

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

IN SEARCH OF MERIT

Hiring Entry-Level Federal Employees



A Report Concerning Significant Actions of the
Office of Personnel Management

THE CHAIRMAN



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

September 15, 1987

Sirs:

In accordance with section 202(a) of the Civil Service Reform Act of 1978 [5 U.S.C. §1205(a)(3) and §1209(b)], it is my honor to submit this Merit Systems Protection Board report titled "In Search of Merit: Hiring Entry-Level Federal Employees."

This report covers two topics of particular interest to the Federal civil service system:

1. Entry-level hiring for selected Professional and Administrative Career Positions under the excepted service Schedule B authority that the Office of Personnel Management (OPM) established as a replacement for the Professional and Administrative Career Examination (PACE); and
2. Implementation of a new Apprentice Examination, a formal examining instrument used by OPM to screen applicants for apprentice positions in numerous crafts and trades occupations within various Federal agencies.

I think you will find this report useful as you consider issues affecting civil service staffing. It may be particularly useful in calling attention to the need for: 1) procedures that give Federal employers sufficient flexibility in competing for well qualified entry-level employees; and 2) ensuring that the application of those procedures upholds the merit system principles enumerated in the Civil Service Reform Act of 1978.

Respectfully,

A handwritten signature in black ink that reads "Daniel R. Levinson".

Daniel R. Levinson

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

Washington, District of Columbia



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OVERVIEW

This report examines two topics particularly important to a civil service based on merit: 1) entry-level hiring for 118 Professional and Administrative Career (PAC) occupations formerly covered by the Professional and Administrative Career Examination (PACE); and 2) a new examination for apprentices in various trades and crafts occupations.

Entry-Level Professional and Administrative Career Hiring

Before being abolished in September 1982, the PACE was the primary competitive examination through which hundreds of thousands of job seekers were competitively examined and ranked for subsequent consideration for a limited number of Federal entry-level PAC jobs. Faced with allegations that the PACE adversely affected certain racial and ethnic groups, the Office of Personnel Management (OPM) abolished it in August 1982 under a consent decree. To fill the gap left by the abolishment of the PACE, OPM established a new Schedule B (excepted service) appointment authority. Under that Schedule B authority, agencies develop and use their own recruiting and selection procedures.

This special Schedule B authority covers positions in former PACE occupations only at GS grades 5 and 7. Until recently, advancement beyond GS-7 required selection for a GS-9 competitive service position as a result of formal competition under procedures governed by OPM. Through June 1986, this latter "competition" has proved almost *pro forma*: approximately 97 percent of all Schedule B employees sought by agencies were selected for GS-9 competitive service positions. On May 7, 1987, the President issued an executive order authorizing noncompetitive conversion of these Schedule B employees to GS-9 competitive service positions if each employee's performance warrants it, and if the employee meets minimum qualifications and other requirements established by OPM.

Agencies that have used this Schedule B authority generally have found it adequate to meet their entry-level PAC staffing needs. Largely because it allows them more flexibility in targeting their recruiting activities, those agencies have increased the representation of Blacks and Hispanics among entry-level hires. However, user agencies generally find the authority administratively cumbersome and, for them, more costly than centralized competitive examining. Additionally, 98 percent of all appointments under this authority in calendar year (CY) 1985 were made by only 9 of the 21 largest Federal departments and independent agencies.

Since March 1979, OPM has developed alternative examinations for 16 of 127 occupations that, by their estimate, accounted for approximately 60 percent of annual entry-level hiring under PACE. However, even if this percentage is reflective of current hiring patterns, there are still a substantial number of occupations and a

substantial percentage of anticipated hiring needs without a formal competitive examination vehicle.

This special Schedule B PAC authority has been exempted by OPM from even those procedures established for the excepted service (*i.e.*, governing accepting and rating applications, selection and appointment). The only exception is that agencies must observe veterans preference "as far as administratively feasible." Additionally, this authority permits the use of selection procedures that are prohibited for competitive service hiring.

The target positions for entry-level hiring are not the entry-level positions filled, but rather are full performance positions at higher grades. Those full performance positions are in the competitive service. Schedule B PAC employees, however, are recruited, considered, and hired under procedures that do not ensure the same uniform degree of merit (*e.g.*, attention to recruiting sources, rating and ranking candidates, and selecting from among the three highest ranked candidates) that is often required for other excepted service hiring and is mandatory for competitive service hiring. Additionally, employees hired under this Schedule B authority now may be converted noncompetitively into the competitive service.

For the reasons stated above, the Merit Systems Protection Board (MSPB) is concerned that hiring under this authority may be inconsistent with Merit System Principle 1, which states: "*[r]ecruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity*" [5 U.S.C. §2301(b)(1)].

From the perspective of merit system integrity, it is unfortunate that relatively little progress has been made in developing alternative examinations in the almost 6 years since the PACE was abolished. MSPB recommends that OPM accelerate its examination development process to permit elimination of this special Schedule B authority in a timely manner. We suggest that OPM develop a reasonable and firm timetable for accomplishing this goal and that, pending its accomplishment, OPM take steps to bring the recruitment and selection procedures of the Schedule B PAC authority into closer alignment with competitive service procedures.

Apprentice Examination

In contrast to the concerns raised in the review of entry-level PAC hiring, early results reflect favorably upon a new apprentice examination that was tested in 1983 and placed into use in March 1984. OPM and the Department of the Navy cooperated in

* Although the number of occupations covered by the PACE when that examination was abolished was 118, when that examination was first challenged the number was 127. Between the initiation of the challenge and the abolishment of the PACE, OPM removed nine occupations from the PACE through implementation of new examinations. Those examinations are included in the 16 alternative examinations reported by OPM. For a current list of PAC occupations, identifying those subject to Schedule B and those for which alternative examinations are in place, see Federal Personnel Manual Chapter 213, Appendix E.

developing that examination.

The Federal Government has some seven or eight thousand persons employed in its 4-year apprentice program; between one and two thousand new apprentices are hired each year. The examination that was previously used did not differentiate well among successful candidates, making selection difficult. Further, women taking the examination seldom ranked highly, and there was an unacceptably high turnover rate among new hires who entered Federal service through the examination.

Based on experience during the first full year of using the new examination, both OPM and agencies that employ apprentices are pleased with it. The first year results indicate better-quality selections, plus general improvement in the representation of women and minorities among selections. Second full-year statistics provided by OPM reflect continued general improvement in the representation of women and minorities. Too little time has passed to tell yet if the new examination will reduce the turnover rate. If continuing validation testing upholds early results, **this examination will constitute a success story.**

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INTRODUCTION

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

This is one of a series of reports to be published during calendar year 1987 analyzing the significant actions of OPM during the preceding 12-18 months. Its focus is on entry-level hiring mechanisms for two disparate parts of the Federal civilian work force:

- The mechanisms used to bring new entry-level employees into the numerous white-collar occupations categorized in the Federal civil service as Professional and Administrative Career (PAC) positions,¹ and

¹ For purposes of this report, the term "PAC" refers to those 118 occupations filled by the Professional and Administrative Career Examination (PACE) when the PACE was abolished in 1982. In the past, the number of occupations covered by PACE has fluctuated slightly as occupational series were added or dropped. The PACE actually covered 127 occupations when the challenge to it was initiated, but OPM implemented new examinations for nine of those occupations between the time of the challenge and the time the PACE was abolished. Since PACE was abolished, the number of occupations subject to the Schedule B authority that replaced it has been further reduced by the introduction of additional alternative examinations.

- The relatively new competitive examination developed by OPM for selecting apprentices for a variety of blue-collar trades and crafts occupations.

Other reports in this series will focus on:

- Implementation of the Performance Management and Recognition System.
- Expanded Temporary Limited Appointment Authority.
- Implementation of Revised Reduction-in-Force Regulations.
- OPM's Revised Personnel Management Evaluation Program.
- Performance Management.

A. ENTRY-LEVEL PROFESSIONAL AND ADMINISTRATIVE CAREER HIRING

BACKGROUND

For approximately 30 years, the Federal Government used a nationwide, open, written competitive examination to rate, rank, and hire entry-level applicants for a wide range of professional and administrative career occupations. The single examination was replaced from time to time with a new one. From 1974 until September 1, 1982, the examination used was the Professional and Administrative Career Examination, or PACE.

The PACE was aimed primarily at recent college graduates or graduating seniors. At the time of its abolishment, it applied to

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118 occupations,² and was a source for new PAC entry-level (grades GS-5 and GS-7) hires in the competitive service³ in all Federal agencies. Since many of these new hires could be expected to enter into long-term Federal careers, they constituted an important long-range source for internal applicants to compete (in later years) for senior level (GS/GM 13-15) and Senior Executive Service (SES) positions.

In January 1979, a group of minority candidates who failed to achieve passing scores on the PACE filed suit in Federal court. Their suit charged that the PACE discriminated unfairly against minorities. Citing differences in the pass rates for whites (approximately 42 percent), Blacks (approximately 5 percent) and Hispanics (approximately 13 percent), these challengers contended that the differences were caused by test bias. This civil action became known as Luevano v. Devine.

Luevano v. Devine never came to trial. Instead, a consent decree was negotiated by the plaintiffs and the Department of Justice

² See footnote 1 for a brief explanation about the varying number of occupations covered by the PACE.

³ "The 'competitive service' consists of-- (1) all civil service positions in the executive branch, except--(A) positions which are specifically excepted from the competitive service by or under statute; (B) positions to which appointments are made by nomination for confirmation by the Senate, unless the Senate otherwise directs; and (C) positions in the Senior Executive Service; (2) civil service positions not in the executive branch which are specifically included in the competitive service by statute; and (3) positions in the government of the District of Columbia which are specifically included in the competitive service by statute." [5 U.S.C. §2102(a)] The competitive service is sometimes also called the "career service," with the terms being used interchangeably.

on January 9, 1981. With some modifications, it was entered by the U.S. District Court of the District of Columbia on November 19, 1981. Abolishment of the PACE was a key requirement of the decree.

On May 11, 1982, OPM announced its decision to abolish the PACE without a "phase-out" period, and to establish a new Schedule B⁴ appointment authority to serve as an interim selection measure until permanent provisions for replacing the PACE could be developed. On August 31, 1982, through advance copies of Federal Personnel Manual (FPM) Letter 213-32, OPM provided implementing instructions for the new procedures. Those procedures apply to the 45 legislative and executive branch departments and agencies subject to the consent decree.

Starting with its Report on the Significant Actions of the Office of Personnel Management During 1982, MSPB annually has re-

⁴ "Schedule B" is one of three "schedules" of the excepted service. "Excepted service" is a term defined by section 2103 of Title 5, United States Code. It applies to all positions in the executive branch that are specifically excluded from the competitive service by proper authority, and that are not in the Senior Executive Service. The three schedules apply to different kinds of positions, with Schedule B applying to positions, not of a confidential or policy-determining character, for which it is impractical to hold competitive examinations. Consequently, individuals appointed under this Schedule B authority (Schedule B, §213.3202(1), found in 5 C.F.R. Part 213) are not part of the competitive service, and, until recently, were required in most circumstances to compete for competitive service positions to advance to GS-9, which is the first level in the mid-level (GS-9-12) grade range. On May 7, 1987, the President signed Executive Order Number 12596, providing noncompetitive conversion procedures (to career or career-conditional status) for these Schedule B employees.

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viewed entry-level PAC hiring. Particular attention has been paid to:

- Agency use of the Schedule B authority;
- Movement of employees from their entry-level Schedule B positions to competitive service GS-9 positions;
- The race/national origin distribution resulting from use of the Schedule B authority; and
- OPM activity permanently to replace the PACE with alternative examinations.

This MSPB interest is stimulated by the fact that the **target jobs** being filled through the Schedule B PAC authority are **mid-level** (typically GS-9 or GS-11) **competitive service jobs**. MSPB is concerned with ensuring that the recruiting and selecting procedures used yield results consistent with these concepts established in Merit System Principle 1, which states:

*Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.*⁵

SPECIFIC FINDINGS

1. Recruitment

*[r]ecruitment should be from qualified individuals from appropriate sources * * *.*⁶

Agencies requesting approval to use the Schedule B PAC authority must provide certain information to OPM,⁷ justifying their need and agreeing to certain conditions established by OPM. However, except for a requirement to provide information about "previous recruiting experience,"⁸ recruitment is not a subject about which agencies must report to obtain OPM approval for use of this authority. Agencies seeking the authority must show, in effect, that they have made maximum use of priority placement sources and have either announced the vacancy or vacancies or have exhausted the merit promotion candidate pool.

One provision added to Title 5 by the Civil Service Reform Act of 1978 is a requirement that agencies notify U.S. Employment Service (USES) employment offices of all vacancies in the competitive service, and the period for which applications will be accepted.⁹ Because Schedule B positions are exempt from this requirement, PAC positions placed under this Schedule B authority do not have to meet this vacancy announcement requirement. Nor has OPM established this requirement by regulation. Agencies may choose to follow this practice for their Schedule B PAC positions, but this would be at their option. It is not some-

⁵ 5 U.S.C. §2301(b)(1).

⁶ *Ibid.*

⁷ FPM Chapter 213, Appendix E, at E-2b.

⁸ *Ibid.*, at E-2b., c. and d.

⁹ 5 U.S.C. §3327(b).

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thing OPM includes in its review of agency requests for the Schedule B authority.

The Civil Service Reform Act legislative history includes information about the extent to which agencies are expected to "post" jobs with the USES: "The conferees intend that an agency notify all U.S. Employment Service offices when there are vacant positions in an agency headquarters office. If a position in a regional office is vacant, the agency may notify all USES offices; however, notice to the USES offices in the region is sufficient."¹⁰

Entry-level positions are not an end unto themselves. In the case of the 118 occupations covered by the Schedule B PAC authority, recruitment is for full performance "target" jobs, usually in the mid-level grades of GS-9 or GS-11. Those full performance jobs are in the competitive service. Consequently, individuals recruited through this Schedule B process are in fact being sought for competitive service jobs. This makes the nature and scope of the recruitment process very important.

The nature and scope of the entry-level recruitment process for these positions have been made even more important by the signing, on May 7, 1987, of Executive Order Number 12596, providing for a non-competitive conversion of Schedule B PAC employees into competitive service positions. As a result of that Executive Order, individuals may now enter the competitive service after having been recruited through procedures that did not have to meet usual competitive service requirements. MSPB is

concerned that this does not yield recruitment efforts consistent with Merit System Principle 1.

In addition to MSPB's concern about the adequacy of the recruitment process under the Schedule B authority, MSPB also questions the wisdom of a personnel management policy that requires heavy reliance on internal selections (e.g., promotion of current Federal employees, reinstatement of former Federal employees, and transfer of employees between Federal agencies) as the primary source for entry-level PAC hiring. Under current OPM guidance, agencies are first to draw on internal sources before requesting the Schedule B authority.

As discussed in more detail in Section A.3. of this report, the proportion of entry-level PAC positions filled from internal sources increased from 65 percent in FY 1978 (the last year the PACE was in effect) to 75 percent in CY 1986. We think it is self evident that there should be a reasonable balance between the proportion of entry-level positions filled from internal sources and those filled from sources outside of government. We suggest that a system under which 75 percent of PAC entry-level positions are filled with current or former federal employees may lack that balance.

2. Selection

** * * selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.¹¹*

¹⁰ "Legislative History of the Civil Service Reform Act of 1978," Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. II, p.1988.

¹¹ 5 U.S.C. §2301(b)(1).

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The Schedule B PAC jobs are exempt from procedures governing selection in the competitive service because they are in the excepted service. They are also exempt from all procedures that govern "accepting and rating applications, selection and appointment,"¹² *in the excepted service*, except that "the agency must observe veterans preference as far as administratively feasible."¹³ Among the specific procedures governing excepted service hiring from which these positions have been exempted are:

- establishment and uniform application of rules regarding the acceptance of applications for employment;
- rating applicants on a numerical scale unless all qualified applicants will be offered immediate employment;
- adding five or ten points to the scores of preference eligibles, as appropriate, and reserving certain jobs for preference eligibles except under certain circumstances;
- maintaining employment and reemployment lists;
- following an established order of consideration of eligibles; and
- restricting selection to the highest three names available from among the properly ordered group of eligibles.

Under the Schedule B PAC authority, agencies may "assign adjective ratings instead of numerical scores and refer candidates for selection by categories."¹⁴ Thus,

applicants for these jobs are exempt from rating and ranking requirements that apply to other excepted service jobs.

"Category rating," leading to "referring candidates for selection by category," was considered by Congress during debate on the Civil Service Reform Act. An amendment that would have permitted such a system for the competitive service was proposed in and defeated by the House of Representatives acting as the Committee of the Whole.¹⁵

Since Executive Order Number 12596 has established procedures for the noncompetitive conversion of these excepted service employees into the competitive service, the nature of the competition through which they gained Federal employment (like the nature and scope of the recruiting that led to the employment) has become vitally important.

As noted later in this report, before the Executive Order was published, MSPB (and some other agencies) were concerned that the competition that took place when these employees sought competitive appointment as GS-9's was not "real." Experience gained by Schedule B employees at the entry-level grades was viewed as giving them such an "edge" that the reality of the later competition was questioned. It appeared that the only opportunity for "real" competition occurred at the time of the Schedule B selection.

The advent of the Executive Order has made this concern moot: the Schedule B

¹² FPM Chapter 213, Appendix F, Section III, at B.2.

¹³ *Ibid.*

¹⁴ FPM Chapter 213, Appendix E, paragraph E-2.e.

¹⁵ "Legislative History of the Civil Service Reform Act of 1978," Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. I, pp.944-946.

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employees will not have to compete for selection into the competitive service. With noncompetitive conversion into the competitive service now universally possible, there is no longer any question about where "competition" takes place. To the extent that competition occurs, it clearly is during the Schedule B PAC hiring.

As has already been noted, the Schedule B PAC authority has been exempted from all but one of the selection requirements governing other excepted service positions. The procedures are even farther from meeting competitive service standards. Along the way, the "rule of three" also has lost all effect, although it is established by law for the competitive service and by regulation for the excepted service.¹⁶ The Schedule B PAC hiring procedures offer little assurance of selection "determined solely on the basis of relative ability, knowledge, and skills after fair and open competition."¹⁷

Use of the Schedule B PAC authority may be foreclosed as a result of a court challenge to it. If the authority withstands that challenge, OPM should revise the ground rules

governing both recruitment and selection of employees for these jobs to ensure that agencies using the Schedule B authority apply procedures that are in closer alignment with competitive service procedures and Merit System Principle 1. To do less, in the face of the recent conversion authority, is to permit recruitment and selection of people who may enter the competitive service through a system that does not meet the expectations of Merit System Principle 1.

**3. Historical Perspective:
What Happened in
1985 and 1986**

a) Extent of Agency Use of the Authority

Using information supplied by OPM, MSPB has tracked the method of appointment for entry-level PAC employees by calendar year starting with 1983. The results have been compared to FY 1978 data, the base reference year used in earlier MSPB reports. Updated information is displayed in Table 1.

Table 1 shows that in 1986, use of the Schedule B authority declined significantly (in actual numbers and as a proportion of total PAC entry-level hiring) compared to the two previous years. During 1986, hiring under the Schedule B authority accounted for only 10 percent of all entry-level hiring, the lowest level since the authority was introduced. This decline in use of the authority coincides with the introduction and use of alternative examinations for several occupational groups and the continued high proportional use of "other" methods of appointment (*i.e.*, internal selection).

¹⁶ 5 U.S.C. §3318. Competitive service; selection from certificates[:]. (a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office."

"5 CFR §302.401 Selection and appointment [in the excepted service]. (a) Selection. When making an appointment from an employment list, an agency shall select for appointment to each vacancy from not more than the highest three names available for appointment in the order provided in §302.304 * * *."

¹⁷ 5 U.S.C. §2301(b)(1).

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**Table 1
COMPARING ENTRY-LEVEL PAC APPOINTMENTS
USING PACE IN 1978 AND SCHEDULE B SINCE 1983**

	<u>Method of Appointment</u>			<u>Total</u>
	<u>PACE or Schedule B</u>	<u>Other than PACE Competitive Examination</u>	<u>Other</u> *	
FY 1978 (PACE)				
Numbers Appointed.....	7,587	(1)	14,090	21,667
Percentage.....	35.0%	(1)	65.0%	100.0%
CY 1983 (Schedule B)				
Numbers appointed.....	2,059	1,346	11,748	15,153
Percentage.....	13.6%	8.9%	77.5%	100.0%
CY 1984 (Schedule B)				
Numbers	4,020	1,749	15,086	20,855
Percentage.....	19.3%	8.4%	72.3%	100.0%
CY 1985 (Schedule B)				
Numbers appointed.....	4,114	2,311	15,345	21,770
Percentage.....	18.9%	10.6%	70.5%	100.0%
CY 1986 (Schedule B)				
Numbers appointed.....	1,920	2,715	14,313	18,948
Percentage.....	10.1%	14.3%	75.5%	100.0%

(1) "Other than PACE competitive examination" information does not apply to 1978. Column applicable only starting in 1983 (years in which the Schedule B authority has been used).

* "Other" includes internal placement, reinstatement, priority placement programs, and transfers from other agencies.

Note: Sum of rows may not equal 100% because of rounding.

SOURCE: U.S. Office of Personnel Management.

MSPB began tracking individual agency use of the Schedule B authority in 1983. Table 2 shows agency use of the authority by year starting then.

The large reduction in Schedule B use by the Department of the Treasury in 1985 and 1986 is the result of implementation of competitive examinations for two key Internal Revenue Service series (Tax

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Technician early in 1985, and Internal Revenue Officer in January 1986).

MSPB anticipated a similar large reduction for Department of Health and Human Services (DHHS) in 1986, based on OPM

projections that competitive examinations for two Social Security Administration series¹⁸ would be implemented in April 1986. However, the implementation date slipped to October 1986. DHHS use of this Schedule B authority should decline in 1987.

**Table 2
NUMBER OF INDIVIDUALS APPOINTED THROUGH
THE SCHEDULE B PAC AUTHORITY EACH CALENDAR YEAR SINCE 1983 BY
MAJOR AGENCIES**

Department or Independent Agency	1983	1984	1985	1st six Months, 1986
Treasury	1,183	1,206	436	71
Army	307	1,067	747	151
Air Force	290	627	668	155
Navy	211	436	175	49
DoD - Not Uniformed	2	595	829	+
Health and Human Services	459	178	421	178
Education	0	52	33	0
General Services Administration	20	45	14	29
Environmental Protection Agency	0	38	36	25
Labor	3	8	146	0
Agriculture	0	6	16	3
Interior	0	2	8	2
Justice	2	1	13	0
Transportation	2	1	1	1
Small Business Administration	0	1	1	3
Energy	0	0	17	17
National Aeronautics and Space Administration	0	0	0	3
TOTALS	2,479	4,263	3,561	687

+ Agency reported the data were not available at the time the responses to the MSPB inquiries were prepared.

SOURCE: The agencies listed in this Table.

¹⁸ Social Insurance Claims Examiner, GS-993-5/7, and Social Insurance Representative, GS-105-5/7.

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b) Agencies' Attitudes Toward the Schedule B Authority

Since its inception, the Schedule B authority has met with mixed, and initially very negative, reviews by the agencies. In December 1983 MSPB reported that "agency officials overwhelmingly regarded the abolishment of the PACE and the establishment of the Schedule B appointment authority as one of the three OPM actions during 1982 that had the most negative effect on the merit system."¹⁹ When those opinions were recorded, only one agency had any significant experience with the authority. Agencies speculated that the "major advantage of the new * * * authority [would] be * * * increased flexibility in [targeted recruiting]," and the "major disadvantage [would] be the inability to convert employees hired under [it] to competitive * * * positions or to * * * promote them [noncompetitively beyond GS-7]."²⁰

A year later, in December 1984, MSPB noted that in 1983 seven agencies "accounted for 99.4 percent of all Schedule B hires."²¹ The major agency concern (shared by "12 out of 15 agencies") was still the lack of a noncompetitive mechanism to advance these employees beyond GS-7 and into the competitive service.²²

In May 1986, MSPB reported OPM figures showing that use of the authority had widened slightly in 1984: nine agencies

accounted for 99.6 percent of all Schedule B hires in that year,²³ and a total of 15 of the 21 largest agencies had experience with it.²⁴ The issue of "conversion" (noncompetitive advancement beyond GS-7) continued to be a major agency issue in 1984.

What changed in 1985? At first analysis, almost nothing. Of the 21 largest departments and independent agencies, one used the authority for the first time--in small numbers--and many agencies continued to express concern about the inability to "convert" their Schedule B employees. Nine agencies accounted for 98 percent of the 3,561 CY 1985 Schedule B hires. Most agencies still saw the strength of the authority as resting in the flexibility it gives them to target recruiting.

MSPB asked each of the 21 largest departments and independent agencies to rate the ability of the Schedule B authority to meet their entry-level PAC needs. Table 3 shows the scale used, the criteria considered, and the distribution of the responses.

With one exception, agencies with experience using the authority--collectively accounting for 93.9 percent (3346 of 3562) of all Schedule B PAC hires reported by agencies in 1985--reported the authority was "very good" or "good" in its ability to meet their entry-level PAC needs. The exception was Department of the Navy, which accounted for 4.9 percent of the 1985 hiring (175 of 3562), and which rated the authority "neither good nor poor." By contrast, the six agencies responding "poor"

¹⁹ U.S. Merit Systems Protection Board, "Report on the Significant Actions of the Office of Personnel Management During 1982," December 1983, p.107.

²⁰ *Ibid.*, p.105.

²¹ U.S. Merit Systems Protection Board, "Report on the Significant Actions of the Office of Personnel Management During 1983," December 1984, p.73.

²² *Ibid.*, p.72.

²³ U.S. Merit Systems Protection Board, "Report on the Significant Actions of the Office of Personnel Management During 1984-1985," May 1986, chart on p.33.

²⁴ *Ibid.*

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Table 3
Distribution of Agency Ratings of How Well
the Schedule B PAC Authority Meets Their
Entry-Level PAC Needs, Based on Three Criteria
(Showing Number of Agencies That Chose Each Response;
21 Agencies Responding)

A. 11 Agencies with some or extensive experience using the Schedule B PAC authority:*

<u>Criteria</u>	<u>Rating Scale</u>					
	<u>Very Good</u>	<u>Good</u>	<u>Neither Good nor Poor</u>	<u>Poor</u>	<u>Very Poor</u>	<u>Don't Know/ Can't Judge</u>
Staffing needs	4	5	1	0	0	1
Need to maintain quality work force	3	6	1	0	0	1
Affirmative action needs	3	4	3	0	0	1

B. 10 Agencies with little or no experience using the Schedule B PAC authority:*

<u>Criteria</u>	<u>Rating Scale</u>					
	<u>Very Good</u>	<u>Good</u>	<u>Neither Good nor Poor</u>	<u>Poor</u>	<u>Very Poor</u>	<u>Don't Know/ Can't Judge</u>
Staffing needs	0	1	1	3	3	2
Need to maintain quality work force	0	1	2	2	3	2
Affirmative action needs	0	1	1	3	3	2

* For purposes of distinguishing between these two groups, MSPB set the following limits: an agency that had hired fewer than 25 PAC employees through the Schedule B process during the period including all of 1985 and the first 6 months of 1986 was placed in the "little or no experience" group. Agencies that had hired 25 or more employees through the authority during that time frame were placed in the "some or extensive" group.

or "very poor" accounted for only 1.1 percent (39 of 3562) of the hires.

Clearly, in terms of the questions asked, the Schedule B authority is largely viewed fa-

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vorably by agencies having experience with it. Since their judgments are based more on fact than on conjecture, MSPB believes they should be accorded substantial weight in measuring how well the authority meets agencies' needs in the three areas queried. It appears that agencies are able, through the authority, to meet their basic entry-level PAC needs.

This is not, however, an unqualified endorsement of the Schedule B authority as a suitable replacement for the PACE, either by MSPB or by the agencies that responded favorably to the questions asked. Rather, it is evidence that agencies have learned that they can (and that they do) use the authority effectively.

Again this year, the narrative comments accompanying agency responses identified weaknesses or problems in the authority's long-term use as a replacement for the PACE. The continued absence of a mechanism to advance the Schedule B PAC employees beyond GS-7, and to move them into the competitive service, without further competition, was cited as a problem by five of the ten agencies that rated the authority favorably on the rating scale, by the Department of the Navy, and by five of the six agencies that rated the authority unfavorably. As previously mentioned, Executive Order 12596 has eliminated this problem.

Other weaknesses or problems cited multiple times included "limited career growth," which is a corollary of the "lack of a noncompetitive conversion procedure" theme; and "an awkward and time-consuming procedure" that agencies must follow to get approval to use the authority. One big user also cited added operational costs that it must bear (high recruiting and

advertising costs and a heavy burden resulting from the need to rate and rank large numbers of applicants). That user also remarked unfavorably about finding preference eligibles blocking the selection of preferred candidates.

Several high-use agencies said they had found that *applicants were not bothered by the limited career growth* (or that their recruiters were able to minimize the negative effect of this) *at the time of recruitment. Instead, the need to compete again became a factor that adversely affected employee morale and performance after a period of time on the job, when the effect of that requirement sank in.* Additionally, several agencies that either do not use the authority or that use it only sparingly, noted that their managers were so concerned about the limited growth and need for further competition that they would not use the authority. This suggests the possibility of increased use of the Schedule B authority in the future, as a result of Executive Order 12596.

The most prevalent positive comments agencies offered stressed the value of this authority as a vehicle for targeted recruiting. Frequent-use agencies have found it to be an effective tool for the recruitment and selection of minority and women applicants, or for other specific candidate targets. Agencies that recruit largely for agency-specific occupations, and those that have obtained year-long blanket approval for the authority, are most often satisfied with it.

MSPB sees the "targeted recruiting" aspect as a "double-edged sword." While it offers opportunity to meet social policy goals (e.g., targeting minorities and/or women), it also could be a means to restrict recruiting to sources that do not improve the represen-

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tativeness of the Federal employee population, or even to specific individuals. MSPB is concerned that the procedures used to recruit and hire for these jobs offer substantial opportunity to contravene Merit System Principle 1.

Several agencies cited two special provisions of the Schedule B authority,²⁵ the "PAC Outstanding Scholar Program" and the "PAC Bilingual/Bicultural Program," as particularly useful. After first obtaining OPM approval to make Schedule B PAC appointments, agencies may use these special additional provisions for targeted recruiting and hiring "without regard to the list of eligibles established under procedures adopted for filling PAC positions."²⁶ Agencies experienced in their use indicate these provide valuable recruiting flexibility. These two special provisions of the Schedule B PAC authority appear to be very positive recruiting/hiring enhancements. In some form they should be saved and, if possible, incorporated into competitive service hiring. The Schedule B PAC authority itself, however, should be eliminated as soon as possible by implementation of competitive examination procedures.

²⁵ Authorized by Appendix E of FPM Chapter 213 (at E-3.b.).

²⁶ *Ibid.* The Outstanding Scholar Program permits appointment of college graduates who either 1) obtained a grade point average of at least 3.5 on a 4.0 scale for all undergraduate classes completed toward a baccalaureate degree, or 2) stand in the upper ten percent of a baccalaureate graduating class or of a major university subdivision. The Bilingual/Bicultural program permits appointment of otherwise qualified applicants who have the required level of oral Spanish language proficiency and/or the requisite knowledge of Hispanic culture, to positions in which interaction with the public or job performance would be enhanced by these additional qualifications.

c) Movement of Employees from Entry-Level Schedule B Positions to Competitive Service GS-9 Positions

Since GS-5 Schedule B employees must meet "time-in-grade" requirements for promotion to GS-7, and these employees must meet qualification standard requirements to be eligible for selection from a GS-9 register, in almost all cases there was a 1- or 2-year delay between their initial GS-5 or GS-7 appointments and their earliest eligibility to compete for GS-9. Through March 1985, agencies were able to "reach" on registers and select, for GS-9 mid-level competitive service appointment, 834 of 835 Schedule B employees.²⁷ MSPB asked agencies for similar information for the 18-month period from January 1, 1985, through June 30, 1986. The results are shown in Table 4.

The 99.9 percent success rate for employment of Schedule B PAC employees into mid-level career positions reported by MSPB last year²⁸ has not been quite duplicated. However, the "conversion" rate for the 18-month period in question is around 96.8 percent. For agencies investing time, energy, and training in Schedule B PAC employees, such a high rate of success is undoubtedly a welcome sign.

However, when measured against that part of the first merit system principle that states: "* * * selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, *after fair and open competition which assures that*

²⁷ U.S. Merit Systems Protection Board, "Report on the Significant Actions of the Office of Personnel Management During 1984-1985," May 1986, Table 2-15 on page 36.

²⁸ *Ibid.*, p.5.

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all receive equal opportunity" (emphasis supplied), two concerns immediately surface:

1. The PAC "vacancies" announced for mid-level competition usually are not vacancies. Rather, they are encum-

bered positions occupied by Schedule B employees. The presence of existing employees places intense pressure on agencies and selecting officials to ensure that current employees are selected, since the alternative is loss of the

**TABLE 4
AGENCY-REPORTED RECORD OF ATTEMPTS AND SUCCESSES
IN PROMOTING ELIGIBLE SCHEDULE B PAC EMPLOYEES COMPETITIVELY
TO GS-9 POSITIONS FROM APPROPRIATE MIDDLE LEVEL REGISTERS
(JANUARY 1, 1985 - JUNE 30, 1986)**

Department/ Agency	Number Reported:		Reached & App'ted	Selected Others?#	How Many Others?
	Eligible	Sought			
Air Force	802	802	792	yes	5-10 ⁺
Army	599	496	469	yes	**
Treasury	368	327	322	yes	2
Navy	347	340	316	yes	2
HHS	338	338	338	yes	2
DoD - Not Uniformed	180	159	145	yes	3
State	63	27	27	no	0
Education	40	36	34	no	0
GSA	37	20	19	yes	1
EPA	26	20	20	no	0
Labor	21	9	8	no	0
Energy	11	11	11	no	0
Agriculture	8	8	8	no	0
Transportation	1	1	1	no	0
Interior	1	1	1	no	0
SBA	1	1	1	yes	1
TOTALS	2,843	2,596	2,512		13-18

Question pertains to whether or not the agency had to select other candidates to "reach" Schedule B employees.

⁺ Estimated figure; actual figure reported "not available"

** Figure reported "not available"

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investment in those persons.

2. Just how "open" the competition is, after one candidate has been in the position 1, 2, or more years, appears evident from the success rate the Schedule B employees have. Outside candidates may believe they have a "fair shot" at the vacancy, but the deck usually is stacked against them because of the selection made earlier under an employment process tailored to the Schedule B PAC authority. As noted earlier, that process does not meet normal excepted service hiring requirements, and is even further away from competitive service requirements.

In responding to MSPB's questions, the Department of the Air Force identified both strengths and weaknesses of this authority. The strongest criticism Air Force offered was on the subject of competition for mid-level competitive service positions:

While we are able, with OPM's help, to reach most of our Schedule B employees on mid-level registers, the process is complicated, time-consuming and costly. *In addition, because it has become almost a "pro forma" process, it runs the risk of losing credibility as a competitive procedure*²⁹ (emphasis supplied).

²⁹ Quoted from the Department of the Air Force response, dated 23 October 1986 and signed by P.L. Schittulli, Director of Civilian Personnel, which was transmitted to MSPB as part of a consolidated Department of Defense response. The consolidated response was sent by letter dated 5 November 1986, and was signed by Claire E. Freeman, Deputy Assistant Secretary of Defense for Civilian Personnel Policy.

The OPM Director in replying to a question from MSPB was not reassuring:

OPM and agency experiences, as well as MSPB's review last year, have indicated that almost all Schedule B PAC employees have been within reach for competitive appointment at GS-9 in their career ladders. Agencies have said that appointment of these employees has sometimes been a laborious and costly process. *For example, agencies have occasionally requested certification of the same Schedule B employee several times and have returned certificates unused if the employee was not within reach*³⁰ (emphasis supplied).

Agency behavior such as this is understandable in the sense that the agencies know the people and have already invested heavily in them. OPM's acknowledgment of this behavior, however, raises a question: how strongly is the Government's central personnel policy agency defending the principle of fair and open competition?

Executive Order 12596 has eliminated the continuing MSPB concern about the reality of competition for mid-level competitive service positions. However, the Executive Order does not solve the more fundamental problem of assuring "fair and open competition," because the recruitment and

³⁰ Statement contained in enclosure to letter from Honorable Constance Horner, Director, Office of Personnel Management, dated December 4, 1986, to Honorable Daniel R. Levinson, Chairman, Merit Systems Protection Board. The letter was responding to MSPB's request for information about OPM's significant actions in 1985 and the first half of 1986.

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employment procedures for the entry-level position do not meet either competitive service or normal excepted service standards.

d) OPM Assistance to Agencies

OPM apparently is sensitive to agencies' PAC staffing needs, especially when the number of positions involved is reasonably large and the agency (or agencies') interest is strongly expressed. Hence, Army was able to get blanket authority to use the Schedule B authority in FY 1986, as it did in FY 1984 and FY 1985. Where single agency occupations are involved (as in the Internal Revenue Service or Social Security Administration), OPM works closely with the agency concerned, and has successfully developed some replacement examinations. Additionally, establishment of a competitive examination allows noncompetitive conversion to career status of Schedule B employ-

ees who have been in the affected job at least 6 months.³¹

In establishing the Contract Specialist, GS-1102-5/7, examination and register, OPM worked closely with the Federal contracting and procurement community. Staff from the Federal Acquisition Institute, part of General Services Administration's Office of Procurement Policy, helped coordinate this interaction for the agencies. OPM's decision on when to open the register was influenced by the needs of the employing agencies. OPM projected a "window of time" of several months within which it believed it could finish work on the examination. Actual examining and opening of the register then were scheduled so as not to disrupt agencies' peak recruiting or hiring periods.

³¹ The following are excerpted from OPM Operations Letter Number 337-1432, dated February 19, 1986: "As new examinations are established to replace the Schedule B***, those positions covered are to be removed from the Schedule B authority and placed in the competitive service on the date the appropriate register is established. We plan to establish registers for the new examinations as close as possible to the dates proposed in the operations letters announcing the examination.*** Under 5 CFR 315.701, an incumbent of a Schedule B (PAC) position which was brought into the competitive service, who performed at least 6 months of satisfactory service immediately before the date the position was brought into the competitive service, may be converted to career or career conditional employment within 6 months. *** In determining whether employees meet the qualification requirements for the positions to be converted to the competitive service, agencies may apply inservice placement standards and may waive any written test which is required in the competitive examination. The key factor in deciding whether the employee will be converted to competitive status should be performance on the job ***."

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e) The Race/National Origin Distribution Resulting from Use of the Schedule B Authority

The *Luevano* consent decree is concerned with how well Blacks and Hispanics fare in PAC hiring compared to nonminority candidates. The court retained jurisdiction to ensure compliance, and receives annual reports for that purpose. OPM collects necessary data from agency submissions at the time of hiring and prepares the annual re-

port. MSPB obtained copies of the calendar year 1985 and 1986 reports.

Table 5 shows the annual race/national origin distribution of all PAC hires by calendar year from 1982 through 1986, with no distinction made by appointing authority. It shows that, since 1983, hiring of Blacks for PAC positions has stabilized at approximately 18-19 percent; for Hispanics at approximately 6 percent; and for whites (nonminorities) at slightly over 75 percent.

**TABLE 5
RACE/NATIONAL ORIGIN DISTRIBUTION OF ENTRY-LEVEL PAC
NEW HIRES WITHOUT REGARD TO SOURCE OF APPOINTMENT,
Calendar Years 1982 through 1986**

<u>Calendar Year</u>	<u>Race/National Origin Group (As Monitored by Consent Decree)</u>							
	<u>Black</u>		<u>Hispanic</u>		<u>White, not Hispanic</u>		<u>Total</u>	
	<u>Number Hired</u>	<u>Per- cent</u>	<u>Number Hired</u>	<u>Per- cent</u>	<u>Number Hired</u>	<u>Per- cent</u>	<u>Number Hired</u>	<u>Per- cent</u>
1982	2218	15.7%	804	5.7%	11063	78.5%	14085	100%
1983	2769	18.3%	952	6.3%	11432	75.4%	15153	100%
1984	3878	18.6%	1182	5.7%	15795	75.7%	20855	100%
1985	3981	18.3%	1289	5.9%	16500	75.8%	21770	100%
1986	3612	19.1%	1101	5.8%	14235	75.1%	18948	100%

* *Sums of individual rows may not equal 100% because of rounding.*

SOURCES:

1982 data: MSPB's "Report on the Significant Actions of the Office of Personnel Management During 1983."
1983-1986 data: OPM Reports A-1, Appointments to Occupations Covered by the PACE Examination, January through December 1983, 1984, 1985, and 1986, Governmentwide (all agencies covered by the consent decree) nationwide.

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Table 6 divides the Table 5 data into two broad appointing categories: "Schedule B" and "All Other Sources." This table shows what, if any, effect the Schedule B authority has had on changing the proportion of Blacks and Hispanics appointed to PAC entry-level positions.

Table 6 reveals that the proportion of Blacks hired under Schedule B continues at a rate higher than under "all other sources." In both 1983 and 1984 the difference was 7 percentage points (roughly 24 percent under Schedule B each year vs. roughly 17 percent for "all other sources"). The spread was

**TABLE 6
RACE/NATIONAL ORIGIN DISTRIBUTION OF ENTRY-LEVEL PAC NEW HIRES:
DISTINGUISHING BETWEEN SCHEDULE B HIRING AND
HIRING THROUGH ALL OTHER APPOINTING SOURCES
Calendar Years 1983 Through 1986**

Race/National Origin Group
(As Monitored by Consent Decree)

<u>Black</u>	<u>Hispanic</u>	<u>White, not Hispanic</u>	<u>Total</u>
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A. Appointments Based on Schedule B Authority:

	<u>Number Hired</u>	<u>Per- cent</u>	<u>Number Hired</u>	<u>Per- cent</u>	<u>Number Hired</u>	<u>Per- cent</u>	<u>Number Hired</u>	<u>Per- cent</u> [*]
1983	503	24.4%	200	9.7%	1356	65.9%	2059	100%
1984	952	23.7%	327	8.1%	2741	68.2%	4020	100%
1985	893	21.7%	302	7.3%	2919	71.0%	4114	100%
1986	446	23.2%	139	7.2%	1335	69.5%	1920	100%

B. Appointments Based on All Other Appointing Authorities:

1983	2266	17.3%	752	5.7%	10076	77.0%	13094	100%
1984	2926	17.4%	855	5.1%	13054	77.5%	16835	100%
1985	3088	17.5%	987	5.6%	13581	76.9%	17656	100%
1986	2022	17.2%	652	5.5%	9106	77.3%	11780	100%

* Sums of individual rows may not equal 100% because of rounding.

SOURCES: OPM Reports A-1, Appointments to Occupations Covered by the PACE Examination, January through December 1983, 1984, 1985, and 1986, Governmentwide (all agencies covered by the consent decree) nationwide.

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reduced in 1985 (17.5 percent for "all other sources," versus slightly under 22 percent for Schedule B hiring), but then increased again in 1986.

Hispanics also have fared better under Schedule B than "all other sources," but the differential has narrowed in each of the 4 full years reported. The proportion of Hispanics hired under "all other sources" has held at an average of 5.5 percent for the 4 years, but the proportion hired under Schedule B has declined from almost 10 percent in 1983 to 7.2 percent in 1986.

The nonminority (White, not Hispanic) group has changed slightly as a proportion of Schedule B hiring, starting at almost 66 percent in 1983, reaching 71 percent in 1985, and dropping slightly to 69.5 percent in 1986. Nonminority hiring through "all other sources" has remained stable at approximately 77 percent during the 4-year period.

f) OPM Activity to Replace the PACE Permanently

MSPB's 1984-85 report on OPM's significant actions³² contained information about 16 occupations for which OPM had completed, or was in the process of completing, alternative examinations. As alternative examinations are completed, the occupations they cover are removed from the list of occupations covered by the Schedule B authority.

Information from OPM concerning 1985 and 1986 activity shows that little has changed since the 1984-1985 report was prepared. As of October 1986 OPM had completed

work on the 16 examinations identified in the 1984-1985 report³³ (some of which were identified there for future implementation). The last two to be completed, Social Insurance Claims Examiner and Social Insurance Representative, were announced in October 1986. Following testing, the registers (list of competitively ranked eligibles) for these occupations opened on February 27, 1987. All 16 examinations identified by OPM last year as completed or underway are thus now in use. By OPM's estimates, those 16 examinations cover about 60 percent of all anticipated entry-level PAC hiring.

OPM reported having targeted only one other occupation for alternative examination development: Quality Assurance Specialist, GS series 1910. This was identified by OPM as the last of the PAC occupations that represented relatively large numbers of entry-level hires each year (OPM estimated

³² U.S. Merit Systems Protection Board, "Report on the Significant Actions of the Office of Personnel Management During 1984-1985," May 1986, pp.38-40.

³³ The examinations are for the following GS series: Computer Specialist, GS-334-5/7; Tax Technician, GS-526-5/7; Economist, GS-110-5/7; General Investigator, GS-1810-5/7; Criminal Investigator, GS-1811-5/7; Game Law Enforcement Agent, GS-1812-5; Printing Management Specialist, GS-1654-5/7; Bank Examiner, GS-570-5/7; Agricultural Program Specialist, GS-1145-5/7; General Investigator (DoD), GS-1810-5/7; Immigration Inspector, GS-1816-5; Customs Inspector, GS-1890-5/7; Internal Revenue Officer, GS-1169-5/7; Contract Specialist, GS-1102-5/7; Social Insurance Claims Examiner, GS-993-5/7; and Social Insurance Representative, GS-105-5/7.

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it to represent approximately 1 percent of annual PAC entry-level intake), and therefore was considered an acceptable target. OPM's original schedule called for the examination to be announced (work essentially completed) by November 1987, and the register to be established in February 1988.

OPM staff reported to MSPB, however, that after OPM provided the information about this planned activity to MSPB, a recommendation was made not to pursue construction of an alternative examination for this particular occupation. Preliminary studies reportedly identified problems in the occupation's diversity that would make examination construction difficult. OPM reports that it is now planning other use of the staff time that would have been allocated to that effort.

Where does this leave OPM and the agencies with regard to eliminating the Schedule B authority? As of this report, 16 of the 118 PAC occupations have valid alternative entry-level examinations; the rest are still under Schedule B. While each of the remaining 102 occupations represents small employment numbers (by OPM estimates they collectively represent about 40 percent of all PAC entry-level hiring), they still represent situations where Merit System Principle 1 appears at risk.

The current OPM director, as was the director who was in office when the PACE was abolished, is on record as viewing the Schedule B authority as a less-than-adequate process for entry-level PAC hiring. Consequently, even as OPM may find satisfaction in what it has done to implement alternative examinations, it must remain dissatisfied and concerned about what has not been accomplished yet--and has not yet been scheduled.

One measure of effort to accomplish work is the number of staff years dedicated to that work. OPM informed MSPB that the following full time equivalent (FTE) staff years have been allocated solely to PAC entry-level examination procedures development. Since the *Luevano* consent decree the following figures represent work on the development of alternative examining procedures:³⁴

* CY 1979: 3.15 FTE	* CY 1983: 7.35 FTE
* CY 1980: 9.95 FTE	* CY 1984: 7.00 FTE
* CY 1981: 10.95 FTE	* CY 1985: 7.90 FTE
* CY 1982: 9.60 FTE	* CY 1986: ⁺ 5.40 FTE

(⁺ first 6 months only)

Whether this is "enough" staff for the job is properly a decision of the OPM Director. It seems unlikely, however, that continued allocations of staff at the levels indicated since 1982 will produce alternative examinations in a timely fashion.

On February 27, 1987, a U.S. District Court Judge ruled, in a case concerning this issue, that OPM acted improperly: in deciding to place in the excepted service all job categories formerly covered by PACE, and in deciding to abolish the PACE ahead of schedule when no alternative examinations were available. Also, OPM failed to prove that the cost of developing and implement-

³⁴ The figures for 1979 through 1983 were provided by the OPM Director in October 1985 in response to MSPB's request for information for MSPB's 1984-85 OPM significant actions report. The figures for 1984 and following years were provided as part of OPM's December 4, 1986, information submission for this current report.

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ing validated alternative examinations is prohibitive.³⁵

The Judge ordered that:

* * * within six (6) months from the date of this Order * * * OPM must implement a fair, open and competitive examination, or examinations, to govern appointment to PAC positions currently governed by the Schedule B authority * * * and must place such positions in the competitive service * * * [and OPM is] permanently enjoined from using the Schedule B authority * * * after six (6) months from the date of the Order * * *.³⁶

She also ordered that "within ninety (90) days from the date of this Order, defendants must convert to competitive service status all persons hired since August 31, 1982, into the PAC positions formerly governed by the PACE who currently remain excepted service employees * * *."³⁷

On March 30, 1987, the judge stayed her own order pending appeal to the U.S. Court of Appeals. In arguing for the stay, OPM said if the order stood there would be an "utter deadweight loss" of millions of dollars spent developing new tests.³⁸ The judge noted that "[t]his suggests that * * * defendants do not intend to develop alterna-

tive tests for positions formerly governed by PACE."³⁹

In the meanwhile, Executive Order 12596 provides a mechanism for meeting the (stayed) conversion requirement ordered by the judge, although by making conversion conditional upon proven performance and regulations that OPM may establish, it stops short of the "blanket" conversion that the order appears to require.

**B. NEW EXAMINATION
FOR APPRENTICES**

BACKGROUND

The Federal Government has been an employer of blue-collar apprentices since passage of the Apprentice Act of 1937. Across the Government, some seven or eight thousand persons are employed in the 4-year apprentice program. Between one and two thousand new Federal apprentices are hired each year.

Department of Defense agencies employ about 85 percent of all Federal apprentices, and Department of the Navy has around 90 percent of these (or slightly more than 75 percent of all Federal apprentices). This is not surprising when placed in context: the Navy employs approximately 140,000 blue-collar employees, who make up roughly 42 percent of the Navy civilian work force.

In April 1983 OPM tested a prototype of a new apprentice examination at the Norfolk Navy Shipyard, Norfolk, Virginia. Work on the prototype had begun in 1980, with considerable involvement by Navy officials. It was developed in response to employing

³⁵ National Treasury Employees Union, et. al., v. Constance Horner, Director, Office of Personnel Management, et. al., Civ. A. No. 84-2573, United States District Court, District of Columbia, February 27, 1987.

³⁶ Ibid.

³⁷ Ibid.

³⁸ The Washington Post, March 31, 1987, p.A15.

³⁹ Ibid.

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agencies' concerns that the then-existing examination was failing them in three ways:⁴⁰

- Large numbers of candidates were grouped at the top of the OPM registers with tied scores, and selecting officials had difficulty differentiating among them;
- Employing agencies couldn't reach women through the examination; and
- There was an unacceptably high turnover rate among new hires who entered through the examination.

Following refinements based on results of the initial use of the examination, OPM put the new apprentice examination into use in March 1984. MSPB did not attempt to re-

view it in the 1984-1985 report on OPM's significant actions, primarily because sufficient information about it was not available when that earlier report was being prepared.

SPECIFIC FINDINGS

MSPB queried the Departments of the Navy, Army and Air Force to get information about user satisfaction with the new examination. Although experience with the examination in these three departments varies significantly (see Table 7), their experiences all appear to be favorable. The Air Force simply stated that "* * * the candidates who had taken the new examination were better qualified candidates."⁴¹ Navy, in a more responsive statement, said:

Managers in the Headquarters and Field activities have generally described the

**TABLE 7
NUMBERS OF PERSONS HIRED THROUGH THE NEW
APPRENTICE EXAMINATION
BY THE DEPARTMENTS OF AIR FORCE, ARMY AND NAVY
MARCH 1984 THROUGH FEBRUARY 1986**

<u>DEPARTMENT</u>	<u>MARCH 1984- FEBRUARY 1985</u>	<u>MARCH 1985- FEBRUARY 1986</u>	<u>COMBINED</u>
Air Force.....	120.....	124.....	144
Army.....	0.....	7.....	7
Navy.....	1,007.....	1,030.....	2,037
TOTAL	1,127.....	1,161.....	2,188

Source: The Departments identified in this table, in response to an MSPB information request.

⁴⁰ Information presented during a briefing by John D. Kraft, OPM Office of Staffing Policy, to Merit Systems Protection Board staff members Harry C. Redd III and S. Ed Tape, on March 20, 1986.

⁴¹ Contained in Department of the Air Force response referred to in footnote 29 above.

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new hires from the new apprentice examination as being better qualified to perform successfully both the academic and on-the-job training requirements. In addition, the new apprentice hires appear to be more serious about their job responsibilities and career goals. This may reflect how our society is changing rather than the exam's ability to screen in maturer hires as no statistical data are available.⁴²

OPM shares the opinion that the new examination is a success. In an enclosure to Director Horner's reply to MSPB's information requests,⁴³ for example, we find:

We are very pleased with the examination. It has saved examining time for our area offices and had given agencies quality hires.

Why does this examination cause such positive reaction from both the using agencies and the OPM? Do the tangible results, visible through quantitative and qualitative measures, justify such favorable attitudes?

Table 8 provides selected comparisons in hiring patterns between the last year of the old examination and the first 2 years under the new one. (In Table 8 data for the second year of the new examination's use are limited to the first 9 months of the fiscal year.) The table contains two sets of figures, one for Department of the Navy (clearly the largest user of the examination)

⁴² Quoted from an enclosure to the Department of the Navy reply to MSPB's information request. The response, dated 27 October 1986, was signed by Chase Untermeyer, Assistant Secretary of the Navy for Manpower and Reserve Affairs.

⁴³ This is the reply referred to in footnote 30 above.

and one for all of the Federal Government, including Navy.

Almost across the board, minority groups and women made hiring gains under the new examination (Hispanics are the one overall exception to this generalization). While a 3-year comparison does not represent a trend, the Table 8 data are encouraging, especially when they are linked with the agency reports that the quality of the apprentices they hired through the new examination was higher than under the old examination. OPM also reported that:

In March 1985, the Department of Labor reported that of the 228,198 registered apprentices, 6.4% were women and 19.7% were minorities. The data include the Federal apprentices.⁴⁴

The comparable Federal figures are better for all 3 years (even more so than they appear at first look, since the FY 1985 figures are included in the overall figures reported by Department of Labor, improving the overall figure slightly). Consequently, it appears that the Federal Government is: 1) doing better in apprentice affirmative action than the national average; 2) improving on its overall apprentice affirmative action record; and 3) making gains (based on agency assessments) in the quality of apprentices.

OPM is now collecting criterion data for a validation study to be conducted in early Summer 1987. These data are on both training and job performance criteria. OPM has completed a validity generalization study which found that there appears to be

⁴⁴ This is the reply referred to in footnote 30 above.

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TABLE 8
SELECTED COMPARISONS OF HIRING UNDER
THE OLD AND NEW APPRENTICE EXAMINATIONS
Fiscal Years 1984 (Old), 1985 and 1986 (New)
(Showing Hiring by Navy and All Other Federal Agencies)

	<u>Navy</u>			<u>All Other Federal Agencies</u>		
	<u>FY1984</u>	<u>FY1985</u>	<u>FY1986*</u>	<u>FY1984</u>	<u>FY1985</u>	<u>FY1986</u>
	<u>(n=1007)</u>	<u>(n=1030)</u>	<u>(n=387)</u>	<u>(n=127)</u>	<u>(n=75)</u>	<u>(n=22)</u>
<u>Sex</u>						
Male	878 (87.2%)	887 (86.1%)	316 (71.1%)	104 (81.9%)	48 (64.0%)	21 (95.5%)
Female	129 (12.8%)	143 (13.9%)	71 (18.3%)	23 (18.1%)	27 (36.0%)	1 (4.5%)
<u>Race/National Origin</u>						
<u>American</u>						
Indian	7 (0.7%)	11 (1.1%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Asian	55 (5.5%)	65 (6.3%)	21 (5.4%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
<u>Black/ Not</u>						
Hispanic	106 (10.5)	151 (14.7%)	88 (22.7%)	12 (9.4%)	2 (2.7%)	1 (4.5%)
Hispanic	12 (1.2%)	20 (1.9%)	2 (0.5%)	83 (65.4%)	40 (53.3%)	0 (0.0%)
<u>White/ Not</u>						
Hispanic	827 (82.1%)	783 (76.0%)	276 (71.3%)	32 (25.2%)	33 (44.0%)	21 (95.5%)

* Represents hires during first nine months of FY1986 (October 1, 1985, through June 30, 1986).

Source: U.S. Office of Personnel Management

sufficient similarity among the various jobs to use the same measures of performance for most jobs. There also appear to be some indications that performance during training might be predicted from similar items in the examination process. Final determination of the validity of the new examination will depend upon the outcome of OPM's validity study.

A combination of additional years of experience with the new examination and the results of the validation study will be necessary before the examination can be judged fully. It would appear, however, that OPM's apprentice examination is a success story. As such, it indicates what OPM and agencies can achieve when they work together in a cooperative and professional manner to solve a problem.

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METHODOLOGY

In preparing the "Entry-Level Professional and Administrative Career Hiring" portion of this report, MSPB drew heavily upon information from the Office of Personnel Management and the 21 largest executive departments and independent agencies, provided in writing in response to written questions from MSPB. The officials who responded to the MSPB questions are identified in the appendix to this report.

There were actually 27 responses from the 21 departments and independent agencies, because the Department of Defense submitted separate replies from seven discrete nonuniformed components of the department, rather than a single consolidated response.

In writing the "Blue-Collar Apprentice Examination" portion of this report, MSPB drew from information submitted by OPM and three departments that OPM said had experience with that new examination. This also was written information responding to specific written questions from MSPB.

OPM's and agencies' answers to MSPB's questions were a mixture of facts, perceptions, and opinions. The factual information included statistical reports and numerical summaries.

MSPB's analyses included looking for patterns and consistency among the responses that could serve to identify actual or potential prohibited personnel practices, or to identify possible violations of--or the potential to violate--the merit system principles.

Many OPM and agency personnel officials helped the MSPB staff by offering com-

ments about certain aspects of either entry-level PAC hiring or the new Apprentice Examination (sometimes about both). Their comments confirmed or modified MSPB staff ideas and stimulated new ideas. While not discrete additional information sources, these professionals contributed significantly to this report.

OPM REVIEW

The OPM Associate Director for Career Entry reviewed a draft of this report, and on August 26, 1987, MSPB representatives met with him to discuss his comments. Those comments were taken into consideration in preparing the final report.

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

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

Terence C. Golden
Administrator
General Services Administration

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

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

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

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

John M. Golden
Director of Personnel
Department of Commerce

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

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

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

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

William E. Brock
Secretary
Department of Labor

J.M. Schulman
Director of Personnel
Department of Energy

Carl Grant
Director of Personnel
National Aeronautics and
Space Administration

Clarence Hardy
Director of Personnel
Environmental Protection Agency

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

**IN SEARCH OF MERIT:
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Carolyn Shackleford
Special Assistant to the
Director of Personnel
Small Business Administration

Diana L. Zeidel
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Department of Transportation

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

Philip E. Carolan
Director of Personnel
Department of the Treasury

Michael Rudd
Director of Personnel and Labor Relations
Veterans Administration

Constance Horner
Director
Office of Personnel Management

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