

# **A Weapon in the War for Talent:** Using Special Authorities to Recruit Crucial Personnel



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HUMAN CAPITAL SERIES

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The PricewaterhouseCoopers Endowment for  
**The Business of Government**

F O R E W O R D

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On behalf of The PricewaterhouseCoopers Endowment for The Business of Government, we are pleased to present this report by Hal Rainey, "A Weapon in the War for Talent: Using Special Authorities to Recruit Crucial Personnel."

This important report comes during a time when the federal government is considering major reforms to its present civil service system. In coming months, the United States Congress will consider legislation to expand special recruiting and hiring authorities across the federal government. The Office of Management and Budget and the Office of Personnel Management are implementing *The President's Management Agenda*, which includes the administration's initiative on the "Strategic Management of Human Capital." Agencies that now have special authority will continue to implement and evaluate these authorities.

Professor Rainey examined four agencies within the federal government that currently have special authorities that provide them flexibility to recruit, hire, and pay senior executives. He finds that the special authorities have been administered fairly and have had a positive impact on the agencies that have received them. His report also provides valuable information on the numerous recruiting and hiring authorities that currently exist throughout government.

We trust that this report will prove both useful and constructive during the coming debate about the expansion of special recruiting authorities in government. The question now facing government is whether its current portfolio of recruiting and hiring authorities is adequate to meet the federal government's special talent needs for the 21st century. In his groundbreaking report, Professor Rainey provides new information and insights to inform the coming debate.

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## EXECUTIVE SUMMARY

Recently Congress provided four federal agencies with special authorities for hiring professionals and executives to help them compete for highly talented people in highly competitive job markets. This report describes how those agencies have used these new authorities and flexibilities. The situation for each agency is unique. One agency, the Federal Aviation Administration (FAA), received authorization to develop its own personnel system independently, in many ways, from the federal personnel system. Another, the U.S. Patent and Trademark Office (USPTO), received a degree of independence from its parent department, the U.S. Department of Commerce, in designing its executive positions and selecting people for them, but otherwise remained under the rules of the federal personnel system (i.e., USPTO remained under “Title 5”).

Two other agencies received specially designated positions with authority for flexibility in recruiting, hiring, and paying the people who take those positions. The U.S. Office of Student Financial Assistance (SFA) in the Department of Education received authorization for 25 positions to be used to hire specially needed experts and executives. Congress granted the U.S. Internal Revenue Service (IRS) 40 “critical pay” positions, with substantial flexibility in this authority to recruit and pay critically needed professionals and executives at salaries up to that of the Vice President of the United States.

The four agencies exemplify different alternatives for providing government organizations with flexibilities and authorities that can help them compete for talent. Representatives of the agencies given general grants of flexibility report beneficial results.

Human resource (HR) managers from the FAA say that with their new personnel system, they feel they have improved their recruiting and hiring. They say they now have the incentive and the opportunity to behave more proactively in recruiting through such means as the use of search firms. They also say they have been successful in recruiting excellent people in such areas as information technology. HR management representatives of USPTO note that they did not receive extensive authorities or flexibilities for executive and professional recruiting, since USPTO remained under Title 5. They regard their newly authorized independence from Commerce in designing and filling executive positions as valuable for executive recruiting. As of the time of this study, however, they had not used it to fill specific positions with specific recruits.

This report concentrates mainly on the two agencies—SFA and IRS—that received authorization for specific numbers of positions with particular provisions for flexibility to recruit critically needed executives and professionals. Both agencies provide evidence of the successful use of these authorities in the form of the impressive profiles and credentials of the persons hired, and in the form of agency representatives’ positive accounts and claims about the benefits of the new authorities and the people recruited with them.

The report finds that in these agencies, especially the latter two, the availability of special authorities appears to have changed the behavior of people in the agency with recruiting responsibilities. Top leadership is heavily involved. They and other managers and staff members in the agencies report

more attention to designing and recruiting for the new positions than was typical for executive and professional positions. They feel that they use more aggressive and creative recruiting practices, drawing on professional networks and recruiting firms more than in the past. Their attainment and use of special authorities for critical positions has taken place in a context of organizational transformation and reform that has associated the design and recruitment for the new positions with the goals of transformation and with the mission of making the reforms work. While the new authorities have been described as flexibilities, SFA and IRS have heavily emphasized accountability in the use of the authorities.

The report recommends that special hiring authorities for executives and professionals be regarded as a valuable part of a comprehensive strategy for transforming a federal agency into an organization that better manages for results. The use of such authorities should be expanded and extended to other agencies, but with careful consideration of recommendations about key implementation steps. These steps include integration of the authorities with a more comprehensive vision and strategy for improved performance and results-oriented management. The pattern of success in the two agencies that received specific numbers of critical pay or excepted service positions makes clear that the effective use of special hiring authorities involves much more than simply offering agencies some improved capacity to recruit people they want. It involves a carefully implemented process of empowering executives and managers in an agency to add this resource to a comprehensive strategy for moving their organization toward a greater results orientation and toward significant improvement in mission accomplishment.

The key implementation steps include sustained support from top leaders, as well as the presence of sponsors and “champions” in the organization with clear assignments of responsibility for the implementation of the authorities. The commitment needs to include careful consideration of critical success factors, such as careful design of the positions and recruiting processes. Other implementation steps include organizational learning and maintaining accountability and transparency through such means as checks and reviews during the hiring process.

# Introduction

## Public Management Challenges and Dilemmas

In recent years Congress provided certain federal agencies with special authorities for hiring professionals and executives to help the agencies compete for talented people in highly competitive job markets. Current and classic challenges in governmental management served as driving forces behind these initiatives:

- *The need for skill sets that are new, hard to attain, or both.* Government faces a pressing need for highly educated and experienced people to help federal agencies meet such immediate challenges as developing their computer, information, and communication systems amid the rapid changes in those technologies. This challenge involves finding not just technically proficient people, but also finding people who combine such knowledge with executive leadership ability or particularly valuable perspectives and backgrounds.
- *A competitive economy and market for such people.* The same imperatives drive business and nonprofit organizations to compete for these talented individuals. The constraints in government on pay levels and other incentives, and on the processes of recruiting and hiring, impede government agencies in this competition.
- *Impending retirements in the federal service.* Large numbers of executives, managers, and professionals in the federal service are becoming eligible for retirement, raising the challenge of replacing them.
- *The “human capital crisis” in government.* Officials and observers regard these conditions as building to a point of crisis in the federal civil service personnel system because of the intense competition and constraints in replacing and maintaining talent in positions of great importance to the nation.
- *The challenge of streamlining and improving government.* These challenges relate more generally to the long-standing concern over making government agencies more streamlined, flexible, responsive, and less bound by red tape and rigidity. The pursuit of flexibility in organizations and their management has been a central challenge across the last century that will intensify in the new century as organizations struggle to adapt to rapid change and increasing complexity.<sup>1</sup>
- *Improving the business of government.* Similarly, reforms have also sought to make government more “businesslike” and to improve governmental performance by drawing on resources from business and other nongovernmental sources, and by introducing conditions in governmental management that resemble conditions in the business sector. The use of special hiring authorities attempts to provide government with forms of flexibility available in business.
- *Balancing the need for decentralization to provide flexibility and adaptability, against the need for accountability, consistency, and equity.* This is a classic problem in all administrations, but especially in public administration. As agencies receive more authority to do



the hiring they want to do, it raises the challenge of wide variation and fragmentation of the federal personnel system, and the challenge of assuring accountability for appropriate use of these new authorities. Later sections will describe how IRS and other agencies have successfully responded to the need to justify and carefully use their new authority.

These and many other current and classic issues are in play in these recent developments in the federal system. Finding out how the federal agencies handle these new authorities and opportunities becomes essential when considering their future application to other agencies.

### **The “War for Talent”**

Demand for more highly trained and skilled employees is increasing, and demand for less-skilled employees is going down.

Organizations must compete for the more highly skilled people in what authors are calling the “war for talent.”<sup>2</sup> A report by McKinsey & Company coined this term in concluding from a study that “the most important corporate resource over the next 20 years will be talent,” and that that talent will also be the resource in shortest supply.<sup>3</sup> An obvious example of this pressure comes from the breathtaking pace of development in computing, information, and communications technology, including the incredible rise of Internet activities. As organizations press to respond to these developments, they have to search for knowledgeable people who can help them do so, driving up demand for such people.

Computer technology firms have been competing for talent not just on the basis of salary and tangible benefits, but also with promises of a high quality of working life, support for family and other personal issues, meaningful work, and educational and developmental opportunities. The websites of most successful business firms are now crowded with descriptions of such opportunities and arrangements for prospective employees. The website for IBM contains a good example of such efforts. General Electric’s website announces that the company spends over \$1 billion per year on leadership and personal development, and describes the opportuni-

ties for leadership and professional development programs.<sup>4</sup>

In this competition, government faces severe challenges. Even as the importance of “human capital” becomes more widely accepted in government circles, other reports announce an impending crisis in human capital.<sup>5</sup> Downsizing in federal agencies, impending retirements of baby-boomers, uncompetitive compensation packages for highly qualified people, and the complexities of the federal personnel system all hinder government in the competition for talent.<sup>6</sup>

### **The History of Federal Hiring Trends**

The challenges for federal agencies may be worsening, but they are by no means new. Managers in government have complained for decades about the rigidities and red tape of governmental personnel systems. Many federal managers say that the web of rules and procedures has created impediments to hiring particularly desirable candidates because of such requirements as having the central personnel agency rate and rank candidates. If the candidate does not come out in the top three in the ranking process, the agency cannot hire the person. In addition, this process takes time. Even after the rankings, there are often long delays before the person can actually be hired. Then, of course, government must compete for top talent against private firms with more opportunities to fashion attractive compensation packages, including stock options that government cannot offer. Actually, as described, the federal personnel system currently allows a variety of flexibilities and has many special categories and arrangements, but generally the system is not well designed to provide rapid, flexible, and competitive strategies for hiring top talent.

### **The Trend Toward Decentralization of Human Resource Management Authority**

These characteristics of our federal system and similar concerns in other nations have given rise to an international trend toward decentralization of personnel authority and other responsibilities in government. (See Table 1) In the United States and many other countries, reformers have sought to make government more businesslike in many

ways, and have sought to decentralize and simplify many of the administrative procedures of government.

Much of this activity has focused on the purportedly excessive rules and procedures for personnel administration and for procurement and purchasing.

Experts and federal executives and managers have been expressing these concerns for a long time. In a book published several decades ago, John Macy, the highly respected former head of the U.S. Civil Service Commission (the predecessor of the current Office of Personnel Management [OPM]) mentioned the frequency of such complaints from federal

**Table 1: A Brief History of Federal Hiring with Emphasis on Professional and Administrative Jobs: Centralization and Decentralization**

<b>Centralization and Decentralization</b>	Since the 1880s, there have been periods when the government’s hiring system has been centralized and periods when it has been decentralized. Historically, a centralized system has been seen as more expert and incorruptible, while a decentralized system has been seen as less bureaucratic and more conducive to expedited decision making (1999, 1).
<b>Centralization: from 1880s</b>	From its establishments in the 1880s, until the early 1940s, the Civil Service Commission (CSC) applied a highly centralized examining system to fill positions in the competitive service (2000, Appendix 3).
<b>Decentralization after WWII</b>	However, decentralized examining continued after World War II, because centralized examining proved incapable of meeting the demands for new employees as the civil service expanded. In 1949, the first Hoover Commission recommended giving primary responsibility for recruiting and examining federal employees to the agencies (Ibid).
<b>Centralization during 1950s–1970s</b>	In 1954, the CSC resumed its earlier heavy reliance on centralized examining with the introduction of the Federal Service Entrance Examination (FSEE), replaced by the PACE in 1974, an entry-level examination for most professional federal jobs (Ibid).
<b>Decentralization in 1980s</b>	Among the goals of the Civil Service Reform Act (CSRA) of 1978 was the decentralizing or delegation of many personnel authorities. The CSRA has affected the increase of agencies’ staffing authority and the increase of the use of “direct hire” authority for hard-to-fill vacancies (1994).  Due to the Luevano consent decree in 1981, the Office of Personnel Management (OPM) announced the establishment of a new Schedule B-PAC hiring authority. Schedule B-PAC is used for hiring into positions for which it is not practicable to hold a competitive examination. It made the federal hiring process completely decentralized (2000).
<b>Trends in 1990s and Current Situation</b>	As a result of legal challenge, OPM eventually abolished the Schedule B-PAC authority and introduced a centralized examination (ACWA), which was first administered in 1990. But the test was abandoned in 1994 because of a slowdown in hiring and the structural disadvantages of centralized examining (Ibid).  In 1996, OPM delegated to agencies the authority to examine applicants for virtually every position in the competitive civil service. Agencies may perform the staffing work themselves or may contract the work with OPM (1999, vi).

**Sources:**

U.S. Merit Systems Protection Board, “Restoring Merit to Federal Hiring: Why Two Special Hiring Programs Should be Ended.” 2000, Appendix 3.  
 U.S. Merit Systems Protection Board, “The Role of Delegated Examining Units: Hiring New Employees in a Decentralized Civil Service.” 1999.  
 U.S. Merit Systems Protection Board, “Entering Professional Positions in the Federal Government.” 1994.  
 U.S. Office of Personnel Management, “Deregulation and Delegation of Human Resources Management Authority in the Federal Government.” 1998.

administrators.<sup>7</sup> In 1986, the National Academy of Public Administration published a report lamenting the excessive constraints on federal managers, including the constraints on human resource management decisions.<sup>8</sup> The cover of the report featured an illustration of Gulliver tied down by the thousands of tiny ropes with which the Lilliputians had bound him. As one of many parts of the new trend, in the U.S. federal government many personnel procedures and authorities, including those for hiring, have been decentralized and delegated from OPM to the operating agencies.

In the 1990s, the Clinton administration and the National Performance Review (NPR) redoubled the efforts to loosen some of the rules and constraints. NPR reports called for substantial deregulation and decentralization of authority over personnel matters to the operating agencies. As Table 2 illustrates, the proposals did have significant effects, including considerable decentralization to agencies of hiring procedures. Yet this decentralization usually involved having the agencies take over from OPM the complex process of examining, ranking, and listing candidates for jobs in an “agency certificate” process that replaced the “OPM certificate” process. Although this decentralized hiring procedures, the process remains elaborate and rule-intensive. In addition, agencies have varied a great deal in the degree of authority actually distributed within the agency. The federal reports describe mixed opinions among federal managers and personnel specialists over just how much decentralization and deregulation has actually occurred and how much things have changed.<sup>9</sup> While they tend to report that they feel the agency certificates and other decentralized procedures speed up the hiring process, many federal executives and managers still see the hiring process as slow and cumbersome.

Because of these constraints, and usually in relation to major reform efforts, Congress has given certain agencies special authorities for hiring key people. Legislation mandating a major overhaul of the Internal Revenue Service (IRS) included the provision of a variety of special flexibilities in personnel administration. These flexibilities include the authority to hire up to 40 people for four-year terms at salaries not to exceed that of the Vice President of the United States. Congress also passed legislation making the Office of Student Financial Assistance

(SFA) in the Department of Education, which channels \$54 billion per year in financial aid to students, a Performance-Based Organization (PBO).<sup>10</sup> (See Table 3 for a description of the PBO concept.) As part of this transition, Congress gave the agency authority to hire 25 people for important technical and professional responsibilities without regard to the standard limits and rules for salaries for such employees. Congress also designated the U.S. Patent and Trademark Office (USPTO) as a PBO, and gave the agency independence from its parent agency, the Department of Commerce, in decisions about the designation of executive positions in USPTO. In 1996, Congress gave the Federal Aviation Administration (FAA) authority to establish its own personnel system independent of the federal personnel system and the Office of Personnel Management. Many of these changes are quite recent and still developing, and in only two of these cases did Congress provide authority for flexible hiring of specific numbers of positions at specifically designated pay levels.

Actually, Congress provided a complex array of flexibilities for these four agencies, as described in the sections that follow, and the situation for each agency is unique. This raises an issue that will come up again later in this report—the issue of wide variation among agencies in the patterns of flexibility provided. As an additional complication, the federal personnel system itself has many variations, special provisions, and flexibilities within it. Thus it becomes important to try to understand the character of the current system to see how the special authorities differ from it.

**Table 2: Recent Decentralization of Hiring Authorities**

<p><b>Congress and the Clinton Administration</b></p>	<p>Congress and the Clinton administration required OPM to delegate nearly all of its hiring-related authorities to agencies (MSPB, 1999, 2).</p> <p>The administration's budget proposal for FY 1996 significantly reduced the amount of money for OPM's division that handled competitive examining. The FY 1996 appropriation, which decreased OPM's budget by approximately \$40 million, reflected that reduction (Ibid).</p> <p>Congress also amended Section 1104 of Title 5 to remove most restrictions on OPM's ability to delegate examining authority to agencies and to authorize OPM to provide staffing assistance on a reimbursable basis through the revolving fund to agencies exercising delegated examining authorities (Ibid).</p>
<p><b>National Performance Review and Responses of Office of Personnel Management</b></p>	<p>Decentralization of the federal personnel system and the accompanying widespread delegation of personnel authorities to federal agencies have been stimulated by the NPR initiatives (MSPB, 2000, 5).</p> <p>The NPR's 1993 report, <i>From Red Tape to Results: Creating a Government that Works Better &amp; Costs Less</i>, calls for fundamental changes in the federal staffing process: "Give all departments and agencies authority to conduct their own recruiting and examining for all positions, and abolish all central registers and standard application forms" (cited in MSPB, 1994, vii).</p> <p>In addition, the report calls for actions in the federal HR system such as (1) simplifying the General Schedule system to give agencies more flexibility in classification and pay; (2) allowing agencies to design their own performance management and reward systems; and (3) improving the system for dealing with poor performers (OPM, 1998).</p> <p>In accordance with these recommendations, since 1994 OPM has taken actions such as (1) abolishing the Federal Personnel Manual (FRM); (2) eliminating mandatory centralized registers; and (3) delegating hiring authority for virtually all federal positions to the agencies, although less progress has been made in classification and dealing with poor performers due to the lack of legislative action (OPM, 1998).</p> <p>Putting personnel authorities in the hands of agency managers has focused attention on the need for ways to hold them directly accountable for the results of their personnel decisions. In this regard, the NPR included a new emphasis on accountability (MSPB, 2000, 5).</p>
<p><b>Government Performance and Results Act of 1993</b></p>	<p>The Government Performance and Results Act (GPRA) and other "good government" laws further expanded the emphasis on accountability of managers for results and mandated ways to measure performance and hold each level of an organization accountable for its successes and failures (MSPB, 2000, 5).</p> <p>Consequently, federal agencies now are legally required to define their mission in terms of outcomes and develop strategic plans to accomplish their missions with improved effectiveness and efficiency. A key element in those strategic plans is the development of performance indicators for all important tasks. Hiring is such a task; consequently, the stage has been set for the normal processes and machinery of government to hold managers accountable for matters such as their hiring decisions (MSPB, 2000, 5).</p>

**Sources:**

U.S. Merit Systems Protection Board, "Restoring Merit to Federal Hiring: Why Two Special Hiring Programs Should be Ended." 2000, Appendix 3.

U.S. Merit Systems Protection Board, "The Role of Delegated Examining Units: Hiring New Employees in a Decentralized Civil Service." 1999.

U.S. Merit Systems Protection Board, "Entering Professional Positions in the Federal Government." 1994.

U.S. Office of Personnel Management, "Deregulation and Delegation of Human Resources Management Authority in the Federal Government." 1998.

**Table 3: PBOs—Performance-Based Organizations**

<b>National Performance Review's Criteria for PBOs</b>	<ul style="list-style-type: none"> <li>a. clear mission with broad support from stakeholders</li> <li>b. focus on ends (and customers) rather than means</li> <li>c. operations separated from policy making and regulatory activities</li> <li>d. appropriate awards (compensation at market rates) or sanctions for the chief executive</li> <li>e. ability to raise revenues (proposed by the NAPA 1996 report as an additional criteria)</li> </ul>
<b>Foreign Experience</b>	<ol style="list-style-type: none"> <li>1. United Kingdom <ul style="list-style-type: none"> <li>• The model of “Executive Agency”—that is, the PBO Framework—was included in the “Next Steps” program launched in 1988. More than 100 government programs have been transformed into performance-driven organizations as part of Next Steps.</li> <li>• Each agency operates under a “framework document” that defines its duties, establishes annual performance goals, and confers freedom from specified government-wide requirements respecting procurement, budgeting, and personnel. Chief executives are accountable for achieving the performance goals, are appointed competitively from among candidates in the civil service and the private sector, and report directly to the ministers.</li> </ul> </li> <li>2. Canada <ul style="list-style-type: none"> <li>• The Increased Ministerial Authority and Accountability (IMAA) initiatives as well as the introduction of Special Operating Agencies (SOAs) have launched efforts to conduct government operations in a more businesslike manner.</li> <li>• The IMAA initiatives require departments to agree, through a Memorandum of Understanding (MOU) with the Treasury Board (TB), to changes in its planning, monitoring, control, internal audit, and program evaluation functions in return for increased operational flexibility.</li> </ul> </li> <li>3. New Zealand <ul style="list-style-type: none"> <li>• Reform efforts are based on a number of principles including: departmental functions should be clearly specified; their policy and operations functions should be separated; and departmental managers should be fully accountable for running their organizations efficiently.</li> <li>• Key features of this new system include appointment of departmental chief executives on a limited term; performance-based contracts; annual agreements between ministers and chief executives specifying performance expectations; annual assessment of chief executive performance against these agreements; and the near total delegation of input control to chief executives.</li> </ul> </li> </ol>
<b>Initial Proposal for PBOs</b>	<p>The Vice President's Initial Proposal for PBOs includes a cost recovery criterion (ability to raise revenues). Based on this criterion, the initial proposal includes three agencies in the Department of Commerce: Patent and Trademark Office (PTO), the seafood inspection service of the National Oceanic and Atmospheric Administration (NOAA), and the National Technical Information Service (NTIS).</p>
<b>PBO or Other Statutory Authority</b>	<p>In establishing PBOs, agencies have the option of fully exercising existing personnel authorities and flexibilities, and of seeking the right to use the Demonstration Project authority. Within such authority, agencies can design their own personnel system, as was done in the Navy's China Lake project. However, some agencies have been able to replicate such “demonstrations” only with express statutory authority. The General Accounting Office (GAO) and the National Institute of Standards and Technology received such authority in separate statutes; NTIS and PTO are seeking legislative authority as well. On the other hand, OPM is encouraging agencies to seek demonstration authority.</p>
<b>Office of Personal Management's Initial “Template” about PBO Proposal</b>	<p>OPM has been working with the Office of Management and Budget (OMB) and the NPR in developing policies and practices proposed for the activation and functioning of PBOs. OPM has created a “template,” dated March 1996, setting forth personnel authorities already available to federal agencies. This is intended to permit PBO initiatives to begin quickly without needing to seek new legislative authority.</p>

**Sources:**

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- National Academy of Public Administration, “A Performance Based Organization for Nautical Charting and Geodesy.” 1996.
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# The Federal Personnel System: The Complex Context

Anyone can see why managers might want more freedom and flexibility within the federal personnel system. A large system that has emphasized accountability, equity, and fairness within and across agencies, the federal system for hiring, pay, and other human resource requirements involves elaborate rules, procedures, and categories. Title 5 of the U.S. Code delineates much of the elaborate federal personnel system. Federal managers and professionals discussing the system constantly refer to “Title 5” when they talk about its characteristics (“... under Title 5 we have to ...”) and about such matters as whether an agency, a group of employees, or a procedure is under Title 5 or exempt from it. Such discussions arise not only because Title 5’s definitions and rules include many special situations, but also because federal legislation has set up special situations that involve exemption from Title 5.

For example, Table 4 provides a summary of the pay structure of the federal civil service. It shows a variety of pay categories, including numerous different categories and plans for higher-level professionals and administrators in different agencies. This elaborate system also shows that the federal personnel system has done a lot to provide for variation, special situations, and special needs, and hence has responded to the complexity of its environment and tasks. At the same time, however, the system includes many rules and constraints on executives and managers trying to carry out the work of their programs and agencies. For example, the system involves a set of schedules or defined categories of pay level, with upper limits on them.

Obviously, while the system may have its merits, the basic schedules impose limits on executives’ ability simply to decide on the pay to offer a person they want to hire as an executive or high-level professional.

In addition, Table 4 shows that Title 5 does have provisions for special salary rates and other variations, but executives often point out that they still involve complicated procedures and constraints. For example, one executive interviewed for this report pointed out that Title 5 provides for special pay for a critically needed type of employee in a highly competitive occupation. To use it, he said, “... you have to get approval from OPM and OMB, and there are so many strings attached that it is really hard to use this authority....”<sup>11</sup> So, as pay levels and other forms of compensation for highly educated and talented people in the private sector go up, those in government trying to hire people at that level feel more and more constrained.

Similarly, Title 5 and the federal personnel system provide a complicated set of methods and authorities for hiring people, as summarized in Table 5. While the system has defenders who make a strong case for it, some federal executives and managers, and some expert observers, have been critical. They have focused their complaints in particular on the basic system of competitive hiring through “OPM certificates,” whereby the Office of Personnel Management certifies the most qualified candidates, and on the application of the “rule of three.” Under this procedure, when an agency wants to hire someone, OPM plays a central role in ranking

**Table 4: Pay Structure of the Federal Civil Service and Special Pay Plans: Types of Federal Pay Systems**

<b>Basic Statistics</b>	<p>Total Employment: 1,671,438 (as of March 31, 2000)</p> <p>There are three categories: (1) General Schedule, 72.8%; (2) Federal Wage System, 12.3%; and (3) Other Pay Systems under Other Acts and Administrative Determination, 15.0%</p> <p>Average Salary for Full-time Employees: \$50,429 (GS, \$49,428; FWS, \$37,082; Other, \$66,248)</p>
<b>General Schedule (GS)</b>	<p>According to chapter 53 of Title 5, the GS pay system covers most “white-collar” positions in the executive branch and certain legislative branch agencies.</p>
<b>Federal Wage System (FWS)</b>	<p>The FWS covers trade, craft, and labor occupations (“blue-collar occupations”) in the federal government (chapter 53 of Title 5).</p>
<b>Other Pay Systems under Other Acts and Administrative Determination</b>	<ol style="list-style-type: none"> <li>1. Similar to General Schedule: covers some employees in Departments of Defense, Commerce, Nuclear Regulatory Commission, Treasury, State, and FAA (27,600).</li> <li>2. Administratively Determined (pay plan AD): covers some employees in Departments of Defense, Justice, Health and Human Services, Veterans Affairs, and other Departments. Congress authorizes agency heads to set salaries for those in these systems.</li> <li>3. Veterans Health Administration: provides unique pay plans for employees like doctors, dentists, nurses, and assistants (pay plan VM, VN, VP).</li> <li>4. Foreign Service (pay plan FO, FP): established under the Foreign Service Act of 1980.</li> <li>5. Executive Schedule (pay plan EX): established by Congress to cover top officials in the executive branch.</li> <li>6. Senior Executive Service (pay plan ES): covers most managerial, supervisory, and policy positions in the executive branch which are classified above GS-15 and do not require Senate confirmation.</li> <li>7. Other Senior Level Pay Plans: (a) Specially Qualified Scientific and Professional Personnel (pay plan ST, authorized under section 3104 of Title 5); (b) Statutory Rates not Elsewhere Classified (pay plan SR)—nonsupervisory and nonmanagerial employees classified above grade 15 of the GS; (c) Administratively Determined (Senior) Pay Plans—the AD pay plan described above contains some highly paid employees; (d) Administrative Law Judges (AL) and Contract Appeals Board Judges (CA); (e) Senior Foreign Service (FE) and Ambassadors (FA).</li> <li>8. Other: includes special systems such as those for the Tennessee Valley Authority (TVA), the Federal Reserve Bank, The Canal Zone, and pay plans established under both the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and the Federal Employees Pay Comparability Act of 1990. Also includes Demonstration Authority pay plans.</li> </ol>
<b>Special Salary Rates</b>	<p>The OPM has the authority to establish special rates of pay under section 5305 of Title 5 and has oversight authority for certain special rates authorized under Title 38 for GS and GM employees.</p> <p>Special salary rates can be set for white-collar positions where federal agencies have difficulty recruiting and/or retaining qualified personnel in certain occupations. Under Title 5, minimum special rate salaries may be no more than 30 percent above the GS step 10 salary for each particular grade.</p> <p>As of March 2000, there were 138,455 white-collar workers being paid special rate salaries (117,940 Title 5 and 20,515 Title 38). The white-collar special pay rate workforce was distributed as follows: Professional (35.6%), Administrative (6.5%), Technical (24.2%), Clerical (18.0%), and Other (15.7%).</p>

**Source:** U.S. Office of Personnel Management, “Pay Structure of the Federal Civil Service.” 2000.



the candidates according to a set of criteria. It then provides the agency with a list of the top three candidates from which the agency can choose the person to hire. This process obviously takes some control out of the hands of the agency. Critics of the system point out that criteria used in the rankings—such as “veterans preference,” under which candidates get points for being a military veteran—may not really reflect the best qualifications for the job. The process is also lengthy. Even after agency officials choose someone to whom they will make an offer, they may have an additional wait before the person can actually start work. Good candidates typically have other opportunities and frequently take other jobs rather than wait for the entire process to be completed.

Concerns about this process, as well as efforts to reform the personnel system in general, have pro-

duced other alternatives, such as “agency certificates.”<sup>12</sup> Under this procedure, OPM delegates to a federal agency the authority for examining and ranking candidates for a position the agency needs to fill. OPM regulates this process, which often closely resembles the OPM certificate process except that it does not have to go through OPM. For example, a federal manager or professional with a specific expertise, such as a federal scientist, may describe a process for hiring in her agency as first involving the preparation of a position description that specifies qualifications and requirements for the job. The agency then advertises the position, and candidates fill out standard forms in addition to addressing questions about how their qualifications suit them for the job. A committee consisting of professionals, personnel specialists, and other appropriate people ranks the candidates. The agency brings in the top six people for an inter-

**Table 5: Typology of Federal Hiring Methods for Professional and Administrative Occupations: Six Types of Federal Hiring Methods**

<b>Competitive Hiring</b>	Characterized by (a) rating candidates; (b) ranking candidates; and (c) referring candidates in rank order, which is subject to (d) veterans preference rules and “rule of three.”
<b>Cooperative Education Program</b>	Allowing students enrolled in two- or four-year college programs to work for federal agencies. Upon completion of academic program, they may—without competition—be converted to a competitive service appointment at the discretion of the agency.  Neither veterans preference nor the rule of three applies.
<b>Veterans Readjustment Appointments</b>	Permitting agencies to hire qualified veterans into the competitive service without competition. Veterans are eligible for these appointments for specified time periods following their separation from the armed forces.
<b>The Outstanding Scholar Hiring Authority</b>	Procedures established by court order in 1982; using baccalaureate GPA or class standing as eligibility criteria for appointment; allowing candidates who meet the eligibility criteria to be directly hired without competition to determine who are the best qualified among the eligible candidates.  Veterans preference and the rule of three do not apply.
<b>The Bilingual/Bicultural Hiring Authority</b>	Used when a job requires proficiency in Spanish and English; in such situations this authority permits the appointments of individuals who achieve merely passing scores on an appropriate examination.
<b>Special Appointing Authorities (Residual Category)</b>	Includes special authorities established by statute, executive order, or civil service rule. Some of these authorities permit noncompetitive appointments into the competitive service. No single authority in this category represents a large number of appointments, but collectively they do account for a relatively large number of hires each year.

**Source:** U.S. Merit Systems Protection Board, “Restoring Merit to Federal Hiring: Why Two Special Hiring Programs Should be Ended.” 2000, Appendix 3.



view. After the interviews, the executive who has to make the final decision receives a list of the candidates regarded by the committee as the best qualified. The executive, who has also participated in the candidate interviews, makes the final choice.

Such a procedure has many good qualities, such as fairness, openness, participation, and professionalism. It can still involve a lot of time, however, and still involves a degree of passiveness on the part of the recruiters, that is, compared to a situation in a private firm where a group of executives targets a talented person they want and goes after him or her. This is a more formalized and elaborate procedure.

Because of the drive to give operating agencies more control over their own hiring, still other methods and authorities have developed.<sup>13</sup> These alternatives have included, for example, “direct hires.” The percentage of people hired under OPM certificates and agency certificates went down during the 1980s and early 1990s, and hiring by other methods such as direct hires went up. Significantly, however, by the late 1990s the percentage of newly hired people brought in under competitive hiring methods (like the certificate methods) was going up and hiring by the other methods going down.

### **Existing Flexibilities: The Three R’s**

Efforts to reform and improve the system have provided many flexibilities for agencies under current Title 5 and other laws and rules (see Table 6). For example, most federal managers know of the “Three R’s,” which refers to provisions for recruitment, retention, and relocation. These provisions permit bonuses or extra payments of up to 25 percent of base salary for recruiting, retaining, or relocating an employee. Title 5 also includes various provisions for “critical pay” for critically needed job candidates who are hard to obtain, and other arrangements for paying special amounts to critical or special employees. Many agencies have made use of the existing flexibilities under Title 5.

### **Exemptions from Title 5**

In addition to the available flexibilities, a variety of organizations and organizational units in the federal government are exempt from Title 5. Government corporations, independent establishments, and some ordinary agencies have received congress-

sional approval for exemption from Title 5 and for creation of their own personnel systems, or for partial exemptions. OPM issued a report based on a study of 18 organizations that are exempt from Title 5 and found that this exemption provided increased flexibility and independence in their human resource management (HRM) practices (see Appendix). In such agencies, HRM staff became more involved in designing and experimenting with new alternatives, and tended to be more closely integrated into management decision making in the agency. At the same time, however, the study found less difference between these agencies and those covered by Title 5 than the researchers originally expected, apparently for several reasons. Exempt agencies still try to adhere to merit system principles. They have to develop and defend their new systems and often draw on existing practice to do so. They often have to deal with unions that place constraints on flexibility in managing human resources. The greatest differences between the exempt agencies and those still covered by Title 5 tended to be in areas such as position classification and compensation, with fewer differences in such areas as recruitment. The study showed that exemptions from Title 5 make a difference, but not necessarily a huge difference, and called for continued attention to exemptions to understand their effects.

All of these variations and flexibilities show that the personnel system of the U.S. government has responded to pressures for more decentralization, deregulation, and increased flexibility and adaptability. It is a gross oversimplification to claim that the system involves a monolithic, strictly structured lattice of bureaucratic constraints. However, its variations and complexity appear to be part of the reason that federal managers want more independence from it. Some managers and experts say that the confusing array of authorities and special provisions makes it difficult to compete for talent while having to wend your way through the system. In addition, many of the flexibilities and special provisions available under Title 5 still have many strings attached. OPM regulates them, and procedures such as agency certificates often require steps at the agency level similar to those required for OPM certificates. To use many of the provisions and authorities, the agency must get approvals from OPM and sometimes other authorities. For example, as mentioned earlier, to use the “critical pay”

**Table 6: Hiring Innovations and Flexibilities within Existing Laws (Best Practices)**

While the NPR advocated decentralization and substantially increased delegation of authority that requires comprehensive civil-service reform legislation, such legislation has not been passed. On the other hand, many agencies took actions to reform HRM within the structure of the current system. Many of these innovations and flexibilities are stimulated by the agencies' efforts to compete for human resources with the private sector and other governmental agencies.

Agencies	Innovations and Flexibilities
Department of Commerce, Census Bureau	<p>The bureau competes for highly trained experts in survey design and data analysis directly with the rapidly growing high-technology segments of the private sector.</p> <p>The bureau has found it difficult to fill the positions of statisticians and computer specialists. The difficulties in hiring are not from a lack of delegated authority but rather the <b>inability to offer a competitive salary</b> comparable to what private sector companies can offer. Thus, the bureau has developed some innovations to deal with this problem.</p> <ul style="list-style-type: none"> <li>• <b>The Electronic Hiring System:</b> an online hiring process permits individuals to log on to its hiring system; expert applicants can apply online for a position; applications are processed and applicant referrals are made within two or three days.</li> <li>• <b>COOL (Commerce Opportunities Online):</b> an interactive, automated, and web-based merit promotion vacancy announcement and application system.</li> <li>• <b>Using Temporal Appointments:</b> term appointments provide the bureau with a flexible workforce possessing the necessary skills for the work to be accomplished.</li> <li>• <b>Using a Contractor to Staff Data Capture Operations.</b></li> <li>• <b>Highlighting the Bureau Quality-of-Life Programs</b> as a way to entice potential employees.</li> <li>• <b>Emphasizing Continuous Learning Programs</b>, such as the Census Corporate University, as a way to attract potential employees.</li> </ul>
U.S. Department of Agriculture, Forest Service	<ul style="list-style-type: none"> <li>• <b>Centralized Online Application Processing:</b> the use of open, continuous announcements, categorical grouping, and alternative delegated examining unit procedures make it possible for the agency to maintain lists of names for ready referral; managers submit requests to fill positions online and are referred candidates using an online certificate referral system.</li> <li>• <b>Excepted Appointment Authorities:</b> used for professional hard-to-fill occupations.</li> <li>• <b>Pay Bonuses and Relocation Packages to New Recruits:</b> the recruiters have the delegated authorities to hire and offer both pay bonuses and relocation packages in order to compete with the private sector for similar pools of candidates.</li> <li>• <b>Using Co-ops to recruit Co-ops.</b></li> </ul>
U.S. Department of Agriculture, Agricultural Research Service	<ul style="list-style-type: none"> <li>• <b>Categorical Groupings:</b> the USDA Demonstration Project, a joint effort of the Agricultural Research Service (ARS) and the U.S. Forest Service, tested a comprehensive simplification of the hiring system for both white-collar and blue-collar jobs. The demonstration project procedures have since been made permanent under separate legislation obtained by the department (Omnibus Reconciliation Act of 1998). The procedures provide for "Categorical Ranking" (quality groupings), a three-year probationary period for scientific positions, an alternative referral system for veterans, and an alternative to the rule of three. Under this process, candidates are ranked into the three possible groups (quality group, single group, and quality group plus eligible group). There is no further rating required, and the highest group is then referred to the selecting official to begin the selection process.</li> <li>• Agencies may use modified quality grouping procedures in rating candidates, especially in situations where large numbers of applicants are anticipated.</li> </ul>
U.S. Department of Agriculture, Animal & Plant Health Inspection Service	<ul style="list-style-type: none"> <li>• <b>Coordinated College Recruitment:</b> selection authority has been delegated to the respective first-line supervisors. The agency maintains a permanent staff who maintain the ongoing contact needed to remain in the forefront on college campuses. In the recruiter network, the 90 to 100 recruiters with collateral duty assignments from the scientific and mission support areas enhance the agency recruitment effort.</li> </ul>
Department of Defense, Defense Finance and Accounting Service	<ul style="list-style-type: none"> <li>• To compete effectively with the private sector in the "war" for accounting and financial talent, the service uses automated internal and external recruitment.</li> <li>• <b>Automated Staffing System:</b> it is almost completely automated in its staffing function using RESUMIX or PERSACTION (electronic application systems providing a paperless process).</li> </ul>

**Sources:**

National Academy of Public Administration, "Innovative Agency Employment Practices." 2001.

National Academy of Public Administration, "The Case for Transforming Public Sector Human Resource Management." 2000.

provisions under Title 5, the agency has to get approval from both OPM and OMB.

For these reasons, executives, managers, and personnel administrators in federal agencies often continue to look for independence from many of the personnel rules and procedures centralized under OPM by Title 5. This makes it important to monitor the uses that agencies are making of some of the flexibilities recently granted to them, as in the cases of the four agencies covered in this report.

# Case Studies of Special Recruiting Authorities

## Federal Aviation Administration: A New Personnel System

The Federal Aviation Administration (FAA) received the most general grant of flexible authority of any of the four agencies. In 1996, Congress authorized the FAA administrator, in consultation with employees and experts, to "... implement a personnel management system for the FAA that addresses the unique demands on the agency's workforce ..." and that provides "for a greater flexibility in the hiring, training, compensation, and location of personnel." With the exception of several provisions, the new system was to be exempt from Title 5. Also in 1996, the agency issued the FAA Personnel Management System (PMS). The PMS gives the heads of FAA's "line of business" and staff organizations the authority to determine the number and types of employees in their organizations, based on the amount of funds allocated to them. The system gives the administrator authority over the selection of persons to fill any vacant positions, and gives the heads of staff and business units authority over selection for any vacant executive or senior professional position in their units, subject to the approval of the administrator. Table 7 provides additional details about the authority granted to FAA.

The PMS also established the FAA Executive System, with provisions for performance bonuses and other features similar to the Senior Executive Service, but with more emphasis on linking compensation to performance and increasing accountability for management. The system streamlines executive disciplinary actions to allow prompt removal of poor performers.

The new system also streamlines hiring through authority for "on-the-spot" hiring for special needs and hard-to-fill positions. It provides for recruitment bonuses, for reducing the number of hiring authorities to be considered, and for reducing other rules to allow faster hiring. A Centralized Applicant System provides managers with applicant lists and ratings much faster than before. An automated system places job vacancy announcements on the Internet, reducing the time required to advertise vacancies by 80 percent. The PMS also decentralizes, to the line of business units, the decisions and funding for employee training, and includes new provisions for labor relations.

## A Focus on Mission

Personnel officers at FAA express strong convictions about the benefits of the new flexibility and authority. They feel that the new PMS enhances FAA's ability to focus its human resources management on mission accomplishment. One of FAA's human resources administrators said, "We are much better able to focus on the mission and how you try to accomplish it through the people part of the equation. We have made tremendous strides in how we attract, hire, and retain the right people; and other agencies are trying to duplicate what this agency is doing." They are making strides, he and others say, through the new performance incentive programs and new position description and classification procedures that link individual objectives to FAA's strategic objectives. Table 8 provides details about a number of the developments at FAA.

In addition, FAA human resource officers say the new freedom has provided people there with the incentive and opportunity to develop innovative executive and professional recruiting processes. The heads of the line of business units make the decisions about the positions needed in their units and the types of people to fill them, and the human resource officers report that they now work harder at playing the role of partner with administrators in

supporting these decisions. They say they now strive to work collaboratively with the executives to determine their needs, engaging in discussions of what they want to see happen, how a position will relate to accomplishing strategic objectives, and the key skills and foci of the position.

FAA representatives say they also make more effective use of recruiting firms to target appropriate

**Table 7: Department of Transportation—Federal Aviation Administration (FAA)**

<b>Legislation</b>	
<p>The special authority for hiring and pay of the FAA is granted by Section 347 of the 1996 Department of Transportation and Related Agencies Appropriations Act (P.L. 104-50; 49 USC 106 note) and by Section 253 of the Federal Aviation Reauthorization Act of 1996 (P.L. 104-264; 49 USC 40122).</p> <p>According to Section 347 of the law, in consultation with employees of the FAA and such non-governmental experts in personnel management systems as he may employ, and notwithstanding Title 5 and other federal personnel laws, the administrator of the FAA shall develop and implement a personnel management system for the FAA that addresses the unique demands on the agency's workforce. Such a system shall provide for a greater flexibility in the hiring, training, compensation, and location of personnel. The provision of Title</p>	<p>5 shall not apply to the new personnel system, with the exception of whistleblower protection (Sec. 2302); veterans preference (Sec. 3308-3220); limitations on the right to strike (Sec. 7116); anti-discrimination (Sec. 7204); suitability, security, and conduct (Chapter 73); compensation for work injury (Chapter 81); retirement, unemployment compensation, and insurance coverage (Chapter 83-85, 87 and 89).</p> <p>According to Section 40122 of the Federal Aviation Reauthorization Act of 1996, the administrator shall negotiate with the exclusive bargaining representative of employees of the administration; and no officer or employee of the administration may receive an annual rate of basic pay in excess of the annual rate of basic pay payable to the administrator.</p>
<b>Flexibilities</b>	
<p>The FAA Personnel Management System (PMS), signed by the administrator in March 1996, is intended to make the personnel management system for the FAA more efficient and to provide greater flexibility in the hiring, training, compensation, and location of FAA personnel. The new system is exempt from substantially all of Title 5. Key characteristics of the FAA's hiring and pay system include:</p> <p>a. <b>General Authority to Employ:</b> Each head of a line of business or staff organization is authorized to determine the number of employees for their organization based on the amount of funds allocated to the line of business or staff organization by the administrator.</p> <p>b. <b>Types of Employees:</b> Each line of business and staff organization is authorized to hire any type of category of employee.</p> <p>c. <b>Selection of Employees:</b> No vacant position shall be filled by any means other than selection and approval by the administrator; and no vacant Executive or Senior Professional position shall be filled by any means other than selection by the</p>	<p>head of the line of business or staff organization in which the position is located, and approval by the administrator.</p> <p>d. <b>Classification of Positions:</b> Each head of a line of business or staff organization shall conduct a classification review of all positions in their organization; the number of position descriptions shall be consolidated and reduced to the maximum extent feasible.</p> <p>e. <b>Executive System Performance Incentive Plan:</b> The administrator or the head of a line of business or staff organization may pay a performance incentive to an employee in the Executive System in accordance with the criteria that were in effect for Senior Executive Service employees; the total amount available to a line of business or staff organization to pay incentives to employees in the Executive System shall be determined solely by the administrator.</p> <p>f. <b>The President appoints the Administrator of the FAA.</b> There is not special authority, which is without regard to Title 5, to pay the administrator.</p>

**Table 8: Additional Information about the Federal Aviation Administration (FAA)**

<b>Title 5 Exemption and Merit Principles</b>	<ul style="list-style-type: none"> <li>• It is an excepted service agency based on its own statutory authority, like GAO and FDIC (NAPA, 1996).</li> <li>• The 1996 legislation granting the agency authority to create its own responsive HRM system exempted the organization from most Title 5 requirements, including the Merit Principles; it no longer operates under the umbrella of the Department of Transportation's personnel structure.</li> <li>• However, the agency has declared that its newly emerging HRM system should be consistent with those principles. For FAA, merit policies and practices require a balance between fairness and the flexibility to achieve organizational results.</li> </ul>
<b>Major Characteristics of HR Changes</b>	<ul style="list-style-type: none"> <li>• Replacing its Senior Executive Service (SES) with a new FAA Executive System. This executive system links compensation to performance with increasing accountability for management; decreases the average days for executive disciplinary and performance actions to allow prompt removal of poor performers (NAPA, 1996).</li> <li>• Hiring practices are being streamlined by relaxing or eliminating some OPM regulations, giving managers increasing authority for on-the-spot hiring in special cases, authorizing recruitment bonuses and other incentives, and decreasing the time it takes to hire external and internal candidates (NAPA, 1996).</li> </ul>
<b>Recently Introduced Tools to Improve the Hiring Process</b>	<ul style="list-style-type: none"> <li>• The use of a Centralized Applicant System, which provides automatic consideration for applicants and the opportunity for managers to hire without announcing a vacancy. This system will review qualifications and assign ratings and rankings, enabling managers to get referral lists over 90 percent faster.</li> <li>• "On-the-spot" hires for special program needs and hard-to-fill positions.</li> <li>• Elimination of time-in-grade, other than qualification requirements, for promotions.</li> <li>• Use of the Internet for job applications. In its automated staffing system, Selections Within Faster Times (SWIFT), vacancy announcements are placed on the Internet and automated tools are available for creating, copying, and storing vacancy announcements. The agency states that this had reduced the time required to advertise vacancies by more than 80 percent and provides greater assurance that employees and outside applicants have timely access to vacancy announcements.</li> <li>• Noncompetitive conversion from temporary to permanent status if competition is held initially for the temporary position.</li> <li>• Standard position descriptions that reduce the time for creating a job by more than 90 percent.</li> <li>• Reduction in the number of hiring authorities to three (permanent, temporary with time limit, and temporary without time limit).</li> </ul>
<b>Classification &amp; Compensation System</b>	<ul style="list-style-type: none"> <li>• Has developed its own classification system to meet competitive needs and to move from seniority-based pay systems to performance-based alternatives.</li> </ul>
<b>Workforce Development and Training</b>	<ul style="list-style-type: none"> <li>• Has decentralized and deregulated training funding and decision making; each organizational "line of business" will identify its needs and develop a training plan; each will have more flexibility to make decisions about employee training.</li> </ul>
<b>Labor Relations</b>	<ul style="list-style-type: none"> <li>• Established the National Employee's forum (representatives of employee association and special emphasis groups) to serve as one point of check and balance to ensure appropriate representation and protection for employees against undesirable practices.</li> <li>• Has initiated a new appeals process called Guaranteed Fair Treatment. A three-member panel consisting of one advocate chosen by each side in a dispute and a neutral arbitrator resolves appealed actions. This process replaces the MSPB appeals process and greatly reduces time frames for resolving disputes.</li> </ul>

**Source:**

National Academy of Public Administration, "A Performance Based Organization for Nautical Charting and Geodesy." 1996.  
U.S. Office of Personnel Management, "HRM Policies and Practices in Title 5-Exempt Organizations." 1998.

people for positions—a point that people in the other agencies with flexibilities emphasize. They say before they got the new authority and flexibility, there was not much sense in trying to use such firms. Since job candidates had to go through ranking processes and other procedures through the OPM, an individual they might want to hire might not end up on the list of candidates from which they could choose. Even if they got to choose the person they wanted, the process took a lot of time, and there were often additional long waits before the person could actually start. Good candidates would be gone. Under the old system, there was a tendency to put out an announcement and hope for applicants. Now, they say, they are much better able to bring recruiting firms into the process to help locate the type of people FAA executives and human resource professionals have decided to recruit. They feel they have also learned to make more creative use of advertising. Of course, the streamlining and automating of their own procedures helps, too. “Now,” says one FAA administrator, “we can choose the right person for the right job. We can find the best person.”

FAA spokespersons see significant progress in acquiring sophistication in how to search. They have brought in more people from outside the agency, with new and necessary skills and perspectives. They are better able to introduce considerations of leadership ability into their recruiting, as well as an emphasis on experience in working collaboratively with customers, clients, and partners. This latter emphasis supports the effort to make FAA more collaborative with customers, to move away from serving as “police officers” and toward talking with customers and citizens about alternatives, possibilities, and how FAA can help them do their jobs.

They report a sense of increasing success in recruiting the people they want and need. “In information technology, we have been able to attract people at the top of the game in the federal government and the private sector,” asserts an FAA human resource official.

Pressed for evidence of this success, FAA representatives report that 17 percent of newly hired executives have come from outside the agency. As for senior executive positions in such areas as research and development, 90 percent have come from out-

side the agency. Concerning the new PMS in general, they point out that there has been no major lawsuit or other major complaint nor an increase in grievances.

## **U.S. Patent and Trademark Office: USPTO as a PBO**

The U.S. Patent and Trademark Office (USPTO) represents a more limited version of providing an agency with flexibilities in recruiting and hiring. USPTO takes in over a billion dollars in revenues per year as fees for reviewing patent and trademark applications and for issuing them. In part because of this businesslike revenue-generating characteristic, Congress designated USPTO a “performance-based organization.” The concept of a PBO had been implemented in the United Kingdom as part of reform efforts there. It made its way across the Atlantic during the Clinton administration when the National Performance Review began to promote the idea (see Table 3). Establishing an agency as a PBO usually involves hiring the head of the agency on a contract for a certain number of years, with a performance contract or agreement establishing annual performance objectives that the agency must meet. Meeting and exceeding these objectives can win a performance bonus for the top executive. Often executives at the second level in the agency are hired under performance contracts as well, and the agency typically receives independence from many of the rules and requirements imposed on typical government agencies. The idea is to allow the agency to perform like a business.

As has been the case with government corporations and authorities, the legislative branch tends to apply the PBO concept in varying ways, specific to individual agencies.<sup>14</sup> For USPTO, for example, unions representing personnel in the agency strongly opposed proposals to exempt USPTO from federal personnel policies and rules. Thus, USPTO ended up remaining under Title 5. Representatives of USPTO suggest that USPTO employees and union members, who tend to be highly professional and highly educated, wanted to retain the due process protections under Title 5 that provide employees rights to due process in decisions about firing and disciplinary action. As a result, most of the employees and managers in USPTO remain under the personnel rules of the federal government that apply to



other agencies. See Table 9 for a more detailed description of the provisions for USPTO.

USPTO representatives point to one very significant change, however, that they regard as important in the quest for executive talent. The PBO legislation gave USPTO certain grants of independence from the parent agency, the Department of Commerce, in personnel matters. Prior to this, when the USPTO’s Executive Resources Board determined there was a need for a new SES level executive, they had to compete with other agencies in the Department of Commerce. Commerce had a fixed number of SES positions that were allocated among the department’s agencies, such as USPTO and the National Oceanic and Atmospheric Administration. But now, if USPTO executives decide they want to create a new executive position, they have more freedom. They can work directly with OPM on creating the position without going through Commerce. USPTO representatives feel that this flexibility provides them with significant opportunities to determine their own configuration of executive resources.

The situation at USPTO brings up the important point that the special authorities and flexibilities

Congress may grant to agencies can be highly politicized. For USPTO, an exemption from Title 5 did not come about because a major professional association, a union, opposed the exemption. Unions can mount significant opposition to situations that give managers more discretion and authority. Generally, the design of the grants of authority often involves various forms of lobbying and selling to Congress by agency representatives and representatives of other groups. The situation at USPTO is still developing, and possible flexibilities in human resource management may yet be worked out between USPTO and OPM in a “memorandum of understanding.” Table 10 provides additional information about the transformation of USPTO to a Performance-Based Organization.

### Office of Student Financial Assistance: A PBO with Special Positions

In another alternative for providing an agency with flexibility in fighting the war for talent, Congress has given some agencies a specific number of special positions for use in attracting the “hard to attract.” In another variation on the PBO idea, Congress made the Department of Education’s

**Table 9: Department of Commerce—United States Patent and Trademark Office (USPTO)**

Legislation	
In November 1999, the President signed into law the Patent and Trademark Office Efficiency Act (P.L. 106-133, Appendix, Section 4701, that amends 35 USC 1). This act re-established the PTO as the USPTO, a Performance-Based Organization. The USPTO retains	responsibility for decisions regarding the management and administration of operations, and exercises independent control of budget allocations and expenditures, personnel decisions and processes, procurement, and other administrative and management functions.
Flexibilities	
<p>a. <b>Head of the Agency:</b> The USPTO is headed by an Under Secretary of Commerce for Intellectual Property and Director of the USPTO, appointed by the President and confirmed by the Senate, in order to provide policy direction and management supervision for the USPTO.</p> <p>b. <b>Appointment of COO:</b> The Secretary of Commerce appoints a commissioner for patents and a commissioner for trademarks to serve as chief operating officers (COO) for the respective units. The commissioners have five-year terms and will be responsible for all aspects of the activities of the USPTO.</p>	<p>c. <b>Compensation of COO:</b> The commissioners enter into annual performance agreements with the Secretary and are eligible for 50 percent bonuses based on their performance under those agreements.</p> <p>d. <b>Personnel Management:</b> Officers and employees of the USPTO continue to be subject to Title 5.</p> <p>e. <b>Public Advisory Committees:</b> The law establishes Public Advisory Committees for Patents and Trademarks, each with nine members appointed by the Secretary for three-year periods, to review and report on the policies, goals, performance, and user fees of the USPTO.</p>



Office of Student Financial Assistance (SFA) into a Performance Based Organization through legislation that granted SFA several forms of “personnel flexibility.”

- The new PBO would not be subject to ceilings on the number and grade of employees. (Previously, the agency was subject to ceilings based on full-time equivalents [FTEs], or hours

worked, by employees. Now the agency could make decisions about the number and level of employees within certain dollar amounts).

- The COO would work with OPM on personnel flexibilities in staffing, classification, and pay that meet the needs of the PBO.
- The COO received authority to appoint up to 25 technical and professional employees to

**Table 10: Additional Information about the U.S. Patent and Trademark Office (USPTO)**

<p><b>PTO as a PBO</b></p>	<ul style="list-style-type: none"> <li>• Included in the Vice President’s 1995 Initial Proposal for PBOs with other agencies, such as NTIS.</li> <li>• Legislation had been proposed by the Clinton administration (H.R. 2533) to grant PTO authority to use commercial business practices and to be permitted waivers from selected government controls in exchange for being accountable for agreed-upon performance goals.</li> <li>• PTO’s Human Resource office has been conducting several services to prepare PTO for becoming a performance-based organization. These have included benchmarking studies of competency-based systems and reviews of human resource practices and techniques used in several major corporations, such as Texaco.</li> <li>• Human resource management changes for PTO were being developed before the issuance of OPM’s template of personnel flexibilities in 1996. They include some proposed flexibilities that go beyond those described by OPM that may be found in other bills such as S. 1458, H.R. 1659, and H.R. 3460. These bills would convert PTO to the Patent and Trademark Corporation, and make it subject to the Government Corporation Control Act. Under H.R. 3460, the corporation would have authority to set pay rates and benefits for its employees, including wages and compensation based on performance.</li> </ul>
<p><b>Efforts to Make PTO a Government Corporation</b></p>	<ul style="list-style-type: none"> <li>• In 1989 and 1995, NAPA produced reports related to efforts to make PTO a government corporation at the request of the agency. These reports concluded that the PTO met the criteria for conversion to a wholly owned federal corporation.</li> <li>• These reports emphasized the need for exemption from government-wide regulations about procurement, personnel management, and other administrative systems.</li> </ul>
<p><b>Agency History of PTO</b></p>	<ul style="list-style-type: none"> <li>• In 1846, the Patent Office was transferred from the State Department to the new Department of the Interior, where it remained until being moved to the Department of Commerce in 1926.</li> <li>• In 1991, as the result of increases in fees enacted by Congress, the PTO became fully self-supporting from fees and ceased to be dependent upon taxpayer support.</li> <li>• In 1994, fees allocated totaled about \$547 million. Of this amount, \$25 million was not appropriated to the PTO. Actual operating expenses for the office were \$469 million.</li> </ul>

**Sources:**

National Academy of Public Administration, “Designing Outcome Measures at the U.S. Patent and Trademark Office.” 1999.

National Academy of Public Administration, “A Performance Based Organization for Nautical Charting and Geodesy.” 1996.

National Academy of Public Administration, “Incorporating the Patent and Trademark Office.” 1995.

administer the functions of the PBO as members of the “excepted service.” These appointments would not be subject to the provisions of Title 5 in their appointments, pay, and classification.

Table 11 offers more details. The designation of the special positions as excepted service draws on a long-standing category of employment in the federal service in which a person is exempted, or excepted, from the normal provisions for federal employment such as competitive examinations. While they have often been considered “patronage” positions, these excepted service provisions have more often been used where competitive examinations or other competitive procedures are not practical, and where the positions are not of a policy-making nature.<sup>15</sup> Most federal attorneys, for example, are hired under this category. Designating the SFA positions as excepted service removes them from Title 5 procedures and the supervision of their hiring by OPM.

According to people in SFA, this last authority and other provisions of the legislation could be interpreted in two ways. One interpretation, favored by some SFA people, contends that the act gives SFA authority to hire a reasonable number of senior managers, plus 25 special technical and professional persons. Under the second interpretation, the total of 25 covers senior managers as well as the technical and professional positions. The COO adhered to this second interpretation to avoid any possibility of exceeding the authority granted by the act.

SFA has assigned the senior management positions on the basis of how much supervisory and program management responsibility the position involves. The agency uses the authority for hiring technical and professional people to fill positions requiring technical and professional skills that the agency has difficulty in attracting and for which the SFA has a special need. For example, the agency needed experts in financial management and accounting, and in information technology and other high-tech specialties—positions that typically command substantially higher salaries in the private sector than in government. In addition, the agency recruited people to meet certain strategic priorities, such as a customer service orientation. In its strategic planning and its performance plan, the agency had set

goals for improving customer satisfaction, in addition to others such as improving employee satisfaction and improving business operations by reducing unit costs.<sup>16</sup> The COO placed a priority on finding out what “customers” want and need, and as a result, SFA hired some specialists in part on the basis of their unique “ground level” perspective. That is, they have experience dealing with SFA’s programs and services at the university or school level.

SFA officials say that the authorities really help them get the people they want and need much faster than before. Previously, they say, it could take up to six months to hire a person due to the rules and requirements for posting positions. Many good people would not wait that long for a job offer. So one of the benefits of the authorities comes from advantageous timing. In addition, the private sector not only could make a job offer faster, but also could pay more.

SFA representatives say they feel strongly that the authorities have helped them succeed in attracting excellent people in information technology, financial management, and other areas. They report that the agency sometimes identified the persons hired through professional networks in which executives and managers in SFA were involved. In other cases, the networks did not provide the type of people they were looking for, and the agency used recruiting firms with good results. SFA follows no highly systematic way of setting the pay levels of the new excepted service positions, but sets them on the basis of what the person was making in his or her previous position, what the person’s supervisor thought was justified and necessary, and the apparent value of the person’s skills, credentials, and services.

The noncompetitive and flexible nature of this hiring produced some grumbling from long-term employees, and occasionally some of the new hires might express concern about the level of their salary compared to another recent hire who got more. None of these problems ever became particularly serious, however, and SFA representatives say they never regarded them as cause for major concern or action. Factors that lessen the seriousness of such reactions probably include the very high number of long-term career positions in the

agency compared to the small number of excepted service positions. In addition, a lot of employees are likely aware that the excepted service positions have fewer protections against dismissal than career service positions, although they attain similar protections after two years of service.

Because of the different interpretations of the statute providing the 25 positions, the situation at SFA illustrates how important it is that the actual wording of the statutory authority be as clear and unambiguous as possible. It also illustrates a ten-

gency—which was also true at the IRS—for executives who have received these special positions to proceed very carefully in their use. They have obviously considered it very important to demonstrate responsible and well-justified utilization of these special authorities.

### Internal Revenue Service: Critical Pay for Critical Positions

The authority granted to the Internal Revenue Service (IRS) involves another variation on providing

**Table 11: Department of Education—Office of Student Financial Assistance (SFA)**

Legislation	
The personnel flexibilities of the Office of Student Financial Assistance are established by the Higher Education Amendments of 1998 (P.L. 105-244; 20 USC 1018), which created the federal government's first-ever Performance-Based Organization (PBO), a concept promoted by the National Performance Review (NPR). The delivery of federal student aid	will be led by an executive with expertise who reports directly to the Secretary of Education and has new administrative flexibility in exchange for increased accountability for results. The PBO will have new flexibility in personnel management, including hiring and evaluating senior managers and recruiting technical personnel.
Flexibilities	
<p>a. <b>Establishment of PBO [Section 141(a)]:</b> The Office of Student Financial Assistance is established as a PBO in the Department of Education; one of the purposes of the PBO is to provide flexibility in the management of the operational functions of the programs.</p> <p>b. <b>Independence [Section 141(b)]:</b> The PBO shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, and other administrative and management functions.</p> <p>c. <b>Appointment of chief operating officer (COO) [Section 141(d)]:</b> The management of the PBO shall be vested in the COO who shall be appointed by the Secretary to a term of not less than three and not more than five years, and compensated without regard to Chapters 33, 51, and 53 of Title 5. The appointment shall be made on the basis of demonstrated management ability and expertise in information technology including experience with financial systems, and without regard to political affiliation or activity.</p> <p>d. <b>Compensation of COO [Section 141(d)]:</b> The COO is authorized to be paid at an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service under Section 5382 of Title 5. In addition, the COO may receive a</p>	<p>bonus in the amount that does not exceed 50 percent of such annual rate of basic pay. Payment of a bonus may be made to the COO only to the extent that such payment does not cause the COO's total aggregate compensation in a calendar year to equal or exceed the amount of the President's salary.</p> <p>e. <b>Senior Management [Section 141(e)]:</b> The COO may appoint such senior managers as that officer determines necessary without regard to Title 5. The senior managers may be paid without regard to Chapter 51 and 53 of Title 5. A senior manager may be paid at an annual rate of basic pay of not more than the maximum rate of basic pay for the Senior Executive Service under Section 5382 of Title 5. In addition, a senior manager may receive a bonus in an amount such that the manager's total annual compensation does not exceed 125 percent of the maximum rate of basic pay for the SES.</p> <p>f. <b>Personnel Flexibilities [Section 141(g)]:</b> The COO shall work with the OPM to develop and implement personnel flexibilities in staffing, classification, and pay that meets the needs of the PBO, subject to compliance with Title 5. The COO may appoint, without regard to the provisions of Title 5, not more than 25 technical and professional employees to administer the functions of the PBO. These employees may be paid without regard to Chapter 51 and 53 of Title 5.</p>

a specific number of special positions. At IRS, the “critical pay” authorities came as part of major change and reform and play a significant role in those reforms. Years of concern over modernization and performance of the tax system led to the formation of a commission for reform of IRS, which, in turn, led to the Internal Revenue Service Restructuring and Reform Act (RRA) of 1998. The commission report recommended giving IRS the authority for flexible hiring of key positions. Among many other provisions, RRA gave IRS authority to hire 40 people in critical positions. Specifically, the act gives the Secretary of the Treasury authority for 10 years to hire people to positions that “require expertise of an extremely high level in an administrative, technical, or professional field” and that “are critical to the IRS’s successful accomplishment of an important mission.” The exercise of the authority must be necessary to recruit or retain an individual “exceptionally well qualified” for the position. The act limits the appointments of these critical pay personnel to four years and sets their maximum compensation at the level of the Vice President of the United States.

RRA provided a number of additional “personnel flexibilities” to IRS as well. In addition to the critical pay authority, the act provides for the following flexibilities:<sup>17</sup>

- Variation from standard recruitment, retention, and relocation incentives
- Performance awards for senior executives
- Limited appointments to career SES positions
- Streamlined demonstration project authority
- Authority for establishment of a new workforce performance management system that includes, among other provisions, retention standards for employees
- Authority for establishing new systems for compensation and staffing, including a broad-band-ing pay system

See Table 12 for additional details.

IRS pursued and received these flexibilities as part of a major overhaul of the agency. Features of the reforms included a massive structural redesign to

organize the agency into four operating divisions, each serving a set of taxpayers with similar needs—Wage and Investment, Small Business and Self-Employed, Large and Mid-Sized Business, and Tax Exempt and Government Entities. This reorganization reflects an emphasis on enhancing a customer service orientation in IRS, and on supporting, educating, and facilitating taxpayers rather than simply demanding their compliance. It also involved an effort to change the culture of the agency. Assessments of the agency’s culture had indicated the persistence of an enforcement and compliance mentality among employees. Documents describing the reorganization emphasize the objective of moving the agencies’ culture toward the fundamental assumption that most taxpayers will comply with the tax laws if they know their responsibilities, and that through communication and education the agency can help citizens comply. In addition, of course, the reforms were to continue the agency’s quest for modernization of the tax system, especially through the use of contemporary computing, information, and communication technology.

### **The Origins of the Critical Pay Authority**

According to people at IRS, the idea of pursuing these important objectives through more personnel flexibilities emerged from the deliberations of a committee that Dave Mader, director of operations for IRS, chaired in 1997, as the Commission on Reform was getting under way. Robert Rubin, then secretary of the treasury, and Kay Francis Dolan, deputy assistant secretary for human resources, formed the committee at the suggestion of Mader and others to consider ways to bring about the major reforms that IRS was facing. The committee began to focus on the possibility of gaining some flexibility through independence from the standard constraints and procedures in the federal personnel and procurement systems. This, the committee members contended, would help IRS make the rapid changes and adjustments needed for major reform. Interestingly, then, the ideas emerged from the agency rather than being borrowed or imposed from outside.

It is important to look at how the critical pay authorities have helped IRS to pursue its reform objectives. What has IRS gotten through the use of these positions? People in IRS who have been

**Table 12: Department of Treasury—Internal Revenue Service (IRS)**

<b>Legislation</b>	
The special authority for hiring and pay of the IRS is granted by Chapter 95 of Title 5 and the IRS Restructuring and Reform Act (RRA) of 1998 (P.L. 105-206; 5 USC 9501-10).	
<b>Flexibilities</b>	
<p>Chapter 95 (Section 9501 through 9510) of Title 5 and Section 1201 of IRS's RRA of 1998 are intended to allow IRS managers more flexibility in rewarding good performers and in making employees more accountable for their performance. These provisions give the Secretary of Treasury pay and hiring flexibilities, which are not otherwise available under Title 5. However, the new personnel flexibilities must be exercised consistent with existing provisions of Title 5 relating to merit system principles (Chapter 23), prohibited personnel practices (Chapter 23), preference eligibles, and, except as otherwise specifically provided, relating to the aggregate limitation on pay (Section 5307) and labor-management relations (Chapter 71).</p> <p>a. <b>IRS Special Personnel Flexibilities (Sec. 9501):</b> The new personnel flexibilities granted the Secretary of Treasury must be exercised consistent with existing statutory provisions relating merit system principles and prohibited personnel practices, and to preference eligibles.</p> <p>b. <b>Pay Authority for Critical Positions (Sec. 9502):</b> When the Secretary of Treasury seeks a grant of authority under Section 5377 for pay for critical positions at the IRS, OMB may fix the rate of basic pay, notwithstanding Section 5377 (d)(2), at any rate up to the salary set in accordance with Section 104 of Title III (the rate of pay of the Vice President).</p> <p>c. <b>Streamlined Critical Pay Authority (Sec. 9503):</b> The Secretary of Treasury may establish, fix the compensation of, and appoint individuals to designated critical administrative, technical, and professional positions needed to carry out the functions of the IRS, if the number of such positions does not exceed 40 at any one time.</p> <p>d. <b>Recruitment, Retention, Relocation Incentives, and Relocation Expenses (Sec. 9504):</b> The Secretary of Treasury may pay allowable relocation expenses and allowable travel and transportation expenses for any new appointee to a Section 9502 or 9503 position.</p> <p>e. <b>Performance Awards for Senior Executives (Sec. 9505):</b> IRS senior executives may be paid a performance bonus if the Secretary of Treasury finds such awards warranted based on the executive's performance. The performance bonus may be paid without regard to the limitation in Section 5384 relating to performance awards for SES [Section 9505 (a)], and an award in excess of 20 percent of an executive's rate of basic pay shall be approved by the Secretary. A performance bonus award may not be paid to an executive if the executive's total annual com-</p>	<p>pensation will exceed the maximum amount of total compensation payable to the Vice President [Section 9595 (e)].</p> <p>f. <b>Limited Appointments to Career Reserve Senior Executive Service Positions (Sec. 9506).</b></p> <p>g. <b>Streamlined Demonstration Project Authority (Sec. 9507).</b></p> <p>h. <b>General Workforce Performance Management System (Sec. 9508):</b> The Secretary of Treasury shall establish for the IRS a performance management system.</p> <p>i. <b>General Workforce Classification and Pay (Sec. 9509):</b> The Secretary of Treasury may establish one or more broad-banded systems covering all or any portion of the IRS workforce. The Secretary may, with respect to IRS employees who are covered by a broad-banded system, provide for variations from the provisions of subchapter VI of Chapter 53 relating to grade and pay retention (Section 9509).</p> <p>j. <b>General Workforce Staffing (Sec. 9510):</b> An employee of the IRS may be selected for a permanent appointment in the competitive service in the IRS through internal competitive promotion procedures. Notwithstanding sub-chapter 1 of Chapter 33 relating to examination, selection and placement, the Secretary of the Treasury may establish category-rating systems for evaluating applicants for IRS positions in the competitive service.</p> <p>k. <b>IRS Oversight Board:</b> Section 1101 of the IRS RRA of 1998 establishes the IRS Oversight Board with the Department of Treasury. The Board oversees management of the IRS, recommending to the President candidates for appointment as the commissioner, and, if necessary, recommending the commissioner's removal. The Board also reviews the selection, evaluation, and compensation for certain senior executives in the IRS.</p> <p>l. <b>Commissioner of IRS:</b> Under the Section 1102 of the IRS RRA of 1998, the commissioner will be appointed in renewable five-year terms. The commissioner must consult with the Oversight Board, and the board has review authority over certain operational plans and management matters.</p> <p>m. <b>Other Personnel:</b> Section 1104 of the IRS RRA of 1998 authorizes the commissioner to employ such persons as the commissioner deemed proper for the administration and enforcement of the tax laws, and to issue all necessary directions, instructions, orders, and rules applicable to such persons.</p>

involved in the program point to many benefits. Ron Sanders, the IRS director of human resources, feels strongly that the critical pay hirees who have come from the private sector and other settings have been crucial in the agency’s reform efforts. Besides the high levels of skill and experience they bring, he sees great value in their perspective and attitudes about changes. Sanders describes them as having a “just do it” attitude—a receptive orientation to trying new approaches and taking action.

People hired for the critical pay positions often have a specific challenge, project, or contribution as their focus for the four-year term. Some of the people have assumed these sorts of roles and then moved on. Table 13 describes some of those positions.

As for executives and professionals who have been hired and are still with IRS, representatives of the organization make strong claims about their value and quality. In response to questions about these hires posed by the Joint Committee on Taxation, IRS made the following claim:

The Service has recruited an exceptionally talented and experienced workforce to provide vision, leadership, and guidance which, supplemented by the experience and skills of the career executive corps, has enabled the Service to successfully meet the massive challenges of the complete restructuring mandated by Congress. Our current critical pay executives bring external experiences, practices, and knowledge not currently available within the organization.

Indeed, the agency puts forth a good case for the qualifications of the people hired for critical pay positions and the rationale for bringing them to IRS. They also reported the following information to the Joint Committee:

- The new deputy commissioner for modernization/chief information officer was a top executive in the technology area at Time-Warner.
- Two of the four division commissioners and one of the deputy commissioners are external

**Table 13: Partial List of Streamlined Critical Pay Executives Who Have Been Recruited by IRS**

Position Title	Rate of Pay	Incentives/Bonuses
Chief Financial Officer	\$147,500	None
Director, Program Control Information Systems	\$130,000	None
Assistant Commissioner (Management and Financial Systems) IS	\$135,000	None
Director, Government Program Management Office, IS	\$160,000	\$15,000 (Recruitment, 11/21/98)
Director, Real Estate and Facilities Management Agency-Wide Shared Services	\$176,300	\$37,800 (Recruitment, 3/15/00)
National Taxpayer Advocate	\$144,800*	\$15,000 (Recruitment, 9/1/98) \$25,000 (Annual Performance, 1/18/01)
Deputy Commissioner/Modernization	\$155,100*	\$25,000 (Recruitment, 9/16/98) \$20,000 (Annual Performance, 1/18/01)
Chief Information Officer	\$181,400*	\$43,600 (Recruitment, 8/11/98) \$25,000 (Annual Performance, 1/16/01)

\* Salary at departure

hires and provide specific industry background and experience, change management experience, and senior leadership.

- All of the senior industry advisors in the Large and Mid-Size Business Division have been recruited from the industries to which they are assigned, making them uniquely suited to providing the most current technical advice to the Service.
- The new national taxpayer advocate had a long and distinguished career in tax advocacy and is well-known in legal circles and in Congress.
- The chief of Criminal Investigations is an attorney with a successful career at Justice and in private law practice.
- The chief of Agency-Wide Shared Services was recruited from a major international corporation and brings to the agency expertise in best practices for commercial service support.
- The associate commissioner for Business Systems Modernization was previously president of the Professional Services Council and joined the Service with a wealth of experience and background in modernizing systems.
- The chief of Information Technology Services was just recruited from Marriott International, where he was senior vice president for Information Research Operations and Services.
- The recently hired chief of business strategy and business architecture in the Wage and Investment Division is one of the leading experts in the United States on designing and operating call centers.
- The director of the Stakeholder, Partnership, Education and Communications Office in the Wage and Investment Division came to the Service from Karch International, where he was COO and directed a wide array of successful marketing projects.
- The director of International Operations in the Large and Mid-Size Business Division was formerly the director of E-Business Tax Policy and Practices at a major national consulting firm and had over 15 years of corporate international tax experience.

## A Closer Look at Critical Pay Position Holders

A look at some of the individuals hired under the program reveals the reasons for the enthusiastic response to it. For example, Joe Kehoe is now director of the Small Business and Self-Employed Division. People in IRS consider this a strategically important division because of its size—40,000 employees. In addition, there are many important issues about compliance among small business and self-employed taxpayers, and much that can be done in outreach, education, and facilitation for this group of taxpayers. Kehoe was the head of the Washington Consulting Practice of PricewaterhouseCoopers. After retiring from PricewaterhouseCoopers, Commissioner Rossotti recruited him to accept the challenge of taking charge of a 40,000-person division involved with a government activity that touches so many lives. When Kehoe took the job, he says he felt that if he could contribute to improving the programs and activities of IRS, he could contribute to improving working lives and personal lives throughout the nation.

Like many people who move from the private sector into the federal government, Kehoe has a lot of praise for government employees—more specifically, IRS employees. He says he has been impressed with how hard they work and how dedicated they are. He was struck by the large scope of responsibility of many of the executive positions in IRS. After all, he had just assumed leadership of a division of 40,000, at less pay than he had commanded in private business. He also mentions opportunities he sees to bring in new ideas and perspectives from the private sector. For example, he sees possibilities for improving the way IRS examiners conduct their audits, drawing on the most contemporary practices in audits and reviews by private accounting and consulting firms.

Kehoe says he has found many opportunities to encourage IRS employees to move away from a compliance-oriented view of taxpayers toward a view more sensitive to the immense impact that compliance pressures can have on taxpayers. Still, he does not see his role as involving some simple relaxation of requirements for people to fulfill their responsibilities as taxpayers. He says that he has found interesting, in his communications with taxpayers and associations representing taxpayers, the



number of people who urge him to make sure that everyone does their fair share. He finds that people do not express strong hostility toward the tax system, but rather the strong desire that the system be made fair and equitable. If some are doing their duty by complying with the tax laws, they want to know that others are required to do so as well.

One of the things Joe Kehoe has done in relation to the critical pay authorities is to use them in pursuit of the priorities of his operating division. For example, the Small Business and Self-Employed Division (SB/SE) hired Tom Dobbins. Dobbins is an example of a younger, less senior acquisition for one of the critical pay positions. He came to IRS with a background in lobbying and public relations work with professional associations; his most recent position before coming to IRS was at a private consulting and public relations firm. Others at IRS point out that Dobbins brought to the organization a background and skills that did not really exist within IRS at the time. With the increased strategic emphasis on outreach, education, and communication with taxpayers, IRS had a strong need for people with knowledge and skills in “marketing.” That is, they needed not simply salespeople or public relations people, but people with ideas and experience about how to reach and communicate with key stakeholder groups, such as professional and commercial associations. This connection should enhance the agency’s capacity to utilize those groups as channels of communication and education for taxpayers. In such a role at IRS, Dobbins has helped to develop ideas and practices for getting together with those groups to use them as a way to disseminate such technologies as CDs with information about tax responsibilities and procedures for members of such groups.

His perspectives have helped to promote internal communication as well. Dobbins played a key role in planning meetings that brought together large numbers of SB/SE personnel from all over the nation. At the meetings, they heard from the commissioner, the division director, and other leaders, and met with their counterparts from around the nation. Participants in these sessions were so enthusiastic about their value that the meetings may become regularly scheduled activities. Others in IRS credit Dobbins with having an essential influence on these developments by bringing his new

perspective and background into the IRS context and raising new possibilities.

### **Resentment Issues**

One potential problem for the critical pay program may come from resentment from long-term IRS career employees over the higher salaries and special treatment of the critical pay hirees. One IRS official mentioned in an interview that he had a good friend, a long-term IRS manager, who deeply resented the critical pay authority because it implied that IRS needed outsiders to come in and fix the agency. When asked whether they have encountered any serious resentment or resistance, people such as Dobbins have little to report. Dobbins says he has noticed an occasional wise-crack about how he is supposed to be “some big expert” that has been brought in, but nothing very serious. Many people in IRS point out that the critical pay hirees may have larger salaries than career managers and professionals, but the careerists tend to realize that they have benefits that the critical pay people do not have. The people in the critical pay positions have four-year contracts and may well be looking for another position outside of IRS in four years. They have often come in from higher-paying jobs or otherwise desirable positions elsewhere. The career people have longer-term career stability and benefits.

### **Accountability Issues**

One of the big issues for critical pay authorities should be obvious to anyone with a background in government or public management. When you give people authority and discretion, it always raises concerns about accountability. How do you give people freedom to make decisions and choices in government agencies without raising such classic problems as cronyism, political string-pulling, or just plain bad choices? The critical pay authorities may work well when IRS has a commissioner with high credibility and competence, with a person such as Dave Mader to shepherd the program along, and other high-caliber people to support and develop it. What happens if you do not have such people involved, and political leaders want to intervene to get poorly qualified friends and allies hired, or the decisions are lax and allow someone with a conflict of interest into an important position?



When asked such questions, people in IRS point to various review procedures and safeguards. For one thing, says Ron Sanders, director of human resources for IRS, the new IRS has an oversight board, and it can play a role in reviewing the use of the critical pay authorities. The General Accounting Office has already produced one report on the implementation of the personnel flexibilities in IRS, and such oversight and review processes can continue as a guard against misuse. The Joint Committee on Taxation has asked IRS to answer questions about the implementation of the critical pay authority and has issued a favorable assessment.

In addition, in its implementation of the critical pay authority, IRS has adhered to many safeguards against its misuse. Deb Nelson and Rhett Leverette, who have responsibility for executive resources and have worked directly with the negotiations and hiring for the critical pay positions, describe an extensive set of reviews and safeguards. Each candidate has to have the standard checks and reports that employment with IRS requires. The candidate has to undergo a criminal background check, a detailed financial disclosure, a reference check, a review of recent tax returns, and other forms of scrutiny. Attorneys from both the Treasury Department and IRS review these checks and disclosures for each candidate. Leverette estimates that the process often takes about as long as standard processes under Title 5. Sometimes candidates being considered for positions express concern about how long the process does take, Leverette says. But the critical pay authorities do provide flexibility in the amount of pay the agency can offer to a person, freedom from controls and checks by some other agencies such as OPM, and the authority to pick out a person they want to hire. The authorities, however, by no means give the agency a release from accountability and checks against misuse.

### **The Learning Process**

As with any innovative program or procedure, the critical pay authorities at IRS have involved a learning process for those involved. Dave Mader reports that people at IRS have found that recruiting firms have come to play a crucial role in enabling IRS to use the authorities successfully. Since the agency now has the flexibility to design and designate

positions for particular types of individuals, these firms' knowledge of potential candidates around the nation and the world becomes extremely valuable. The firms can respond to the agency's profile of the person needed and proactively seek out candidates. Tom Dobbins reports that when the recruiting firm first contacted him about the IRS position that he ultimately filled, he thought the recruiter was asking for recommendations and began to name candidates. "I was thinking of you," the recruiter said. Dobbins says he never would have seen himself working for IRS, although he had been thinking he would go into government service at some point. The recruiter convinced him that the position was challenging, interesting, and a good opportunity. He agreed to be put into candidacy for the position and, once in, felt he wanted to present the best candidacy he could. Ultimately he received the offer.

The incident illustrates a point mentioned by people in other agencies as well. Once people in an agency have the flexibility with which they can work, they feel that they can better utilize existing resources and opportunities, such as the availability of recruiting firms. Even though they have had the option of using recruiting firms in recent years, they had little incentive to do so, because if the firm identified a good candidate, the agency still might not have the authority to hire that particular candidate. In addition, the hiring process might take so long that they would lose the person to another job opportunity.

Rhett Leverette, who has worked on the recruiting and "onboarding" of most of the people who have been hired, also describes learning processes from the experiences to date. For example, Leverette and others have been learning more about such issues as fashioning an appropriate compensation offer. They have learned to ask candidates for four years of compensation history, since many of the private sector compensation programs vary substantially from year to year. One needs a sense of the average level in these up and down patterns to develop an appropriately competitive offer. Stock options in private sector compensation packages have been one of the most challenging provisions against which IRS has had to compete. Because IRS cannot offer stock options, it cannot match this aspect of many private sector arrangements. People at IRS,

however, are learning that the agency can compete on the basis of other dimensions, such as the challenges and opportunities for significant experience. They are also learning a lot about dealing with such matters as stock options, investments, and ownership arrangements that may require various forms of recusement or divestment by persons hired from the private sector.

### **Unique Characteristics of the IRS Critical Pay Context**

Some special features of the IRS situation that have a bearing on the success of the critical pay program need consideration. In all four of the agencies covered in this report, the personnel flexibilities and special authorities came as part of major reforms and changes at the agencies. The critical pay positions at IRS come as part of a historically significant reform of the agency, which creates very challenging new opportunities for people coming into the organization to participate in changes that, as they put it, can touch the lives of so many citizens.

In addition to the opportunities and challenges of major changes and of work that has an important impact on the public, the IRS provides many positions involving significant scope of authority and responsibility. As an organization with over 100,000 employees, handling millions of tax returns and over a trillion dollars in tax collections per year, the agency offers massive challenges in information technology, executive leadership, public relations and outreach, and many other highly significant and challenging experiences. It appears that the higher pay helps to attract people to the critical pay positions, but that pay alone is by no means their only motivation or even their primary one. This raises the point that the flexibility to design the position and to match the person to the position seems to play an important role in providing the other incentives in addition to pay—challenge, meaningful work, valuable experience, public service—that IRS can offer to candidates for critical pay positions.

# Findings and Recommendations

## The Challenge of Fragmentation

From the point of view of officials in oversight agencies and bodies such as the Office of Personnel Management and committees of the Congress with responsibility for government operations and the civil service, the spread of special authorities raises a classic issue. People in central personnel offices have tended to emphasize the need for consistency, a coherent policy, and equity throughout a governmental human resource management system within a broad jurisdiction such as the federal government or a state government. As an obvious example, if two people in the system are doing essentially the same work, but one gets paid a lot more, that is unfair. Should one agency have special opportunities and advantages in managing their operations that others do not have? Also, if the system becomes increasingly fragmented and balkanized, the system itself becomes more complex, unwieldy, confusing, and hard to understand and manage.

Representatives of OPM and congressional committees tend to express support for flexibilities in general. They voice concerns, however, about individual agencies going to their authorizing committees in Congress and getting a special arrangement for themselves. From the viewpoint of those concerned with central oversight of the system, one can see why they would see a need for a comprehensive policy concerning flexibilities, so that all agencies might make use of them, rather than just a small set of fortunate ones.

On the other hand, reformers tend to emphasize the value of “tailoring” the system to suit the needs

of individual agencies facing particular challenges. They argue that the special authorities of the sort covered in this report show the way toward a broader dissemination of the best practices in flexible hiring and pay provisions. People in the individual agencies point out that they face the challenge to improve now, and cannot afford to wait until some broad, overall policy is developed and adopted.

## Findings

Representatives of the agencies given general grants of flexibility report beneficial results. Human resource managers from the FAA say that with their new personnel system, they have improved their recruiting and hiring. They say they now have the incentive and opportunity to behave more proactively in recruiting through such means as search firms. They say they have been successful in recruiting excellent people in such areas as information technology. Human resource management representatives at USPTO note that they did not receive extensive authorities or flexibilities for executive and professional recruiting, since USPTO remained under Title 5. They regard their newly authorized independence from the Department of Commerce in designing and filling executive positions as valuable for executive recruiting, but as of the time of this study they had not used it for filling specific positions with specific recruits.

The two agencies—SFA and IRS—that received authorization for specific numbers of positions with flexibility to recruit critically needed executives and professionals provide evidence of the successful use of these authorities in the form of the impressive

profiles and credentials of the persons hired. They also provide evidence of success in the form of agency representatives' positive accounts of the benefits of the new authorities and the people recruited with them.

Agencies that have special authorities for hiring critical and hard-to-recruit personnel tend to approach human resource management differently as a result. Such agencies:

- Devote more time and consideration to conceiving and designing the positions to be filled.
- Have more incentive to invest in position design and recruiting.
- Have more flexibility in deploying resources for recruiting for the special positions. They invest more in recruiting, in the use of executive and professional search firms, and in advertising for the positions. They are more likely to draw on professional and executive networks for finding candidates.
- Have found that success involves much more than just "show me the money." Many of the executives and professionals recruited with special authorities come to government for the challenge and significance of the work. Many of them have made and can make as much money, or much more, in the private sector. While the flexibility in offering more competitive pay levels plays a crucial role in the recruiting of these people, the significance and challenge of the roles offered to them figure just as prominently.
- Report high levels of learning about related matters, including learning about how to locate and recruit candidates, the issues involved in their transition to the organization, and more creative advertising strategies. They report increased and effective use of executive and professional search firms, as well as professional networks. They report learning about how to assess private sector compensation packages and prepare competitive offers, and how to deal with such matters as avoiding even the appearance of a conflict of interest and how to handle matters of stock options available in the private sector but not in government.
- Have high levels of top leadership involvement in position design and recruitment.
- Have attained and used special authorities for critical positions in the context of organizational transformation and reform that has associated the design and recruitment for the new positions with the goals of the transformation and the mission of making the reforms work.
- Devote careful attention to accountability and transparency. They have sought carefully to stay within mandates and to employ checks and reviews to avoid even the appearance of improper procedures or criteria.
- Assign clear responsibility for the successful use of the authorities to executives, managers, and staff members. The implementers have served as sponsors and "champions" of this initiative, and report that they have felt an incentive and a duty to implement it successfully. Other executives and managers in the organizations served as supporters of the initiative.

## Recommendations

**Recommendation One: Special hiring authorities for executives and professionals have significant value as part of a comprehensive strategy for transforming a federal agency into an organization that better manages for results. Therefore, the use of such authorities should be expanded and extended to other agencies, with careful consideration of recommendation two for key implementation steps.**

Among the foremost of these involves the integration of such authorities with a broader strategy for transformation of an agency toward significantly improved results-orientation and mission accomplishment. The pattern of success in the two agencies that received specific numbers of critical pay or excepted service positions makes clear that the effective use of special hiring authorities involves much more than simply handing out to agencies some improved capacity to recruit people they want. It involves a carefully implemented process of empowering executives and managers in an agency to add this resource to a comprehensive strategy. Their strategy must support transformation of their organization toward a greater results orientation and a significant improvement in mission accomplishment.

The many variations and flexibilities described in this report show that the personnel system of the United States government has responded to pressures for more decentralization, deregulation, and increased adaptability to its complex challenges and operating context. It is an oversimplification to claim that the system involves a monolithic, strictly structured lattice of bureaucratic constraints. Indeed, the variation and complexity of the system itself acts as one of the reasons that federal managers want more independence from it. The confusing array of authorities and special provisions makes it difficult for agencies to compete for talent when they have to weave through all the complexities of the system. In addition, many of the flexibilities and special provisions available under Title 5 still have strings attached to them. To use them, an agency must get approvals from OPM and sometimes other authorities. For example, to use the critical pay provisions that already exist under Title 5, an agency has to get approval from both OPM and OMB. For these reasons, executive, managers, and personnel administrators in federal agencies often continue to look for independence from many of the personnel rules and procedures centralized under OPM by Title 5. The success of the special hiring authorities in the agencies on which this report has concentrated suggests the value of implementing them more widely, but with careful attention to recommendations for successful implementation.

**Recommendation Two: Organizations granted special authorities should consider the following key implementation steps necessary to effectively use and maximize the impact of these authorities. Key implementation steps include leadership and sponsorship at the top, integration with a comprehensive agency strategy, address critical success factors, clarity of legislative mandate, investments in organizational learning, and maintenance of accountability and transparency.**

**Leadership and sponsorship at the top.** Successful large-scale change requires sustained commitment from top leadership, with additional sponsorship and responsibility from others in the organization. Top executives need to integrate special hiring authorities into comprehensive strategies for organizational transformation and improvement, and to devote attention and resources to their effective utilization. A coalition of executives, managers,

and employees needs to have clear assignment of responsibility for the program and to serve as its sponsors and champions.

**Integration with comprehensive agency strategy.** Special hiring authorities need to be implemented coherently with a more comprehensive vision or strategy for improved performance and results-oriented management. The new positions and people need to be established in a way that aligns them with the agency's strategy for structure, culture, incentive system, and long-term goals.

**Address critical success factors.** The commitment of leaders and sponsors, and the integration with broader strategies, are necessary because of the need to address critical success factors in the implementation of the hiring authorities. We need to avoid precisely defining these issues or prescribing means of dealing with them in an *a priori* fashion, since implementers in agencies should do much of this work in relation to the needs and circumstances of their agency. Major success factors include:

- *Position design.* Implementers need to devote careful attention to defining the new positions in ways that meet well-developed priorities, and that provide the incentives of significant and challenging responsibility. This crafting of positions and roles becomes doubly important because the person hired may have no entitlement to long-term employment and such benefits as federal retirement programs. These limits also raise such issues as whether the agency should assign the individuals to particular missions or projects that they aim to complete during their tenure.
- *Recruiting.* The implementing officials in the agencies reported increased incentives and opportunities for new recruiting practices. For example, they felt particularly positive about the results they attained through using executive search firms. Implementing officials must invest time and resources in developing new, energetic, and creative recruiting patterns. They must make effective use of new technologies such as the Internet, and of executive and professional search firms.

- *“Onboarding.”* While the agencies in this study reported no particular difficulties with bringing the new people “on board,” they felt the “onboarding” process to be very important and another part of the commitment to making the initiative work. One explanation for the successful “onboarding” of most of the new people into their new roles and relations with others in the organization came from the unique features of their positions. While one might have expected some resentment from long-term employees of these highly paid newcomers, any such reactions appeared to be ameliorated by the limited tenure and entitlements of the special positions. The long-term employees realized that the new people sacrificed some of the benefits that longer-term employees enjoyed. *Implementing officials need to develop plans and policies for “onboarding” newly hired professionals.*
- *Integration.* Effective position design, of course, also helps with integration of the new people into the organization. For example, both in assignments for critical pay hires as well as in other instances, the IRS used the approach of putting together a newly hired outsider with a long-term insider. At the top of newly created operating divisions, the IRS leadership teamed an outsider, hired under the critical pay authority, with a career IRS executive. The Large and Mid-Size Business, Small Business/ Self-Employed, and the Tax Exempt and Government Entities divisions were all headed by newly hired outsiders with an IRS career executive as deputy. The Wage and Investment Income Division was headed by a careerist with an outsider as deputy.<sup>18</sup> Effectively used, such teaming and partnering of new people and insiders has obvious advantages. It brings in new talents and ideas, but provides for institutional memory. Furthermore, it sends the message to career personnel that their years of work and experience are valued, but does emphasize the need for openness to new perspectives and skills. *Implementing officials should effectively integrate outsiders and insiders as a team.*

**Clarity of legislative mandate.** The experience to date has also indicated the importance of legislative mandates that assign the new authorities not

necessarily with great precision, but at least without significant ambiguities. For example, in one of the agencies the ways in which the new positions could be assigned between executive and professional roles was not clear. Significantly, the chief operating officer chose to interpret the legislation in the way most likely to avoid exceeding legislative intent. *Officials crafting legislation and other implementing mechanisms need to provide reasonable clarity about the authorities provided to the agency.*

**Investments in organizational learning.** This last example, and others above, illustrate the significant learning that occurs in organizations implementing the special authorities. People in those organizations have tended to share this learning. Their experiences can now inform new initiatives in other agencies. *Officials from the legislative branch, central oversight agencies, and the agencies receiving authorities should engage in communication and share information about the successful use of special hiring authorities, through task forces, advisory groups, consortia, and other arrangements that can contribute to further success.*

**Maintenance of accountability and transparency.**

The attention to accountability is one of the striking features of these initiatives to date. As noted earlier, the executives and managers in the agencies had a strong incentive and sense of duty to make the special hiring provisions succeed. This appears to have spurred them to avoid even the appearance of impropriety. Moreover, they faced serious challenges in bringing people into government with private sector backgrounds that included compensation arrangements that are legal and appropriate in the private sector, but not allowed in government (such as stock ownership in private firms with which the agency does or might do business).

As described above, the chief operating officer in one of the agencies interpreted the legislative mandate in the way least likely to exceed authorization. In IRS, the new recruits still went through all the background checks and reviews applicable to any IRS recruit. The approval process involved consultations back and forth between IRS attorneys and the attorneys of the parent agency, the Department of Treasury. The IRS oversight board can also serve as an oversight authority for these special hiring authorities and their proper use.

## Concluding Thoughts

While at first one might think that these special hiring authorities confer on the agencies extensive freedom in hiring—and that this might raise problems of accountability and transparency—the careful attention to such matters so far appears to have avoided such problems. This situation appears ironic at first. Provisions intended to provide more flexibility and authority for recruiting key professionals and executives end up leading the recipients of this authority to show careful concerns for accountability. This actually makes sense, however, in that one would hope that people in public service empowered with authority they regard as valuable to improving their agency's performance will have a strong incentive to use it wisely and effectively. In these agencies, this appears, so far, to be the case.

All officials and authorities involved must maintain the sense that the special hiring authorities confer on the agencies receiving them a major responsibility for effective and accountable utilization of this important resource. This includes making provisions for accountability and transparency, but doing so creatively, so that agencies do not reinstitute the constraints that necessitated these authorities in the first place.

# Appendix: Hiring and Compensation Practices in Federal Agencies Exempt from Title 5

The Office of Personnel Management (OPM) (1998) concludes that there are no discernable differences in hiring for specialized or shortage category occupations between the non-Title 5 organizations and Title 5-covered organizations despite the greater flexibility generally available to the non-Title 5 agencies. In every organization studied in this report, the merit system principles such as open competition, some form of rating and ranking, classification/compensation systems based on rank or position, and formal due process procedures are incorporated. However, the rule of three and veterans preference are absent in many Title 5-exempt agencies.

This report also finds that there is movement to market-based compensation and pay-for-performance systems that eliminate step increases and general increases and may include broadbanding, variable pay, and linkage of pay systems to organizational goals or performance.

Over all, while Title 5-exempt organizations' practices are similar in many respects to those of Title 5 organizations, they display a capacity to readily respond as a part of the management structure. However, such flexibility raises questions about accountability to the public and the role of central management agencies, such as OPM.

This is a small sampling from the world of Title 5-exempt organizations, which include government corporations, independent establishments, ordinary executive branch agencies with legislative approval to create alternative personnel systems, and other legal entities.

Agencies	Hiring and Compensation Practices
General Accounting Office (GAO)	<ul style="list-style-type: none"> <li>• Transformed by the General Accounting Office Personnel Act, effective 1980, into an excepted service agency with some authorized exclusions from Title 5.</li> <li>• The act authorized flexibilities in compensation and pay administration. The agency was given authority to operate under the Demonstration Projects provision in Title 5.</li> <li>• Has adopted a pay-banding system that covers evaluator and attorney positions only, with salaries and limitations comparable to the General Schedule pay system; other positions continue to be covered under the GS schedule pay system.</li> </ul>

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Agencies	Hiring and Compensation Practices
United States Postal Service (USPS)	<ul style="list-style-type: none"> <li>• Mostly exempt from Title 5; the largest Title 5-exempt organization.</li> <li>• Has introduced structured interviewing to help selecting officials improve their hiring selections.</li> <li>• Has the most formal selection process, which includes the use of national test registers and veterans preference; now considering a new approach to move away from national registers to a testing process that places the responsibility on the applicant to apply for vacancies with score-in-hand rather than waiting on a register.</li> <li>• Has a 90-day probation.</li> <li>• Uses market-based compensation systems; has implemented both a broad band system and merit-based pay for all of its non-bargaining unit positions. Increases in salary are determined solely by performance, and there are no longer any step increases or cost-of-living adjustments.</li> </ul>
Tennessee Valley Authority (TVA)	<ul style="list-style-type: none"> <li>• Mostly exempt from Title 5.</li> <li>• Has a large internship program for targeted areas such as nuclear engineering and offers scholarships to dependents of employees.</li> <li>• Uses a management selection board for some hiring; the selecting official identifies the selection criteria, then the selection board (comprised of the selecting official's peers, customers, etc.) interviews applicants for behavioral competencies while the selecting manager interviews for technical competencies. The board ranks the candidates and the selecting official makes the selection.</li> <li>• Is moving toward market-based compensation systems to be competitive in the newly deregulated utilities industry.</li> </ul>
Central Intelligence Agency (CIA)	<ul style="list-style-type: none"> <li>• Has "rank-in-person" systems where hiring and promotion decisions are based on expert panel reviews of qualifications. In a rank-in-person system an employee is classified according to the skills and achievements he or she brings to the work of the organization, in contrast to the "rank-in-position" approach in the Title 5 classification system, which classifies jobs based on the duties of specific occupations.</li> </ul>
Library of Congress	<ul style="list-style-type: none"> <li>• Not covered by Title 5 but established a formal, merit-based HRM system that mirrors Title 5 staffing regulations. The organization had voluntarily adopted the Title 5 classification and pay systems earlier. It sees a merit-based system as a protection for both the organization and its employees in a highly complex and dynamic environment.</li> <li>• Uses targeted recruitment aimed at specific occupations and skills such as foreign-language competencies.</li> <li>• Holds managers accountable for filling positions based on the organization's staffing plan that shows diversity imbalances in the workforce.</li> <li>• Holds managers and HRM staff accountable through the performance system for maintaining the strict time frames embedded in their hiring procedures; a tracking system monitors the status of all vacancies.</li> <li>• Uses a statistically validated scoring scheme to identify the most qualified.</li> </ul>
Sallie Mae	<ul style="list-style-type: none"> <li>• Has simple résumé reviews by selecting officials for rating and ranking procedures.</li> </ul>
Federal Deposit Insurance Corporation (FDIC)	<ul style="list-style-type: none"> <li>• Is an excepted service agency; has a board of directors authorized to make decisions on employee compensation and benefits. It is not required to follow the provisions of Title 5.</li> <li>• Has special hiring authority from OPM to appoint term employees non-competitively to assist in bank closures.</li> <li>• Since its creation, its legislation has been revised, expanding the board's authority.</li> </ul>

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Agencies	Hiring and Compensation Practices
Smithsonian Institution	<ul style="list-style-type: none"> <li>• One-third of the workforce is funded and operates under a trust fund, with the remainder covered under the Title 5 system.</li> <li>• Administratively follows Title 5 for classification and compensation because it is easier than establishing their own systems. To promote fairness and equity between the two different groups of employees, it has chosen to manage both sets of employees in essentially the same manner under the same systems.</li> </ul>
Nuclear Regulatory Commission (NRC)	<ul style="list-style-type: none"> <li>• Only partially exempt from Title 5; maintains a highly visible merit staffing system based on the NRC's organizational values and the Merit System principles.</li> <li>• A special Merit Staffing Course, begun in January 1997, instructs supervisors in assuming responsibility for qualifying, rating, selecting, and giving constructive feedback to job applicants.</li> <li>• Places applicants in one of three categories for rating and ranking.</li> <li>• Follows the Title 5 pay structure for ease of pay administration and to sustain inter-agency transfer options for its employees.</li> </ul>
Peace Corps	<ul style="list-style-type: none"> <li>• Holds managers and supervisors responsible for differentiating among candidates and for justifying their selections.</li> <li>• Has a five-year employment rule; employees can have a maximum of two two-and-a-half-year appointments; it reports that this limitation both restricts the hiring pool and reduces performance- and conduct-related actions.</li> </ul>
Department of State, Foreign Service	<ul style="list-style-type: none"> <li>• Only the employees in the Foreign Service are outside of Title 5.</li> <li>• Has rank-in-person systems where hiring and promotion decisions are based on expert panel reviews of qualifications; in a rank-in-person system an employee is classified according to the skills and achievements he or she brings to the work of the organization.</li> </ul>
Office of Federal Housing Enterprise Oversight (OFHEO)	<ul style="list-style-type: none"> <li>• Exempt from Title 5 only for classification and compensation and must adhere to all other provisions such as staffing, performance management, and adverse actions.</li> <li>• To ensure a diverse applicant pool, it uses a Minority Online Information System (MOLIS) that sends vacancy announcements via the Internet to minority institutions.</li> <li>• The authorizing legislation requires that the organization has comparable pay and benefits programs with other federal regulators. The agency uses a broad-band pay system to help recruit for unique and hard-to-fill positions. Examiners and financial analysts at this agency must have a high level of knowledge and expertise related to the banking industry. To attract high-quality candidates, the agency must be able to offer comparable compensation packages, and the broad-band system has given it more flexibility to do so.</li> <li>• However, the agency reported some problems with its broad-band system—that is, problems with employees reaching the top of their pay band too quickly, particularly if the employees are recruited at high points in the pay band. To remedy this situation, it has devised formulas for employees at the top of their pay bands so that some portion or all of their salary increases are granted as cash awards rather than increases to base salary.</li> </ul>
Veterans Health Administration (VHA)	<ul style="list-style-type: none"> <li>• Uses recruitment and relocation bonuses for hard-to-fill occupations for Title 38 employees. Operates a highly publicized Central Placement Service, which is a nationwide automated inventory of applicants for Title 38 positions.</li> <li>• Has rank-in-person systems (Title 38 employees).</li> <li>• Uses an interactive website where candidates can file their applications electronically and get information about the VA.</li> </ul>

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Agencies	Hiring and Compensation Practices
Office of Thrift Supervision (OTS)	<ul style="list-style-type: none"> <li>• Fully covered by Title 5 for hiring and staffing.</li> <li>• Has a Fellows Program in which up to 10 Fellows receive 14-month appointments with benefits.</li> <li>• Has implemented pay-for-performance systems and eliminated step increases and annual pay adjustments.</li> </ul>
Foreign Agricultural Service (FAS)	<ul style="list-style-type: none"> <li>• Has rank-in-person systems where hiring and promotion decisions are based on expert panel reviews of qualifications; in a rank-in-person system an employee is classified according to the skills and achievements he or she brings to the work of the organization (Title 22 employees).</li> </ul>

**Source:** U.S. Office of Personnel Management, "HRM Policies and Practices in Title 5 -Exempt Organizations." 1998.

# Endnotes

1. Organizations have faced increasing complexity and rates of change along most dimensions—technology, human resources, product and service markets, and many others. Leaders and professionals have sought ways to achieve flexibility, adaptability, and innovativeness to cope with the growing flux and complexity. Researchers studying business organizations have coined terms such as “mechanistic” and “organic” to explain the transition that organizations must make. Organizations, they argue, must become less mechanistic or machine-like, and more like living organisms responding and adapting to changing conditions in and around them. T. Burns and G.M. Stalker coined the mechanistic versus organic analogy in *The Management of Innovation* (London: Tavistock, 1961); scholars and experts on organization and management still regularly use this distinction, and similar ones. For example, see R. L. Daft, *Organization Theory and Design* (Cincinnati: Southwestern College Publishing, 2001).

Business firms have developed a variety of structures and processes to respond to this imperative for innovation and adaptation. Public and nonprofit organizations have done so, too, but one can hear in many nations a consensus that government organizations need a lot more flexibility and adaptability. In recent decades the U.S. and other nations have undertaken major reforms of their civil service systems. The reformers have emphasized the need to loosen up rules and procedures in those systems to make them more adaptive to the complex and changing conditions in which they have to operate. The reforms have sought to decentralize authority over human resource management from central personnel agencies to operating agencies, to give leaders more authority to control the pay, selection, discipline, and dismissal of their subordinates, and otherwise to

reduce central and hierarchical controls over governmental human resource management systems.

2. Bruce Tulgan, *Winning the Talent Wars* (New York: Norton, 2001). Susannah Zak Figura, “Human Capital: The Missing Link,” *GovExec.com*, March 1, 2000. Susannah Zak Figura, “Fighting for Talent,” *GovExec.com*, April 1, 2001.

3. Ed Michaels, Helen Handfield-Jones, and Beth Axelrod. *The War for Talent*. Harvard Business School Press, 2001.

4. See <http://www.gecareers.com/Career/leadership.cfm> and <http://www.ibm.com/employment/why-work>

5. See U.S. General Accounting Office, “Managing Human Capital in the 21st Century,” Statement of David W. Walker, Comptroller General of the United States, March 9, 2000, GAO/T-GGD-00-77. Also see United States Senate, Committee on Governmental Affairs (2000), “Report to the President: The Crisis in Human Capital,” prepared by Senator George V. Voinovich, Chairman of the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia. Also see United States Senate, Committee on Governmental Affairs (2000), “Management Challenges Facing the New Administration,” prepared by Senator Fred Thompson, Chairman of the Committee on Governmental Affairs.

6. Figura, “Human Capital: The Missing Link” and “Fighting for Talent.”

7. John W. Macy, *Public Service: The Human Side of Government* (New York: HarperCollins, 1971).

8. National Academy of Public Administration, *Revitalizing Federal Management* (Washington, D.C.: National Academy of Public Administration, 1986).

9. See U.S. Merit Systems Protection Board, "The Role of Delegated Examining Units: Hiring New Employees in a Decentralized Civil Service," 1999; and U.S. Merit Systems Protection Board, "Civil Service Evaluation: The Evolving Role of the OPM," 1998.

10. See Alasdair Roberts, "Performance-Based Organizations: Assessing the Gore Plan," *Public Administration Review*, 57 (6) November/December, 1997, and James Thompson, "Quasi-Markets and Strategic Change in Public Organizations," in Jeffrey L. Brudney, Laurence J. O'Toole, and Hal G. Rainey (Eds.) *Advancing Public Management* (Washington, D.C.: Georgetown University Press, 2000).

11. OPM is the U.S. Office of Personnel Management, the central personnel agency of the federal government. OMB is the U.S. Office of Management and Budget, an office within the Executive Office of the President that has authority over developing and implementing the federal budget.

12. U.S. Merit Systems Protection Board, "Entering Professional Positions in the Federal Government," 1994.

13. *Ibid.*

14. For a discussion of the variations among government corporations, government enterprises, public authorities, and similar types of organization, see Hal G. Rainey and Barton Wechsler, "Managing Government Corporations and Enterprises," in James L. Perry (Ed.) *Handbook of Public Administration* (San Francisco: Jossey-Bass, 1989).

15. See Kenneth J. Meier, *Politics and the Bureaucracy*, 4th ed. (Fort Worth, Texas: Harcourt College Publishers, 2000), p. 33.

16. U.S. Department of Education, Student Financial Assistance, "Performance Plan, FY 2001," (Washington, D.C.).

17. For more details, see U.S. General Accounting Office, "Tax Administration: IRS's Implementation of the Restructuring Act's Personnel Flexibility Provisions" (Washington, D.C.: U.S. General Accounting Office, April, 2000), GAO/GGD-00-81. Also see U.S. General Accounting Office, "IRS Personnel Flexibilities: An Opportunity to Test New Approaches" (Washington,

D.C.: U.S. General Accounting Office, March 12, 1998), GAO/T-GGD-98-78.

18. These ideas and much of the wording is taken from James R. Thompson, "Large Scale Change in Three Federal Agencies: Institutional Alignment as a Precondition for Post-Bureaucratic Reform," a paper presented at the Sixth National Public Management Research Conference, School of Public and Environmental Affairs, Indiana University, Bloomington, Indiana, Oct. 18-20, 2001. Thompson provides an excellent case analysis of ways in which IRS has achieved apparent success in implementing changes in contrast to some less successful change efforts in other agencies.

## ABOUT THE AUTHOR

**Hal G. Rainey** is Alumni Foundation Distinguished Professor of Political Science and Public Administration at the University of Georgia. His research concentrates on management in the public sector, with emphasis on leadership, incentives, change, and performance. He also conducts research on comparisons of the public and private sectors, and on the privatization of public services.

His most recent book is *Advancing Public Management* (Georgetown University Press, 2000, co-edited with Jeffrey Brudney and Laurence O'Toole). He is preparing a third edition of his book *Understanding and Managing Public Organizations*, which won the Best Book Award of the Public and Nonprofit Sector Division of the Academy of Management.



In 1995, he received the Levine Award for excellence in research, teaching, and service, conferred jointly by the American Society for Public Administration and the National Association of Schools of Public Affairs and Administration. He has served as chair of the Public and Nonprofit Sector Division of the Academy of Management, and as chairperson of the Public Administration Section of the American Political Science Association.

Professor Rainey's recent research projects include participation with a research team evaluating the Department of Energy's contracting out of the management of the National Laboratories. He is also working with a team of researchers on a study of the reforms and changes under way at the U.S. Internal Revenue Service.

In 1991, he served on the Governor's Commission on Effectiveness and Economy in Government of the State of Georgia. As a commissioner, he served on the Task Force on Privatization. In 1996 he served on the Athens-Clarke County (Georgia) Consolidation Charter Overview Commission. Before entering university teaching and research, he served as an officer in the U.S. Navy and as a VISTA volunteer.

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