of appraisal systems is their utility as an instrument for improving individual and organizational effectiveness. A key test of a performance rating system is whether poor performers are identified and appropriately dealt with. We found:

- **Less than two respondents in ten (17%) said that employees in their organization are removed when their performance remains unsatisfactory.**
- **Over a third of all respondents (37%) said that to a considerable or great extent managers in their organization were not acting to improve or remove poor performers. Over eight in ten (86%) agreed with this statement to at least some extent.**

On the same issue, we asked OPM what specific projects it has underway to gather data on the performance appraisal-productivity link, and what sources outside OPM were being relied on to provide additional information. While OPM cited numerous efforts underway to study or improve productivity generally, only two seemed to promise specific information on the impact of performance appraisal on productivity: OPM's contractor run organizational assessments, and case studies being conducted by OPM at two sites in two agencies. 1/

But, as OPM itself says regarding the results of its case studies, "Because they are case studies, it will not be possible to draw Government-wide generalizations." And, with respect to the organizational assessments OPM states: "It will not be possible to assess the effect of new performance appraisal system on improving productivity until at least the third year reports are finished (late 1982), since it will require that much time for the appraisals to actually result in personnel actions. Observable changes in productivity may still require a much longer time frame to occur."

### RECOMMENDATION

- **Prior to the October 1, 1981 deadline for implementation, OPM should thoroughly review present plans to evaluate the results of performance appraisal systems, to insure that there will be an adequate system in place for evaluating the linkage between performance appraisal and improved productivity, and for making cost/benefit assessments of the performance appraisal program.**

### MULTIPLE POLICY AUTHORITIES

#### The Regulatory Hydra

The Hydra, a nine headed water serpent in classical mythology, grew two heads for every one that was cut off. A significant number of persons we talked to fear that the Federal personnel system, with its variety of separate agencies having independent jurisdiction over separate areas of that system, is taking on Hydra-like qualities.

The Office of Personnel Management is the President's chief personnel advisor and theoretically "sets" Executive branch personnel management policy. However, OPM's pronouncements and their real world consequences are subject to review and counteraction by:

- The Federal Labor Relations Authority, which has overall responsibility for interpreting and administering the statutory provisions of the labor relations program.

---

1/ OPM indicated that other potentially promising approaches for gathering information in this area such as a Title VI research project, or in-house research were either postponed because of lack of funds or merely at the talking stage.

- The Merit Systems Protection Board and Office of Special Counsel, which are responsible for insuring Executive branch policies and actions are in accord with statutory merit principles.
- The Equal Employment Opportunity Commission, which has oversight and regulatory authority to insure that Federal practices are consistent with civil rights laws.
- The courts, whose decisions one personnel director described as "the wild card in this whole process."

In theory this potpourri of independent agencies results in a dynamic balancing of interests and makes possible more complete attainment of the specific goals for which each was established. Yet a significant number of directors of personnel feel that the multiplicity of policy determining agencies bodes ill for the long term of rational personnel management policy.

### **The Theory**

The thinking underlying the present approach is perhaps best expressed in the final staff report of the President's Reorganization Task Force on Personnel Management (The Ink Report):

The Government's central agency for personnel management--the Civil Service Commission--has suffered from the multiple and ill-fitting roles it has been expected to play. . . . Expected to be all things to all parties--Presidential counselor, merit "watchdog," employee protector, and agency advisor--the Commission has become progressively less credible in all of its roles. It has also dissipated its energies by distributing them over so many areas. 2/

The Ink Report also covered the conflicts between those duties enumerated above and the Commission's responsibilities for labor management relations and Federal sector compliance with equal employment opportunity requirements. The solution to these problems of multiple role conflicts was the creation of multiple agencies, each having but one specialized role.

### **The Result**

We asked personnel directors to tell us what had been their experiences working with the new multiple central personnel agencies. Over half saw problems with the new arrangement. Reactions seemed to sound a consistent theme:

---

2/ - Ink Report at 233.

This is major transition, and the central bodies are still trying to find their proper roles. There is a tremendous amount of confusion.

\* \* \* \* \*

The goal of the CSRA was to simplify and strengthen appellate procedures, the reverse has happened. Employees now get four bites at the apple: grievances and appeals to FLRA, appeals to MSPB, appeals to the Special Counsel and charges of discrimination.

\* \* \* \* \*

We have greater complexity with no greater assurance of more equitable consideration.

\* \* \* \* \*

The effect is a dilution or amelioration of merit principles. Each independent central authority has its own philosophy. What's right depends on who's looking.

Two directors gave particularly thoughtful assessments. One noted:

Given the dispersal of authority and natural tendency of new organizations to attempt to establish turf and jockey for position, no single body can give a 'definitive' answer on policy questions. For example, OPM is now attempting to tighten up its fitness for duty policies. Any new regulations by OPM could be rejected by the FLRA or the MSPB. Agencies are understandably reluctant to move forward until, either through appeals or case decisions, there is some clear indication that their actions will be upheld.

A second director said:

Part of the justification for the creation of separate agencies through the CSRA was that there was an inherent conflict in the multiple roles played by the former Civil Service Commission. Constituting each of these roles in a separate agency did not remove the conflict--it only removed the balancing and mediating mechanism which the three commissioners formally supplied. There is no longer a focal point within the Executive branch to chart an overall philosophy for the Federal personnel system. There is no referee, no priority-setting mechanism. Each of the independent agencies is going in separate directions, following the interests of their little piece of the action.

\* \* \* \* \*

OPM was perhaps originally conceived as a super policy setting body, however, it has not worked out that way. . . . The current environment has made it very difficult to advise top managers on the likelihood of their success in taking various types of personnel actions. The merit system cannot work if there is no way to define merit. Right now, each central agency is defining it in its own way.

\* \* \* \* \*

There needs to be a clearinghouse mechanism. Perhaps a policy board consisting of the heads of each of the separate agencies ought to be formed. This would at least give the four central personnel authorities an opportunity to work in concert rather than at cross purposes.

As is true of many aspects of CSRA, it is too early to state with certainty how serious these concerns are. Nevertheless, some statements can be made now.

**Operational Problems.** At a purely operational level, there is a clear need for a central, integrated reporting system upon which persons responsible for making personnel management decisions can rely for a complete picture of applicable law and policy as it exists at any given moment. As matters stand now, these persons must consider the latest pronouncements of MSPB, EEOC, FLRA, the Comptroller General, and the Federal courts, in addition to OPM's policy guidance and the suggestions of the GAO in its numerous oversight reports. **There is no single source to which one can turn to retrieve this information on an organized, up-to-the-minute basis.**

This is a particular problem for smaller agencies, where the personnel staffs are smaller and unable to specialize to the degree that larger agencies are able. When the staffs of these agencies are required to deal with issues which are at the outer fringes of development, they are sometimes required to "fly blind." They simply cannot devote the staff time required to locate and analyze all of the potential multi-agency controlling guidance which exists.

A variant of the problem plagues even the largest and most highly organized personnel staffs: the purely logistical problem of making sure that all of this diverse material is captured and distributed to their own decentralized infrastructures. For example, the headquarters personnel office of one large agency routinely receives only two copies of decisions of the EEOC, which it must then reproduce and distribute to hundreds of its installations in the field.

One director suggested that a solution to this operational problem would be to expand the existing Federal Personnel Manual System so as to include chapters or supplements, through which would be distributed all of the decisions and issuances of all of the relevant agencies.

## RECOMMENDATION

### OPM should:

**Take the lead in forming an interagency task force to promptly develop a system for the centralized, integrated reporting of decisions and issuances affecting FPM decisions.**

### **COST OF ADMINISTERING EMPLOYEE PROTECTIONS**

Many of the agency personnel directors we spoke to feel that there is an increasing tendency toward greater formality, legalism, and litigation in systems designed to protect employee rights, resulting in greatly increased costs to agencies.

One director complained bitterly of a case involving the withholding of a within grade increase. The agency had to fly the employee and supervisor involved to the regional city, where a complaint hearing on the matter was held. In addition to the travel and per diem costs, and lost time on the job during the three days of the hearing, there were other less visible costs. For example, it took the agency a full eight hours to copy and prepare for submission the documents that the hearing examiner had requested as part of the background record for the case. This director said that even though the agency was eventually upheld, it was a Pyrrhic victory--the costs, both financial and in terms of frustration for the supervisor, far exceeded the small amount of money that was eventually withheld.

There are numerous other ways that agencies incur costs related to the protection of employee rights. For example, some agencies have labor agreements which obligate them to allow union stewards official time to assist employee in the adjudication of grievances. Agencies may also be obligated to pay travel and per diem for union representatives involved in bargaining on new contracts, or during arbitration hearings. Agencies are required to provide for the investigation of EEO complaints, and to set up EEO counseling systems and in-house complaints review and resolutions procedures. There are also considerable costs involved in trying to keep abreast of recent case decisions by MSPB, FLRA, EEOC and the courts. Finally there are also the costs of preparing for hearings, grievances, and arbitrations.

**There is no separate budget for the costs agencies incur incident to the protection of employee rights. The money spent on these functions comes from the agency's overall appropriation, and translates directly into reduced resources available for service to the public.** While this was frequently mentioned as a growing problem, none of the individuals we spoke with felt that there was any concerted effort underway to address this issue. The problem is likely to become more critical as agencies are forced to absorb program cuts and budget reductions in the future.

On the other side of the ledger, it must be pointed out that these costs also result in benefits to the agencies, many of which are difficult to quantify. For example, while the cost of withholding a single step increase



might exceed the amount of the increase itself for a single employee, the demonstration to all employees that poor performance has an effect on compensation may result in broader and longer term savings in the form of increased productivity.

We also know from our study of appeals before the Board that there are significant differences in rate of reversal of adverse actions among the agencies, a fact which suggests differences in the relative abilities of the agencies to prepare, present and pursue cases in the various mechanisms available to protect employees. Similarly, one cannot say on the present evidence what the comparative costs and benefits are of these protections before CSRA and after CSRA.

The point remains, however, that there has been little attention given to quantifying these costs and benefits, nor to finding ways to reduce them.

### **RECOMMENDATION**

#### **OPM should:**

- **Initiate a project to develop uniform measures of agency costs related to the protection of employee rights.**
- **Identify techniques for reducing agency costs in this area.**
- **Identify and recommend to Congress and the President any legislative changes necessary to achieve the above objectives.**
- **Develop programs by which those agencies which have demonstrated more success in administering these systems can share their techniques with less successful agencies, so as to improve the Government's overall performance in this area.**

### **LABOR-MANAGEMENT RELATIONS AND POTENTIAL STRESSES ON THE MERIT SYSTEM**

There was no statutory basis for collective bargaining in the Federal sector prior to the enactment of CSRA. Labor-management negotiations and the administrative machinery set up to regulate and monitor Executive branch activity in this area were based solely on executive order.

CSRA provided a statutory basis for that program, and strengthened it in many different particulars. Few would deny that as a result of CSRA the Federal labor management relations program has assumed much greater prominence and importance than before the Act. Many believe that in the long run Title VII of the Act will prove to have been the most significant part of CSRA, with the greatest eventual impact on Federal personnel operations.

At the broadest level of analysis, it must be conceded that the Congress saw no inherent conflict between the merit principles and the results of the enhanced labor management relations program it mandated in Title VII. Yet it is

equally certain that no one can foresee all of the results of such a vast system, and a few commentators we talked to were troubled by several aspects of the program which they see as having the potential, at least, for deleterious affect on the merit principles.

As a result of these concerns, which were expressed early in our study, we asked directors of personnel:

- Is there a conflict or potential for conflict between the results of the labor relations process and the merit principles?
- If so, is this merely a phenomenon to be expected and accepted, or is it a problem which needs correcting?

### **In pursuit of the abstract concept**

Most of the individuals we interviewed did not feel that there are any immediate threats to merit principles from the labor relations process. A few pointed out that the merit principles leave wide latitude for defining what constitutes a "merit" personnel system. They acknowledged that labor relations decisions and negotiated practices could directly affect "merit" objectives, but stressed that "merit" was a relative concept. Several emphasized management's obligation to reject proposals which openly conflict with merit principles:

It's a question of how you define merit. The old thrust was that merit and consistency went hand in hand. Any deviation was suspect. We've come a long way from that approach and unions are taking us even further.

\* \* \* \* \*

The labor relations program is an example of pressure to circumvent merit as a concept, but we don't approach absolute merit in any of our activities anyway. Merit is an abstract concept. We take steps to approach that concept, but there are real world inhibiting factors that will not allow us to do this.

\* \* \* \* \*

The merit system has to be defined very broadly to accommodate all the different interests involved. If you define it too narrowly, you get irreconcilable conflicts.

\* \* \* \* \*

There is some potential for conflicts between merit objectives and aspects of the labor relations program. Particularly, attempts to build longevity and seniority as criteria in merit selection programs. Pressures to distort

the classification system work against the merit principle of equal pay for work of equal value. It's too soon to tell though whether this conflict is an inherent aspect of all labor--management relations or an explicit result of CSRA. There is not enough information to judge the long term effects of Title VII or CSRA.

\* \* \* \* \*

It's clearly legitimate for unions to try to get the best deal they can, but management has a responsibility not to enter into agreements contrary to merit principles.

\* \* \* \* \*

Labor relations is inherently a conflict situation. Management doesn't necessarily have to agree with something that is contrary to merit principles.

\* \* \* \* \*

Management has a role to say that there are things it will not do.

\* \* \* \* \*

I can see the conflict as being a 'severe problem' in many areas. Overall, though, I don't really think Title VII will change things much.

Those who felt there were problems in the area spoke about a general sense of imbalance:

We will probably end up having to pay nearly a half million dollars just to cover the travel and per diem costs of employees participating on the union negotiating team during this upcoming round of contract talks. I expect there will be some congressional balancing of union needs/management rights if the central personnel agencies cannot strike this balance administratively.

\* \* \* \* \*

Unions will have the upper hand if Government doesn't give more attention to this area. Bargaining is becoming less and less rewarding. Nobody wants to be tied up for six months doing this work and then get charged by their peers with selling out.

\* \* \* \* \*

This is an area that should be brought to the attention of Congress.

On the other side of this argument were those who thought unions served as a positive force for **promoting** merit principles:

An aggressive union can force the personnel officer to do a better job.

\* \* \* \* \*

Federal unions put a lot of pressure on personnel areas because they can only negotiate on work rules. They cannot reach the question of wages. A great deal of union pressure is to enforce personnel rules. However, some union effort is directed to getting around merit principles.

### **Inherent Contradictions**

Only a few directors felt that the labor relations program was currently a serious hurdle to achieving and maintaining a merit personnel system. Many saw potential for conflicts, however, in one specific area:

#### **SENIORITY AND LIMITS ON COMPETITION**

Most directors agreed that it was natural for a union to try to obtain preference for its bargaining unit members in agency promotion plans and other personnel actions. Few saw this tendency as a present problem, but acknowledged the potential for conflict with merit objectives:

To a degree unions do interfere with merit principles, to the extent that they try to control competition.

\* \* \* \* \*

Conceptually and structually it's true that unions seek to limit consideration to bargaining unit members in promotions if they can, but it's not a problem here.

\* \* \* \* \*

It's an obvious problem because unions want seniority, but it's not severe.

\* \* \* \* \*

I don't think there's a problem Government-wide yet. There's not enough cases where unions have bargained down the scope of competition.

\* \* \* \* \*

Unions have an obligation equal to management's to implement FEORP (Federal Equal Employment Opportunity Recruitment Program). They aren't accepting that responsibility, though. In general, the results of the labor relations program run counter to FEORP and other aspects of the reform program.

\* \* \* \* \*

It's not a problem for us, but we're watching (FLRA and MSPB) decisions on cases in other agencies to see what kinds of precedents they set for us in this area and others.

\* \* \* \* \*

Our Washington bargaining unit is very affirmative action oriented. They want all our jobs filled internally through upward mobility with outside hires mostly at entry level. Our field units are definitely trying to limit outside hiring and this makes FEORP hiring more difficult.

#### **RECOMMENDATION**

##### **OPM should:**

**Monitor closely trends in negotiations to identify potential conflicts with merit principles, and develop overall Executive branch strategies for addressing any that arise.**

## CHAPTER SIX

### EPILOGUE

We have stressed in this report the need to maintain equilibrium between "management flexibility" and "employee rights" through the system of merit checks and balances which the Congress enacted in CSRA. Yet neither management flexibility nor employee rights exist in a vacuum, in and for themselves. Each must ultimately serve the public interest.

The difficulty for the policy makers for whom this report was prepared is that the "public interest"--like "merit" itself--is seldom a discrete, quantifiable, certain sum. Whether the glass is half full or half empty depends upon the perspective of the viewer.

Clearly, the Congress knew that the question of how well OPM is serving the merit system can be viewed from many different perspectives. It deliberately and specifically intended to get different points of view when it required annual reports from OPM on specific programs (in addition to OPM's overall annual report) and assigned to both the Merit Systems Protection Board and the General Accounting Office the duty of reporting annually on the "significant actions" of the Office of Personnel Management. 1/

Thus do the Congress and the President receive the sometimes differing but equally valuable views of OPM as program manager and advocate, GAO as auditor, and this Board as merit protector.

This report, we have found, serves an even greater audience than the Congress and the President. In conducting our interviews and pretesting our survey instrument, we were time and again impressed by the fact that those we talked with saw us meeting a long felt need for an independent voice to assay the programs and policies of OPM. One regional director of personnel told us that our visit marked the first time in his career that anyone had ever asked him what he thought of OPM (and its predecessor) who was not a representative of OPM itself.

By tapping the accumulated experiences and perceptions of OPM's principal constituency we have aimed to contribute significantly to the ability of the Congress and the President to understand the reality of OPM's impact on the merit system. Having completed this report, our staff are even now defining the critical issues and gathering the information necessary to analyze the significant actions of OPM during 1981.

---

1/ "The managers of the legislation . . . have presented a better idea, which is two reports, one by MSPB and one by GAO. In this way, all viewpoints and data will be stated." 124 Cong. Rec. S14319 (daily ed., August 24, 1978) (remarks of Senator Hatch).

We welcome in that endeavor the thoughts and suggestions of all who are concerned that the United States have a strong and healthy merit system which serves management, employee, and the public interest.

**INTERVIEWS WERE CONDUCTED WITH THE DIRECTORS OF PERSONNEL  
OF THESE AGENCIES:**

1. Agriculture
2. Commerce
3. Defense (Office of Assistant Secretary (MRA&L))
4.     -- Air Force
5.     -- Army
6.     -- Navy
7. Education
8. Energy
9. Environmental Protection Agency
10. General Services Administration
11. Health and Human Services
12. Housing and Urban Development
13. Interior
14. Justice
15. Labor
16. State
17. Transportation
18. Treasury
19. Veterans Administration

**In addition, we met with:**

20. Personnel Directors Group for Independent and Regulatory Agencies  
(representing approximately 25 agencies).



### THIRD PARTY GROUPS

The following organizations were contacted either by letter or interview in order to elicit their opinions on the topics covered in this report:

American Enterprise Institute  
for Public Policy Research

American Federation of  
Government Employees

American Society for  
Public Administration

Blacks in Government

The Brookings Institute

FED 42

Federal Executive Institute  
Alumnae Association

Federal Managers Association

Federally Employed Women

Government Accountability  
Project

The Heritage Foundation

International Personnel  
Management Association

National Academy of  
Public Administration

National Association of  
Government Employees

National Federation of  
Federal Employees

National IMAGE Inc.

National Organization  
for Women

National Treasury  
Employees Union

Senior Executive Association

## FACT SHEET ON QUESTIONNAIRE

**POPULATION SIZE:** Approximately 2439

**SAMPLE SIZE:** Approximately 1754

**DESCRIPTION OF SAMPLE:** Random sample of full-time permanent employees; in the continental United States, Alaska and Hawaii; in the Executive branch, GS, SES or equivalent; series 201, 212, 221, 230, 233, 235; grades 15 and above in Washington, D.C. and grades 13 and above outside Washington, DC. FBI, OPM and FLRA were specifically omitted from the sample.

**SAMPLING RATES:**

45%: Army, Navy, Air Force

70%: Health and Human Services, Treasury

100%: All other agencies

**RESPONSE RATE:** Over 75.9% responded to questionnaire. Of these, about 80% wrote extensive narrative comments.

**MERIT SYSTEMS  
PROTECTION BOARD**  
WASHINGTON, D.C. 20419

OFFICIAL BUSINESS  
Penalty for Private Use, \$300

POSTAGE AND FEES PAID  
MERIT SYSTEMS PROTECTION BOARD

