

August 14, 1978

## **CIVIL SERVICE REFORM AND GOVERNMENT REORGANIZATION**

### STATUS

On March 2, 1978, President Carter announced his plan for a comprehensive reform of the federal civil service. The next day, the bill was introduced into Congress as H.R.11280 by Congressmen Robert N. C. Nix (D-Pa.) and Edward J. Derwinski (R-Ill.) and S.2640 by Senators Abraham Ribicoff (D-Conn.) and Charles H. Percy (R-Ill.). The House Committee on Post Office and Civil Service conducted thirteen days of hearings during March, April, and May, hearing testimony from more than 200 witnesses. After ten markup sessions, the bill reported, on July 19, 1978, by a vote of 18-7, was heavily amended from the President's original proposal and included such controversial provisions as abolition of the Hatch Act and increased labor negotiating rights. The Senate Governmental Affairs Committee held twelve days of hearings during April and May and reported a bill on July 10 (by an 8-2 vote) with almost all of the President's recommendations. Floor debate in both houses promises to be spirited with the Hatch Act provision promising to provoke the most controversy. Senatorial opponents of loosening of the Hatch Act have threatened a filibuster if the provision should survive the House floor vote.

### PRESIDENT CARTER'S REORGANIZATION INITIATIVES

In 1977, President Carter won approval from Congress for a four-year renewal of the Reorganization Act of 1949 which had expired in 1973. The original act gave presidents the authority to reorganize the executive branch subject to congressional veto. As signed into law, the new reorganization act: 1) reestablished presidential authority to initiate government reorganization plans; 2) provided that the plans would take effect automatically unless

vetoed by either chamber within sixty days after submission; 3) allowed the President to amend a plan within thirty days after submission and to withdraw it within sixty days after submission but prohibited Congress from amending the plan.

President Carter introduced Reorganization Plan No. 1 of 1977 on July 15, 1977. Although both the House Government Operations Committee and the Senate Governmental Affairs Committee reported disapproval resolutions to the floors, the plan took effect October 19. The plan provided for the elimination or transfer of seven of the seventeen units in the Executive Office and modification of the other ten. President Carter said that the plan would reduce the White House staff from 485 to 351 employees and the total Executive Office staff from 1,712 to 1,460.

Under Reorganization Plan No. 2 of 1977, which took effect at the end of the year, the President consolidated the United States Information Agency and the State Department's Education and Cultural Affairs Bureau into a new International Communication Agency under the authority of the Secretary of State. The plan called for the Secretary to direct the new agency's general policy but not the day-to-day news operations of the USIA. Congressional opponents who argued that the objective news reporting of the USIA would be subject to political manipulation by the administration in power never attracted enough votes to pass a disapproval resolution.

Reorganization Plan No. 1 of 1978, introduced by President Carter on February 23, became law on May 5, but its implementation has been delayed until January at the request of the Senate. Under the plan, the responsibility for equal employment opportunity and affirmative action programs for federal employees was shifted from the Civil Service Commission to the Equal Employment Opportunity Commission. In addition, the plan took enforcement authority for national equal employment opportunity and affirmative action from some eighteen government agencies and concentrated that authority in the EEOC. The President stated that the purpose of the plan was to create "a unified, coherent federal structure to combat job discrimination in all its forms."

Reorganization Plan No. 2 of 1978, submitted by President Carter on May 23, became law on August 11. The plan split the Civil Service Commission into two agencies, one for personnel management and one for judging employee appeals. The plan set up the Merit System Protection Board, an independent bi-partisan agency with the responsibility for federal employee complaints and appeals. The plan also established the Office of Personnel Management, headed by a presidential appointee, which will administer federal personnel policy, including examinations, training, productivity programs, and pay and benefits administration.

In addition, the plan created a Federal Labor Relations Authority composed of three full-time members appointed by the

President. The plan consolidated into one office the central policy-making functions in labor-management relations which had formerly been divided between the Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations. President Carter stated that this centralizing of authority was necessary because the members of the Labor Relations Council were part-time, came exclusively from the ranks of management, and because their jurisdiction was fragmented.

Many of the details for the implementation of Reorganization Plan No. 2, such as the length of terms for the heads of the new agencies and the duties they would perform, were submitted as provisions of the Civil Service Reform Act (S.2640 and H.R.11280).

President Carter sent Reorganization Plan No. 3 of 1978 to Congress on June 19. The plan would consolidate all major federal emergency preparedness and disaster relief programs into a single Federal Emergency Management Agency. Consolidated into the agency would be: the Defense Civil Preparedness Agency of the Department of Defense; the Federal Disaster Assistance Administration and the Federal Insurance Administration, both of the Department of Housing and Urban Development; the Federal Preparedness Agency of the General Services Administration; and the National Fire Prevention and Control Administration of the Commerce Department. In addition, the President proposes transferring six other emergency preparedness functions to the new agency and giving responsibility for civil defense programs in the new agency to the secretary of defense and the National Security Council. The new agency would also be responsible for federal response to terrorist acts.

On July 14 of this year, the Senate passed H.R.11003, which had passed the House on April 13. The bill sets limits on the number of top-level White House staff that can be hired by the White House and provides congressional oversight of White House spending for the first time. As passed by both houses, the bill authorizes the President to hire up to twenty-five employees for Executive Level II positions (up to \$57,500 per year), twenty-five for Executive Level III (up to \$52,500 per year), fifty above the GS-16 level (up to \$47,500), and an unlimited number below GS-16. If all of those positions were filled, it would nearly double the number of White House employees in the top three salary levels who, as of July 1, numbered fifty-nine. The House made the authorization permanent while the Senate limited it to five years.

## BACKGROUND

In 1883, Congress passed the Pendleton Civil Service Act ending the era of the spoils system and replacing it with a merit system for choosing government workers. Since that time total civilian employment has increased from approximately 131,000 to almost 2.9 million employees of whom almost 93 percent work under the merit system. The bi-partisan Civil Service Commission, set up by the

Pendleton Act to administer the merit system, has been responsible for giving the competitive civil service exam, interviewing applicants, establishing civil service registers of qualified applicants and referring registers to agencies for consideration.

The President's package of civil service changes was developed from a study by a team of 110 civil servants plus business and academic representatives. Their year-long study resulted in a two-part administration proposal: the Reorganization Plan No. 2 of 1978 and the Civil Service Reform Act of 1978.

The major provisions of the Civil Service Reform Act were as follows:

1) The creation of a Senior Executive Service for 9,200 top federal bureaucrats now in the salary ranges of GS-16 to Executive Level IV. Those government employees who joined this voluntary service would be eligible for annual bonuses of up to 20 percent of total salary, but they could be fired for poor performance.

2) The substitution of incentive pay, in lieu of automatic step salary increases, for some 72,000 middle-level federal managers in grades GS-13 to GS-15.

3) The broadening and reinforcing of the right of appeal of personnel decisions and the standards for such appeals.

4) Reduction in veterans' hiring preference. Disabled veterans would suffer no reduction in preference, but the lifetime preference for other veterans would be reduced to the ten years following discharge from military service. High-ranking retired veterans would be denied preference altogether.

5) The decentralization of personnel decisions by delegating to agencies much of the control now concentrated in the Civil Service Commission.

## A COMPARISON OF S.2640 and H.R.11280

### Title I

Up to the present, there has been no clear statement of the principles of the merit system upon which the Civil Service Act of 1883 was based and under which the civil service system has gradually evolved during the last century. Both the Senate and House bills codify these principles for the first time. In general, the bills state that hiring and advancement are to be based on individual qualifications. Prohibited personnel practices include the practice of discrimination based on race, color, religion, national origin, sex, marital status, age, handicapping

condition, and political affiliation. Employees would also be protected against any inquiry about non-job related activities. Both bills give the President summary powers to issue regulations to enforce Title I.

Both committees strengthened administration proposals to protect employees, so-called "whistleblowers," who expose government wrongdoing. The Carter proposal offered protection against reprisal only for disclosures of violations of laws or regulations. The committee bills cover disclosure of other wrongdoing, such as government waste and mismanagement. The House bill also requires agencies to investigate reports of employee wrongdoing; the Senate bill does not.

## Title II

This Title, reported nearly intact by both committees, establishes legislative authority for the division of the Civil Service Commission into two new agencies: the Office of Personnel Management and the Merit Systems Protection Board. (As stated before, this division was accomplished in fact when Reorganization Plan No. 2 took effect on August 11.) The management functions of the three man bi-partisan Civil Service Commission would be transferred to the new Office of Personnel Management headed by a presidential appointee with a four-year term coterminous with the term of the President. The Office of Personnel Management would be solely responsible for all personnel regulations, applicant processing and referrals. The Office would also have complete authority over the administration of two of the more significant reforms proposed by President Carter: the senior executive service and the new system of merit pay. In addition, Title II authorizes the Director of the Office to delegate any functions vested in him, including the authority to conduct competitive exams, to the heads of executive branch agencies and to other agencies employing individuals in the competitive service. Under current law, examining authority is vested in the Civil Service Commission.

The Merit System Protection Board would be a bi-partisan body, consisting of three members appointed by the President and confirmed by the Senate. The special counsel of the Board, also a presidential appointee, will have a term of office for four years coterminous with the presidential term. The special counsel would investigate adverse actions, prohibited employee practices, and abuses of the merit system but would have no enforcement authority. The counsel would bring findings and recommendations to agency heads and the Board for enforcement.

Both the Senate and House committees rejected an administration proposal to put the entire burden of proof on employees who appeal an "adverse action," such as firing. But they differed on the amount of evidence an agency needed. To fire an incompetent, the Senate bill sets a less stringent test (a "reasonable basis").

The House bill sets a single, tougher standard (a preponderance of evidence) to fire either for misconduct or incompetence.

In addition, the committees reported a provision that would replace the practice of annually evaluating each federal employee's work as satisfactory, unsatisfactory or outstanding. Under the bills, individual agencies would develop their own performance appraisals, based on general guidelines set by the Office of Personnel Management.

### Title III

President Carter's major proposal under this title was a change in the system that gives veterans lifetime advantages in getting federal jobs. The Senate rejected any change in the current program. The House committee adopted a compromise version of the original administration proposal, which had called for limiting preference for able-bodied veterans to the ten years after they leave the service. The House bill sets a fifteen-year, one-time use limit for veterans with no disability. Disabled veterans would retain lifetime preference. The compromise also limits the current lifetime layoff protection for able-bodied veterans to eight years.

Title III also authorizes the heads of federal agencies (with authority delegated by the Office of Personnel Management) to accept unpaid student volunteers as long as they do not displace federal employees. Students in high school, trade school, technical or vocational institutes, junior college, college, universities, and professional schools would be eligible as volunteers. No such program now is authorized by federal law.

### Title IV

The Senate committee agreed to the establishment of a senior executive service under the Office of Personnel Management. The proposed senior executive service would be open to some 9,200 top federal civil servants now in the salary ranges of GS-16 through Executive Level IV (\$42,000 to \$50,000 per year). Entry into the service would be voluntary for career civil servants holding positions at those levels. Those who declined would be safely "grandfathered" into their jobs. Those who joined would be eligible for annual bonuses of up to 20 percent of total yearly salary. But they could be demoted to GS-15 for poor performance. The heads of the different agencies and departments would be authorized to distribute these bonuses, but not more than 50 percent of all senior executives government-wide could receive bonuses in any year. The bonuses would be allocated according to criteria prescribed by the Office of Personnel Management and would not constitute an increase in salary but rather a one-time payment.

Besides drawing top-level personnel from the competitive civil service, the senior executive service would also include political

appointees as long as the total number did not exceed 10 percent of the number of senior executive positions throughout the government.

The House committee voted to try the senior executive service as a two-year experiment in three executive agencies.

#### Title V

Both committees adopted President Carter's proposal for a system of merit pay for management employees in the levels below the senior executive service, GS-13 through GS-15. Under this program, automatic step increases awarded for longevity would be eliminated and periodic adjustments, other than comparability increases, would be based on the degree to which an individual met or exceeded performance objectives. About 72,000 civil servants would be eligible for annual merit pay, which could not exceed 12 percent of any individual's existing salary. Agency heads, under guidelines set by the Office of Personnel Management, would have authority to allocate merit pay.

#### Title VI

Title VI, as reported by both committees, authorizes the Office of Personnel Management to engage in research and demonstration projects aimed at improving personnel management in the federal government. Each personnel experiment could last up to five years and involve up to 5,000 federal employees. Not more than ten projects could be conducted by the Office of Personnel Management at one time. In conducting these experiments, the Office of Personnel Management would be authorized to waive provisions of laws and regulations dealing with: recruitment, hiring, firing and disciplining of employees, promotions, work hours, the involvement of employee unions in personnel decisions.

#### Title VII

Title VII of the bill establishes a statutory basis for labor-management relations in the federal service. Since 1962, presidential executive orders have governed collective bargaining in the federal government. Title VII would for the first time enact into law the rights and obligations of the parties to collective bargaining -- employees, agencies, and labor organizations.

Title VII, in concert with Reorganization Plan No. 2 of 1978, also constructs a new framework for the conduct of federal labor-management relations. The Federal Labor Relations Authority, a bi-partisan, three-member (presidential appointees with five year terms) independent agency, would be responsible for the administration of the programs and policies governing federal labor-management relations. The Federal Labor Relations Authority is modeled after the National Labor Relations Board, and the intention is that it should have the same powers in the federal sector as the Board does in the private sector.

The Senate bill permits unions to bargain collectively on personnel policies and practices, and other matters affecting working conditions within the authority of agency managers. The House committee expanded collective bargaining rights to include the right to bargain on government regulations dealing with job classification, promotion standards, numbers and types of employees assigned to jobs, travel expenses, layoff standards, and the amount of paid time employees can spend serving as union negotiators.

Neither bill gives federal employees the right to strike or allows them to bargain for pay or fringe benefits. Nor does either allow agency shops.

#### ADDITIONAL HOUSE TITLES

As Title IX, the House committee amended the bill to include H.R.10, the liberalization of the Hatch Act restrictions governing the political activities of government workers. H.R.10 had passed the House by a vote of 244-164 on June 7, 1977, but died under threat of filibuster in the Senate. As Title X, the House Committee included the provisions of H.R.3161 which would reduce the work week of federally-employed firefighters. This bill previously passed both houses but was vetoed by President Carter on June 19, 1978.

#### MORE FLEXIBILITY AND MORE POLITICIZATION

All of President Carter's reorganization initiatives have provided for more centralization of power. Three of the reorganization plans have removed policymaking authority from independent or bi-partisan agencies and reassigned that authority to positions held by presidential appointees. With regard to the federal civil service, the most significant reform may be the creation of the Office of Personnel Management. Reorganization Plan No. 2 of 1978 has made that office a fait accompli already. If Congress fails to pass a civil service reform bill of some kind, President Carter presumably could establish rules for the Office of Personnel Management by executive order.

As stated before, the Office of Personnel Management will be headed by a presidential appointee. Most of the significant new management powers under the reform bill would be vested in that office. The Office would have control over the senior executive service, the new system of merit pay, the program of employing student volunteers, the new program of experimental employee demonstration projects, and the screening and hiring of employees. All of these functions could be delegated to individual agency heads. Thus, it would seem that the management policy of the federal work force would vary widely from agency to agency.



President Carter's purpose is to give federal managers and policymakers greater flexibility in organization. It seems that his reform proposals would accomplish that. Critics have contended that the flip side of the flexibility coin is a rampant politicization of the civil service and a destruction of the merit system. Agency heads, that is, political appointees, would control the senior executive service, the awarding of bonus pay to the senior executives, and the awarding of merit pay to those in grades GS 13-15. The provisions allowing agency heads to draft and conduct competitive exams for applicants, to develop performance appraisals exclusive to an individual agency, the authority to reorganize up to 5,000 employees into a five-year employee demonstration project, and the authority to accept unpaid student volunteers (which includes students in professional schools such as law school) all seem discretionary.

Further political manipulation seems possible in other areas. The administration still hopes that Congress will pass some sort of modification of veterans' preference so that the government can carry out a more aggressive affirmative action for women and certain minorities. Obviously, this is a plan for substituting one government preference for another. Currently, under Title V of the Code of Federal Regulations, discrimination is prohibited on the basis of race, color, religion, sex, and national origin. The reform bills add age, marital status, handicapping condition, and political affiliation to that list. It can be wondered whether the EEOC, which now has enforcement power for the civil service, will see the necessity for initiating affirmative action programs for these new groups.

Earlier this year, the House passed a resolution that would exclude drug addicts and alcoholics from the protection of laws prohibiting discrimination on the basis of handicapping condition. The Justice Department had wanted to defend a New York college professor who had been fired because he was an alcoholic. The new provision banning discrimination on the basis of political affiliation is a follow-up to the recent decision of the Civil Service Commission to eliminate the formerly routine question on the civil service application that had asked whether the applicant had ever been a member of the Communist Party or any other organization advocating the overthrow of the government.

With the turning over of affirmative action authority to the EEOC, government affirmative action programs promise to be more comprehensive. Earlier this year, the Civil Service Commission unveiled the Sugarman Plan, a controversy-provoking proposal to bypass civil service competitive exams in filling up to 20 percent of middle and upper-level federal career jobs. The reform bill's provision for employee demonstration projects would seem to provide an opportunity for plans such as the Sugarman Plan.

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