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Report to the Chairman, Committee on
Ways and Means, House of
Representatives

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PERSONNEL PRACTICES

Circumstances Surrounding U.S. Customs Service's Use of Schedule A Appointment Authority



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Abstract <p>The Office of Personnel Management (OPM) approved a request of the Department of the Treasury on August 21, 1998, to amend U.S. Customs Services existing Schedule A appointment authority for 300 criminal investigator positions, to include 10 additional special law enforcement positions. While the majority of candidates for federal employment must compete for jobs under the merit system by applying through the competitive civil-service examination process, Schedule A appointees do not. Schedule A authority allows an agency to noncompetitively appoint individuals to positions in the excepted service for which it is not practicable to apply the qualification standards and requirements established for the competitive service. The use of Schedule A appointments is an important tool for agencies to use as they try to recruit and retain the best employees. While GAO has encouraged agencies to use such tools and other flexibilities in managing their human capital, as with any tool, agencies need to avoid situations and appearances that could compromise the credibility and integrity of the merit system.</p>		
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United States General Accounting Office
Washington, DC 20548

September 13, 2001

The Honorable William M. Thomas
Chairman, Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

The Office of Personnel Management (OPM) approved a request of the Department of the Treasury on August 21, 1998, to amend U.S. Customs Service's existing Schedule A appointment authority for 300 criminal investigator positions, to include 10 additional special law enforcement positions. While the majority of candidates for federal employment must compete for jobs under the merit system by applying through the competitive civil-service examination process, Schedule A appointees do not. Schedule A authority allows an agency to noncompetitively appoint individuals to positions in the excepted service for which it is not practicable to apply the qualification standards and requirements established for the competitive service. The use of Schedule A appointments is an important tool for agencies to use as they try to recruit and retain the best employees. While GAO has encouraged agencies to use such tools and other flexibilities in managing their human capital, as with any tool, agencies need to avoid situations and appearances that could compromise the credibility and integrity of the merit system.

On the basis of your request and discussions with your office, we agreed to report on

- the nature of and reasons for the request for the U.S. Customs Service's Schedule A appointment authority and OPM's approval of the request;
- the number, types, and circumstances of appointments made under Customs' Schedule A authority, and any subsequent personnel actions related to the appointments, including whether those actions complied with merit system principles or OPM policies; and
- OPM's oversight of Customs' Schedule A authority.

Results in Brief

The Treasury Department, on behalf of the Customs Service, requested OPM approval for Schedule A appointment authority on August 6, 1998, for 10 positions for oversight policy and direction of sensitive law enforcement activities. Treasury's request stated that "due to the sensitive nature of the operations, these positions require a unique blend of special

characteristics, skills and abilities that cannot be announced to the general public, and for which it is not practicable to examine.” Treasury’s request did not identify the specific positions the authority would be used for. OPM approved Treasury’s request on August 21, 1998. According to OPM officials, no detailed criteria are applied when OPM considers such requests. Rather, OPM approved the request based primarily on Treasury’s assertion that the positions to be filled were sensitive in nature, involved law enforcement activities, and were impracticable to advertise and examine for. OPM also found that the request was for positions similar to ones at Treasury that OPM had approved previously.

In using the Schedule A authority between September 1998 and January 2001, Customs made nine appointments to various positions—such as law enforcement and public affairs specialists and a strategic trade adviser. The circumstances surrounding five of the nine appointments can in our opinion, give the appearance of inconsistency in the application of the Schedule A appointment authority or possible favoritism toward former political employees. The remaining four appointments did not raise any similar issues. The following describes the circumstances surrounding the five appointments.

- While the criteria used to justify all 10 positions were that their duties and responsibilities were impracticable to advertise and competitively examine (applicants for their qualifications), for three of the Schedule A appointments, identical positions were ultimately advertised and examined in the competitive service. Two individuals, after having spent over a year in Schedule A positions, were selected for identical competitive positions. (The third appointee was selected for a different competitive service position.) In discussing this issue with Customs’ officials, they stated that when it was initially decided that the subject positions were needed, no such positions existed at Customs. Accordingly, to facilitate hiring, given the unique combination of skills required for the positions, they used the Schedule A authority. Officials also stated that subsequently it became apparent that the positions would be needed permanently, and they also concluded that such positions could be advertised and competed. While not disagreeing that the positions could have been advertised competitively originally, Customs’ officials stated that when they initially used the Schedule A authority, they believed it was appropriate and that they were acting in good faith in attempting to meet their goal of hiring needed expertise as quickly as possible. Also, while the circumstances surrounding the appointments give the appearance of providing an unfair advantage to the two appointees—allowing them to serve in identical Schedule A positions for over 1 year—we could not

determine that they would not ultimately have been selected for the competitive service positions based on their education and work experiences prior to coming to Customs. After the conversions, these three original Schedule A positions were eliminated by Customs and no longer exist, and Customs has stated that it has no plans to convert any of the remaining six (of the nine) Schedule A positions or any future positions created under the authority to competitive service positions.

- Two other Schedule A appointments were made to noncareer appointees in Customs' Senior Executive Service (SES) several days before the Presidential transition. The timing of such actions can give the appearance of political favoritism. Treasury subsequently questioned the appearance of political favoritism in these appointments and asked OPM whether the appointments complied with the Schedule A authority. OPM determined that they did comply.

The conversions of the three Schedule A employees—who had been in Schedule A positions identical to two newly created competitive service positions—to competitive service positions complied with merit system principles and the limited-term SES appointment of another Schedule A appointee complied with OPM guidance.

OPM performs periodic oversight reviews of agencies' use of certain appointment authorities, including Schedule A and other excepted appointments, every 4 or 5 years. The most recent review of Customs was for appointments made during 1999. However, the judgmental sample of appointments selected and reviewed by OPM did not include the two Schedule A appointments that had been made under this authority at that time. These appointees were in the law enforcement and public affairs specialist positions that were subsequently converted to competitive service positions. OPM also conducts occasional surveys that require agencies to justify the continuing need for each of its appointment authorities. In the case of Customs, the most recent survey was in 1998 in which Treasury supported the continuing need for Customs' single-agency authority for criminal investigators, prior to OPM's approval of Customs' authority for the 10 positions. The only OPM review of appointments made under Customs' specific authority for the 10 policy-related positions was that made at Treasury's request in February 2001 concerning the 2 appointments of the noncareer SES employees.

Background

A number of human capital management tools and flexibilities are available to assist agencies in their recruitment and hiring processes. The competitive service and excepted service hiring approaches provide different and complementary ways to acquire employees in the general schedule (GS) grades of GS-15 and below. In addition, agencies may also appoint individuals to SES positions through a competitive process or make noncareer SES appointments without competition. While recognizing the need for flexibility in hiring employees, the federal government also seeks to assure that appointments are based on merit. The Civil Service Reform Act of 1978 (P.L. 95-454) set out a number of merit system principles and required that federal personnel management be implemented in a manner consistent with those principles. The principle pertaining to appointments states that “[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.”¹

OPM is responsible for implementing the Civil Service Reform Act and other personnel-related laws and for developing regulations to ensure that the intent of merit system principles is implemented.² OPM delegated examining authority to Treasury—on behalf of Customs—on December 20, 1995. The delegated examining authority requires Customs to conduct competitive examinations that comply with merit system laws and regulations as interpreted by OPM’s *Delegated Examining Operations Handbook*.

The majority of the federal civilian workforce obtained their positions by competing against others through the competitive service examination process. The examination process is one of the processes intended to assure merit system principles are complied with and includes notifying the public that the government will accept applications for a job, rating applications against minimum qualification standards, and assessing

¹5 U.S.C. 2301 (b)(1).

²5 U.S.C. 1104.

applicants' relative competencies or knowledge, skills, and abilities (KSA)³ against job-related criteria to identify the most qualified applicants.

The law provides for necessary exceptions to the competitive service process, however, when conditions of good administration warrant.⁴ OPM has been delegated broad authority for excepting positions from the competitive service when it determines that competitive examination for those positions is impracticable. "Impracticable to examine" means that it is impractical or unreasonable to apply the qualification standards and procedural and other requirements established for the competitive service. If OPM decides a position should be in the excepted service, OPM authorizes the positions to be filled by excepted appointment under Schedules A, B, or C. The Schedule A authority is for positions in the excepted service, other than those of a confidential or policy-determining character, for which it is impracticable to hold a competitive examination and the appointments are not subject to the basic qualification standards established by OPM.⁵

While there are many types of Schedule A positions excepted by OPM governmentwide, such as chaplains, attorneys, and certain positions for which a critical hiring need exists, agencies may also petition OPM to establish Schedule A appointing authority specifically applicable to their agency. OPM decides on such single-agency requests on a case-by-case basis. Treasury's Schedule A authority for Customs Service positions has been approved and amended several times over a period of almost 35 years. For example, in 1963, OPM approved Treasury's request for single-agency Schedule A appointing authority for 25 criminal investigator positions at Customs.⁶ In 1991 and 1997, OPM amended Customs' Schedule

³KSAs are the knowledge, skills, and abilities required to perform the duties and responsibilities of a specific position.

⁴5 U.S.C. 3302 states that the President may provide for the necessary exceptions of positions from the competitive service.

⁵Schedule B is also for positions other than those of a confidential or policy-determining character for which it is impracticable to hold a competitive examination. However, unlike Schedule A positions, appointments under Schedule B authority are subject to the basic qualification standards established by OPM for that occupation and grade level. In contrast, Schedule C positions are positions that are policy determining or which involve a close and confidential working relationship with the head of an agency or other key appointed official.

⁶Schedule A authority: 5 C.F.R. 213.3105 (b)(6) (1964).

A authority by increasing the number of criminal investigator positions at Customs to 200 and 300 positions, respectively.

Individuals appointed to Schedule A positions may be converted to publicly announced competitive service positions by competing for those positions. In addition, employees in certain types of Schedule A positions—such as positions filled by mentally retarded and severely physically handicapped persons—may be converted without competition to competitive service positions upon the completion of 2 years of satisfactory service. Employees in Schedule A positions may also compete for career appointments to SES positions, or be given noncareer or limited-term SES appointments noncompetitively. Depending on the position and the status of the individual, the noncompetitive appointments may require OPM authorization and approval from the White House’s Office of Presidential Personnel. The agency appointing official determines whether an individual meets the qualification requirements of the SES position.

Treasury Requested and OPM Approved Customs’ Authority Based on Impracticability to Examine

Treasury requested, on August 6, 1998, that OPM amend Customs’ Schedule A authority to include 10 positions for oversight policy and direction of sensitive law enforcement activities. Treasury’s request letter—on behalf of Customs—explained that Customs had almost reached its limit of 300 criminal investigator positions previously authorized by its Schedule A authority. Treasury requested an amendment to the authority to authorize Customs to fill an additional 10 positions and to broaden the authority so that the positions included providing oversight and direction to sensitive law enforcement projects and coordinating such initiatives with other federal agencies at the national level, including undercover and intelligence work. The justification for including the additional 10 positions under a Schedule A authority was that “due to the sensitive nature of the operations, these positions require a unique blend of special characteristics, skills and abilities that cannot be announced to the general public, and for which it is not practicable to examine.”

OPM approved the authority for the 10 positions on August 21, 1998. In making the approval, OPM officials said that they had evaluated Treasury’s request and had based their decision on (1) Treasury’s assessment of whether the positions were impracticable to examine for and (2) prior Schedule A approvals that OPM had granted for circumstances similar to Treasury’s newly requested positions. Neither statute nor regulations define detailed criteria for determining which positions are impracticable to examine for. OPM officials told us they use their knowledge of the

duties and responsibilities of the positions and the examination process to make a judgment as to which positions are impracticable to examine for. The OPM official who reviewed the request and recommended its approval said that her determination that it was impracticable to examine for such positions was based primarily on Customs' assertion that the positions were sensitive in nature and involved law enforcement activities. In addition, an OPM official said that the positions, as generally described in the request, were similar to law enforcement type positions that OPM had approved in Treasury's Office of the Under Secretary for Enforcement.

In amending the Schedule A authority, OPM did not restrict its use to any specific job or occupational series. OPM said that granting general authority—without specific positions or occupational series—is a standard OPM practice. For example, OPM approved Schedule A authority at Treasury for no more than 20 positions supplementing permanent staff studying international financial, economic, trade, and energy policies and programs, with employment not to exceed 4 years.⁷

Circumstances of Some Appointments Give the Appearance of Inconsistent Application of the Authority or Political Favoritism

Customs appointed nine individuals to Schedule A positions using the amended authority granted by OPM between the time of OPM's approval on August 21, 1998, and the most recent appointment on January 14, 2001. These appointments were two identical law enforcement specialists, a public affairs specialist, a law enforcement appropriations officer, a strategic trade adviser, a special assistant in the Office of Internal Affairs, a program manager for air interdiction, a deputy executive director of air/marine interdiction, and a senior adviser on various aspects of oversight policy and direction of law enforcement activities. Customs can currently create 4 new Schedule A positions under the authority for the 10 positions because 1 position was not filled and the positions—of the 3 appointees that subsequently converted to competitive service positions—were terminated and no longer exist.

Although the circumstances surrounding the initial appointments of six individuals did not appear inconsistent with the authority, events subsequent to three appointments were apparently inconsistent with the justification Treasury used in first requesting the authority and may have provided two of the three appointees with an unfair competitive advantage. In addition, while the six initial Schedule A appointments did

⁷Schedule A authority: 5 C.F.R. 213.3105 (c)(1)(f) (1975).

not appear inconsistent with the authority, the timing of two of the six appointments could give the appearance of political favoritism.

Two Appointments Appear to Give Unfair Competitive Advantage

The circumstances resulting in two Schedule A appointees eventually being hired into identical competitive service positions appear to have been inconsistent with the justification used in the original request for the Schedule A authority. The appointees—a law enforcement specialist and a public affairs specialist—were initially placed in Schedule A positions that Treasury’s request to OPM asserted could not be announced to the public and were not practicable to examine for. After the appointees performed the duties and responsibilities of these positions for over a year, Customs created identical competitive service positions, advertised the positions, examined applicants, and filled the positions with the two Schedule A appointees. Customs’ ability to ultimately hold a competition for these positions appears to have conflicted with Customs’ original justification when requesting the Schedule A authority. Further, the appointees may have gained an unfair competitive advantage while serving in the Schedule A positions.

Customs’ officials stated that when it was decided that the law enforcement and public affairs specialist positions were needed, no such positions existed at Customs. Accordingly, to facilitate hiring, given the unique combination of skills required for the positions, they believed that using the Schedule A authority was appropriate and the best mechanism. About 13 months after appointing one of the law enforcement specialists and about 19 months after appointing the public affairs specialist, Customs determined that these positions should be established as competitive service positions identical to their former Schedule A positions. Customs officials justified competitively recruiting for the law enforcement position because the former Commissioner had determined that there was a permanent need for the position to improve Customs’ efforts in combating various types of crimes. Similarly, the public affairs position was created in the competitive service because the Assistant Commissioner for Public Affairs determined there was a permanent need for the position (1) to establish and maintain effective working relationships with top officials of other federal, state, and local agencies and members of the media and (2) to oversee Customs’ antidrug enforcement public affairs program. While not disagreeing that the positions could have been advertised competitively originally, Customs officials stated they acted in good faith in initially making the appointments under the Schedule A authority to meet their goal of hiring needed expertise as quickly as possible.

The plans that Customs ultimately developed for examining the applicants for each of the two competitive positions contained criteria or standards for measuring the relative qualifications of the applicants, including the KSAs considered essential for successful or enhanced performance of the position's duties and responsibilities. For example, in the law enforcement specialist plan, one KSA on which applicants were evaluated was "knowledge of federal laws, regulations, and procedures and, specifically, criminal laws enforced by Customs."

Customs advertised the law enforcement specialist and public affairs specialist positions to the public on February 4 and August 14, 2000, respectively. Customs officials said that both positions were announced to the public to attract and retain the most highly qualified candidates. The selection processes for both positions were completed in about 2 months, and the law enforcement and public affairs incumbents—who had originally been hired as Schedule A appointees—were appointed on April 23, 2000, and October 8, 2000, respectively. Although the circumstances suggest that the two appointees may have received an unfair competitive advantage by serving in positions with the same duties for more than a year prior to the competitive positions being announced publicly, we could not determine that they would not ultimately have been selected for the competitive service positions based on their education and work experiences prior to coming to Customs.

Customs' officials acknowledged that the duties and responsibilities of the Schedule A law enforcement and public affairs specialist positions, and the KSAs needed to perform those positions, had not changed so as to provide a basis for Customs to announce the positions to the public and examine the applicants. Rather, Customs' Director of Executive Services Staffing said that the use of the Schedule A appointment authority for the law enforcement specialist and public affairs specialist positions originally was appropriate because, in addition to the unique combination of KSAs required, there was an urgent need to fill such positions in an expeditious manner. However, neither Treasury's request for the appointment authority nor OPM's approval of the authority cited urgency as a reason. Furthermore, OPM officials stated that urgency was not a factor they had considered in granting the approval. While the first appointment was made within 1 month of the authority's being granted, the next two appointments were not made until January 1999—about 5 months after the authorization was granted.

The three original Schedule A positions no longer exist at Customs, and Customs has stated that it has no plans to convert any of the remaining six

positions or any future positions created under the authority to the competitive service.

Two Appointments Raised Treasury's Concern About Appearance of Favoritism

Two other Customs' appointments were questioned at the department level. Treasury officials told us they were concerned about whether the positions complied with Schedule A authority and whether the timing of the appointments of two former noncareer SES appointees—just before the new Administration took office—gave the appearance of political favoritism. While appointments of noncareer individuals to permanent positions late in an Administration do not violate merit system principles, they could give the appearance of political favoritism. The effect of these appointments was to move two employees from noncareer SES appointments—from which incumbents are usually asked to resign upon the advent of a new Administration—to Schedule A appointments in positions which have some similar duties and indefinite tenure. Customs' officials stated that the two employees would not have appeal rights until they have served 2 years under their current Schedule A appointments, which will not occur until January 2003.⁸

Treasury's Deputy Assistant Secretary for Human Resources said that she was contacted on two occasions in January 2001 by Customs' Assistant Commissioner for Human Resources regarding the pending appointments of two noncareer SES employees to the Schedule A positions of law enforcement appropriations officer and strategic trade adviser. As a result of these discussions, the Deputy Assistant Secretary said that she was concerned about whether the appointments would “withstand the scrutiny inherent in the procedures in place for the review of conversions of political employees,” given that the former positions were political appointments and a new Administration would be taking office on January 20, 2001. Customs' officials said they believed the appointments—made on January 14, 2001—were in full conformance with civil service laws, rules, and regulations.

The newly created Schedule A positions included some similar—but not identical—duties to those of the SES positions of the political, noncareer appointees. For example, the law enforcement appropriations officer's responsibilities, which included establishing and maintaining effective working relationships with congressional staff, were similar but not

⁸5 C.F.R. 432.102 and 432.106 (a)(4) and 5 C.F.R. 752.401 (c)(5).

identical to responsibilities of the appointee's former SES position to maintain contact with congressional staff whose actions have a direct bearing on Customs' programs and policies. Similarly, the responsibilities of the strategic trade adviser's Schedule A position included advising the Assistant Commissioner and other Customs' executives regarding trade enforcement strategies and programs, while the responsibilities of the former SES position included providing executive-level advice and counsel in planning long-range regulatory programs.

In early February 2001, the Deputy Assistant Secretary expressed her concerns to the Associate Director of OPM's Employment Service about whether the appointments complied with the Schedule A authority and whether the timing of the appointments could give the appearance of political favoritism. Subsequently, the Deputy Assistant Secretary referred the appointments to OPM and asked OPM to determine whether the appointments were an appropriate use of the authority. One month later, on March 12, 2001, OPM informed the Treasury that both appointments were within the scope of the authority. OPM officials said they based their determination on justifications provided by Customs that described several special skills and abilities required for each position that were impracticable to examine and that OPM did not consider the political nature of the employees' former positions or the appointments.

Conversions of Appointees Met Merit System Principles and OPM Policies

Notwithstanding the issues discussed above, the conversions of the three Schedule A employees—who had been in Schedule A positions identical to two newly created competitive service positions—to competitive service positions complied with merit system principles and the appointment of another Schedule A appointee to a limited-term SES position complied with OPM guidance. Two of the appointees were converted to positions—a public affairs specialist and a law enforcement specialist—with identical duties and responsibilities as those they had filled under the Schedule A authority. The third appointee—who also had previously been a law enforcement specialist—converted to a different position, chief of staff. OPM regulations do not address the conversion of excepted service appointees to the identical positions in the competitive service if conducted in compliance with merit system principles.

Records in Customs' merit-staffing files and other agency documents indicated that merit-staffing procedures had been followed and the principal requirements had been met for each of the three competitive selections. For example, each of the job announcements for the three positions was open for 5 business days—meeting OPM's minimum

requirement for an open period. In addition, Customs made the competitive area of consideration for each of the three job announcements worldwide and open to all qualified candidates. Customs also complied with OPM regulations for the selection of eligible applicants, including the regulation that the selectee must be from among the three highest-rated applicants. Otherwise, the agency must provide a justification. For all three positions, the selectees were the top-rated applicants for those positions. As also required by OPM regulations, the selecting officials for each position did not participate in rating or ranking the applicants for that position.

The establishment of an SES position—senior adviser—to be filled by a limited-term appointment and the selection of a Schedule A appointee also complied with OPM requirements for such SES appointments. OPM regulations require the position’s term to be limited to 3 years or less and the position’s duties and responsibilities to be primarily for project-type activities that will expire in 3 years or less. Customs limited the term of the position to 3 years, and most of the position’s duties appeared likely to be completed within 3 years or less. For example, the incumbent is responsible for implementing programs to ensure integrity and credibility within the Office of Internal Affairs. The performance of such activities could be completed within a limited period of time. OPM’s guidance governing selection of an appointee does not require competition for such appointments, but it does require the appointee to be qualified for the position. In compliance with these regulations, Customs’ appointing official determined that the individual’s KSAs met the qualifications necessary to perform the duties and responsibilities of the position and made the selection.

OPM Performs Oversight of Customs’ Schedule A Authority

OPM conducts oversight of federal agencies’—including Customs’—single-agency Schedule A appointments and determines whether those appointments comply with Schedule A authority. However, OPM’s sampling of Customs’ appointments did not include any of the appointments made under the Schedule A authority. The occasional OPM survey that addresses, in part, the continuing need for Schedule A authority was last conducted at Customs in 1998, prior to OPM’s approval of Customs’ authority for 10 positions. Only the review conducted at Treasury’s request addressed any of the nine positions. OPM found the two positions to be within the scope of Customs’ authority.

The Civil Service Reform Act of 1978 requires OPM to carry out an oversight program to ensure that agencies exercise their personnel

management authorities in accordance with merit system principles and with the law and regulations that implement those principles.⁹ OPM's Office of Merit Systems Oversight and Effectiveness (OMSOE) performs periodic oversight reviews of each agency's human capital practices, including the use of excepted service appointment authorities. Each of the departmental agencies and independent agencies with larger numbers of employees—including the Department of the Treasury—is subject to review every 4 years, and each of the smaller independent agencies is reviewed every 5 years. However, each office within an agency—such as Customs—is not necessarily reviewed each time the agency is reviewed. The Assistant Director for OMSOE said that each audit team determines which offices within an agency will be reviewed based on a pre-site assessment of prior audit reports and other sources.

OMSOE conducted an oversight review of Customs' appointments made during 1999 and issued a report in November 2000. The overall objective of the review was to examine how managers, supervisors, and human capital specialists work together to make decisions that support the mission of the agency, contribute to public policy objectives, and are consistent with merit system principles. The review covered three broad areas—staffing, workforce management, and human capital management accountability. As part of the staffing review, OMSOE reviewed appointment authorities granted to Customs by OPM. In reviewing these authorities, OMSOE performed its standard audit procedure of selecting a judgmental sample of the appointments for review.

The two appointments that Customs had made under its Schedule A authority at the time of the review of 1999 appointments were not selected as part of OPM's sample. The Assistant Director of OMSOE stated that OMSOE uses "problem oriented" sampling to select appointments. That means that if OMSOE officials have identified problems with a specific type of appointment through such sources as employee complaints and periodic employee attitude surveys, the audit team will include some of those appointments in the sample of appointments it reviews. For example, during the Customs review, OMSOE officials said that they randomly selected 9 of 174 Veterans Readjustment Act appointments for that reason. The audit team's decision to limit its review to nine cases, according to an OMSOE auditor, was based on the time and resources available.

⁹5 U.S.C. 1104 (a)(2).

During the entire review of Customs, OMSOE sampled 54 (or about 3 percent) of approximately 2,061 appointments, including 15 Schedule A appointments, made during 1999. The Assistant Director said that because of the limited sample, any conclusions developed from the analysis of appointments sampled could not be projected as being representative of all the appointments for the organization as a whole. The Assistant Director believes the judgmental sampling technique is adequate because OMSOE is looking for systemic problems.

OPM's oversight of appointment authorities also includes occasional surveys by OPM's Employment Service. These surveys are not conducted regularly and, in the case of Customs, were conducted most recently in 1982 and 1998. The surveys primarily consisted of OPM's requesting that Treasury justify the continuing need for each of its appointment authorities. Treasury's response to OPM's survey in July 1998 addressed the continuing need for Customs' single-agency authority for criminal investigators. The response did not apply to the 10 positions because the authority for those positions was not granted to Customs until August 21, 1998, after the survey.

As discussed previously, at Treasury's request, OPM reviewed the use of Customs' Schedule A authority for two of the nine appointments made. That review was limited to an assessment of whether the positions' duties and responsibilities appeared to comply with the criteria for the authority.

Agency Comments and Our Evaluation

We obtained comments on this report from the Director, OPM, and the Deputy Assistant Secretary for Human Resources, Treasury, responding on behalf of the Secretary of the Treasury. The Director said that OPM agreed with the report's conclusions that the appointments complied with merit system principles and OPM guidance. The Director also expressed concern about the appearance of political favoritism that surrounded two appointments and consequently planned to conduct a review. In addition, because our report presented information from Customs' representatives that appeared inconsistent with Customs' original justification for the Schedule A authority, OPM indicated it plans to review the basic justification for that authority.

Treasury's Deputy Assistant Secretary for Human Resources provided technical comments that were incorporated in the report where appropriate.

OPM's comments are reprinted in appendix II.

We performed our work in Washington, D.C., from October 2000 through May 2001 in accordance with generally accepted government auditing standards. Additional information on the scope and methodology of our review is presented in appendix I.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Secretary of the Treasury and the Director, OPM. We will also make copies available to others on request at that time.

Major contributors to this report were Richard W. Caradine, Assistant Director; Thomas C Davies, Jr., Project Manager; and John Ripper, Senior Analyst. If you or your staff have any questions about this report, please contact Mr. Davies or me at (202) 512-9490.

Sincerely yours,

A handwritten signature in black ink that reads "George H. Stalcup". The signature is written in a cursive style with a large initial "G".

George H. Stalcup
Director, Strategic Issues

Appendix I: Scope and Methodology

In order to determine the nature of and reasons for Treasury's request for Customs' Schedule A appointment authority for 10 positions, we asked Customs' officials to explain their justification for requesting the authority. We also reviewed the request letters and supporting documentation that the Treasury Department submitted to OPM on behalf of Customs. To determine OPM's process for reviewing Treasury's request, we interviewed OPM officials, obtained and reviewed documents related to OPM's review and justification for approving the request, and obtained and reviewed the pertinent laws and *Code of Federal Regulations* (C.F.R.) governing the granting of Schedule A authorities.

To identify the circumstances surrounding the appointments Customs made under the Schedule A authority and whether Customs used the authority appropriately, we obtained from OPM and Customs listings of all Schedule A appointments made under the single-agency Schedule A authority (5 C.F.R. 213.3105 (b)(6) (1964)) from August 21, 1998—the date the authority was approved—until May 31, 2001, and the related personnel files.¹ Based on our reviews of these files and interviews with Customs' officials, we identified the dates that the positions were created and appointments were made, the titles and grades of the positions, and the duties and responsibilities of each position. At our request Customs provided justifications explaining why each of these positions met the criteria for its Schedule A authority. We also reviewed laws, regulations, and procedures that govern the use of Schedule A authority and determined that the regulations do not specify criteria for determining when it is impracticable to examine for a position. We compared the general requirements to the position's duties and responsibilities and exercised professional judgment in assessing whether appointments appeared to be an appropriate use of the single-agency Schedule A authority.

In addition, we met with Treasury Department officials to discuss Customs' appointment of two of the agency's noncareer SES employees to the Schedule A positions of strategic trade adviser and appropriations officer. We did this because Treasury officials had expressed concern regarding the two appointments and had contacted OPM regarding whether these appointments would be appropriate under Customs' single-

¹We did not evaluate Customs' approach to identifying potential appointees or the qualifications of the appointees because it was outside the scope of the request.

agency authority. We also discussed with OPM officials their decisions regarding these two appointments.

To determine whether Customs complied with merit system principles in converting three of its nine Schedule A appointees to competitive service positions, we applied the merit system principles established in Title 5 of the *United States Code* (5 U.S.C. 2301) and OPM's interpretation of those principles in its *Delegated Examining Operations Handbook*. The handbook describes the procedures and requirements intended to ensure compliance with the merit system objective of fair and open competition. We compared the handbook's requirements to actions taken by Customs in announcing the positions, evaluating the applicants, and making the selections. In addition, to assess Customs' appointment of a Schedule A appointee to an SES limited-term appointment, we applied the SES appointment criteria in OPM's *Guide to the Senior Executive Service* to the circumstances surrounding the appointment.

To describe OPM's oversight process and the extent of its oversight of Customs' Schedule A appointments, we interviewed OPM officials and obtained copies of OPM's *Oversight Evaluation Handbook*, audit reports of Customs, and OPM's correspondence with Customs concerning the Schedule A authority, from the date the authority was approved through May 31, 2001.

Appendix II: Comments From the Office of Personnel Management



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

AUG 21 2001

Mr. George H. Stalcup
Director, Strategic Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Stalcup:

Thank you for your August 8, 2001, letter giving us the opportunity to review your draft report: *Personnel Practices: Circumstances Surrounding U.S. Customs Service's Use of Schedule A Appointment Authority*. We appreciate the opportunity to comment on the report because it addresses an issue that is very important to the Office of Personnel Management (OPM)—hiring processes that are consistent with the merit system principles, whether or not those processes are bound by typical title 5 constraints.

In the cases discussed in your report, OPM approved the Custom Service's use of the excepted Schedule A appointment authority to fill certain law enforcement positions for which it was impracticable to examine. We agree with your report's conclusions that the appointments complied with the merit system principles and OPM guidance. However, we remain very concerned about the appearance of political favoritism that surrounds the appointment process in these cases. Consequently, we are including a review of Customs Service's system for making Schedule A appointments in our previously scheduled follow-up review. In addition, because information GAO obtained from Customs Service representatives appears to be inconsistent with their original request for the Schedule A appointment authority, we will review the basic justification for the authority.

We appreciate the opportunity to respond to you in this matter.

Sincerely,

Kay Coles James
Director

CON 131-64-4
September 1993

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