

7/18 12:15 p.m.
L.M. for Elaine to send
memo

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MESSAGE

7/28

CONFIDENTIAL

DETERMINED BY AN ADMINISTRATIVE

MARKING NI DATE: 3/4/24

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June 23, 1995

file
Nat'l Perf.
Review
-elim of
political
appointees

MEMORANDUM FOR HAROLD ICKES

FROM: JENNIFER O'CONNOR

SUBJECT: ELIMINATION OF POLITICAL APPOINTEES IN THE REGIONS

I attended a meeting for you with Elaine Kamarck, Steve Silverman and John Emerson regarding the issue raised at a senior staff meeting about the belief by our regional administrators that we are irresponsibly cutting them and their staffs when we need them now more than ever to carry our message.

According to Elaine, there are no political staff cuts -- all are career staff who can't be used for message amplification anyway. She and John agrees that the issue is that people like Art Agnos, the former Mayor of San Francisco, could be more effective as spokespeople if they had more staff. Steve agreed to have Kitty speak privately with each Secretary about selecting the handful of effective regional political appointees who would make good use of an additional "schedule c" and transferring a "schedule c" out of Washington to these regions to help with message amplification and outreach.

Memo to Potus -
What are facts?

Kamarck
doing

"FEDERAL HUMAN RESOURCE MANAGEMENT REINVENTION ACT OF 1995"

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Introduction and Overview

The Report of the National Performance Review (NPR) clearly established the need for reinventing the Federal Government's human resource management systems and processes. It documented elaborate, complex, and overregulated systems that prevent agencies and their managers, employees and unions from designing human resource management programs that helped them deliver services to the public.

The Report made three basic recommendations for streamlining, decentralizing, and deregulating human resource management to achieve improved performance by Government agencies:

1. "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." (p. 23)
2. "Dramatically simplify the current classification system, to give agencies greater flexibility in how they classify and pay their employees." (p. 24)
3. "Agencies should be allowed to design their own performance management and reward systems, with the objective of improving the performance of individuals and organizations." (p. 24)

Following the issuance of the NPR Report, the National Partnership Council, as directed by Executive Order 12871, provided recommendations to the President for statutory reform in the three major personnel policy areas of hiring, classification, and performance management. The Council's recommendations were essentially consistent with those of the NPR. The NPC's report to the President also contained recommendations for labor law reform.

These specifications outline proposed statutory reforms for Governmentwide hiring, performance management, and classification systems that are based on NPR and NPC recommendations. These proposals are consistent with and support basic public policies concerning merit principles, diversity, and veterans' preference. In addition, they include proposals for the "redesign of OPM," "alternative personnel systems," and "labor law reform," which also support the NPR objectives of achieving human resource management programs that contribute to a reinvented, high performance government. Finally, the proposed statutory changes include career transition proposals to help agencies and employees as further downsizing of the workforce occurs.

Title I -- Redesign of the Office of Personnel Management

A. Introduction

1. Basic Purpose--To reflect changes in the mission of OPM that are required by implementation of NPR and NPC recommendations.
2. Summary of Provisions--
 - a. Clarify OPM's oversight responsibilities for the merit system and veterans preference.
 - b. Emphasize OPM's leadership, consultative, and coordinative relationship with Federal agencies.
 - c. Simplify and broaden OPM's authority to delegate those responsibilities that it would retain.

B. Specifications--In addition to slightly rewording the policy leadership and administrative functions of the Director of OPM currently listed in 5 U.S.C. 1103(a), add the following to the list:

1. Serving as a point of contact for Congress concerning executive branch human resource management.
2. Conducting broad systemic reviews of various aspects of the Federal personnel system; helping agencies address problems, including working with agency heads to ensure that appropriate action is taken when violations of law are found; and, as necessary, informing the President of serious violations of merit system principles involving heads of agencies and directing appropriate action.
3. Exercising a leadership role in helping agencies build more diverse, highly trained, and competent workforces.
4. Overseeing the application and enforcement of veterans preference in Federal employment.
5. Assisting agencies in establishing their own capacity to evaluate the effectiveness of their human resource management programs.
6. Coordinating interagency cooperation on common concerns.

7. Administering the Governmentwide pay systems.
8. Administering the Governmentwide employee benefits programs.
9. Operating the Governmentwide job information system.
10. Providing reimbursable services to agencies and other entities in such areas as examining, classification, and other personnel operations.
11. Maintaining Governmentwide data bases.

Title II – A Flexible and Responsive Hiring System

A. Introduction

1. Basic Purpose--To streamline and decentralize the hiring process and create a flexible and responsive hiring system. The Federal Government's hiring system remains highly centralized, and it is perceived as too complex, too prescriptive, and often counterproductive. In addition, the system suffers from a lack of accountability and a tendency to shift responsibility. The intent of the recommended changes is to reverse these shortcomings and make the Government hiring system more efficient and effective while retaining our adherence to principles of merit, fair competition, and preference for veterans.
2. Summary of Provisions--
 - a. Provide OPM the authority to delegate examining authority for all occupations to agencies.
 - b. Reduce the number of appointment types for the competitive service.
 - c. Eliminate barriers to internal placement.
 - d. Provide career transition assistance to employees affected by workforce reductions.

B. Specifications

1. Delegate examining authority.

- a. Agency-based systems: Authorize OPM to delegate authority to agencies to examine for all their competitive service positions.
 - (1) Require that any competitive appointment must be only for the type of position for which public notice was given and for which the application was submitted.
 - (2) Retain OPM authority to act on pass overs of 30% compensably disabled veterans, but only for competitive service positions.
 - (3) Authorize the President to prescribe rules to ensure compliance with laws pertaining to competitive examining, and authorize OPM to maintain an oversight program and to enforce the laws.
- b. Quality categories option: Provide the option, in competitive examining, to use either the existing system of ranking candidates based on numerical ratings or a new method of placing candidates in quality categories based on the levels of their qualifications. Under the new method, veterans would receive preference within quality categories and otherwise would receive rights consistent with existing law.
- c. Disabled employees: Authorize the noncompetitive appointment of disabled veterans and other individuals with targeted and equivalent disabilities, as defined by the Equal Employment Opportunity Commission.
- d. Qualifications:
 - (1) Authorize agencies to directly hire qualified individuals for shortage positions and individuals with exceptional qualifications, in accordance with criteria defined by OPM.
 - (2) Authorize OPM to set minimum Governmentwide qualification standards.
 - (3) Authorize OPM and agencies to prescribe minimum educational requirements for positions that cannot be performed without the education.

2. Reduce the number of appointment types for the competitive service.

- a. Appointment types: Authorize two types of appointments for the competitive service—permanent and nonpermanent:
 - (1) Permanent appointments will lead to career status. Employees receive full benefits and rights as under current law.

- (2) Nonpermanent appointments of up to 5 years will be used to meet needs having a foreseeable end. Extensions beyond 5 years will be permitted to complete work essential to the agency's mission. Employees will be appointed under the same competitive procedures, including veterans' preference, used for permanent appointments.
 - (a) Nonpermanent employees will not be covered by Governmentwide reduction in force rules.
 - (b) Nonpermanent employees will be eligible to elect health and life insurance, at full cost, upon appointment. After 1 year of service, the Government contributes same rate as for permanent employees.
 - (c) After 1 year of continuous service, a nonpermanent employee will have retirement coverage.
 - (d) After 1 year of continuous service in the same or similar position, a nonpermanent employee will be entitled to use the negotiated grievance procedure or an agency administrative dispute resolution procedure in the event of an adverse action based on conduct or performance, with no further administrative or judicial review of an agency administrative appeal unless otherwise provided by law.
 - (e) Nonpermanent employees in General Schedule jobs will be eligible for within-grade increases.
 - (3) Authorize the transfer and reinstatement of current and former permanent employees to the competitive service.
 - (4) Authorize OPM to regulate appointments, including criteria for permanent and nonpermanent appointments.
- b. Competition by nonpermanent employees: Allow nonpermanent employees with 2 years of acceptable performance who were initially hired under competitive procedures to compete for permanent appointment for jobs in the same line of work announced under merit promotion procedures. Appointment will be allowed only when no qualified surplus or displaced employees are available.
- c. Probationary periods:
- (1) Permit the probationary period on appointment and for new supervisors and managers to be longer than 1 year up to 3 years.
 - (2) Permit probation on appointment of a displaced employee for whom minimum qualification standards are modified or waived.
3. **Eliminate barriers to internal placement.**
- a. Details:
- (1) Eliminate the statutory 120-day time limits on details.
 - (2) Authorize nonreimbursable "tryout" details of surplus employees to other positions in the same or a different agency.

- b. Part-time employees: Eliminate the requirement for agencies to report to OPM on their use of part-time employees.
- 4. **Provide career transition assistance for employees affected by workforce reductions.**
 - a. Establish agency requirement: Require each agency to provide career transition assistance for surplus and displaced employees, in accordance with criteria set by OPM.
 - b. Required internal selection: Require each agency to select its own available surplus and displaced employees over other internal or external job candidates.
 - c. Required external selection: Require each agency to select a well-qualified displaced employee applicant from another agency before selecting any other external job applicant. A displaced employee would be entitled to this consideration for 1 year after separation.

Title III -- Performance Management Reform

A. Introduction

- 1. Basic Purpose--To reform the Government's performance management system for employees not in the Senior Executive Service by establishing a flexible, decentralized system under which agencies can design programs tailored to their missions and needs and to reorient performance management programs toward a primary purpose of improving individual and organizational performance.
- 2. Summary of Provisions--
 - a. Require agencies, in partnership with employees, to design and implement their own performance management programs.
 - b. Require agencies, in partnership with employees, to design and implement their own incentive award and bonus programs.
 - c. Improve methods for dealing with poor performers.

B. Specifications

1. Performance Management

- a. Agency programs: Require each agency to establish one or more performance management programs to strengthen the effectiveness and accountability of individuals, groups, and organizations.
- b. Employee involvement: Require agencies to involve employees, both represented and nonrepresented, in program design and operation. In the case of represented employees, this would entail collective bargaining of the individual performance expectations established for an employee, as well as designing the assessment process.
- c. Program requirements: Require that each agency program provide for:
 - (1) establishing work-related performance expectations;
 - (2) providing ongoing communication about performance;
 - (3) assessing performance, including determining whether or not performance expectations are met;
 - (4) taking actions when expectations are met or not met, including granting or denying adjustments to rates of basic pay; and
 - (5) including some element of individual accountability.
- d. Restrictions: Prohibit--
 - (1) the use of forced distributions of assessments against predetermined standards, and
 - (2) agencies with Governmentwide authority from imposing performance expectations on other agencies.

2. Incentive Awards

- a. General provisions:
 - (1) Authorize an agency head to approve individual awards in excess of \$10,000, but not more than \$25,000, and authorize OPM to regulate periodically award limits adjusted for inflation.
 - (2) Authorize an agency head to establish productivity gainsharing programs.
 - (3) Reinforce the concept that a cash award should be granted on the basis of a substantial accomplishment by eliminating the specific authority at 5 U.S.C. 4505a for granting a cash award to any employee whose most recent performance rating was at least fully successful, but retain the authority to use a summary assessment as the basis for a cash award.

- b. Agency programs: Require each agency to establish one or more employee awards programs to provide incentives for and recognition of individual, group, and organizational achievements.
- c. Employee involvement: Require agencies to involve employees, both represented and nonrepresented, in program development. In the case of represented employees, this would entail collective bargaining.
- d. Award authority: Authorize granting monetary and nonmonetary awards, including time-off awards. Also, preserve the ban on cash and time-off awards for senior political officers during a Presidential election period, but reestablish authority to grant nonmonetary recognition.

3. Dealing with Poor Performers

- a. Notice period: Reduce the formal notice period from 30 days to 15 days.
- b. Procedures for taking action: Improve procedures for dealing with poor performers by eliminating the procedures in chapter 43 for taking actions based on unacceptable performance and relying on procedures under chapter 75 for taking appropriate performance-based adverse actions.
- c. Temporary reduction in basic pay: Authorize a new adverse action under chapter 75--a temporary reduction in pay by not more than 25% of pay for a continuous period of up to 120 days--that could be used as a sanction for conduct or poor performance.
- d. Remove MSPB appeal right for denying a within-grade increase: Eliminate an employee's right to appeal to the Merit Systems Protection Board the denial of a within-grade increase on the basis of poor performance.

Title IV -- Demonstration Projects and Alternative Personnel Systems

A. Introduction

- 1. Basic Purpose--To augment the current authority for demonstration projects, provide an authority for "alternative personnel systems," that will give agencies enhanced flexibility to develop personnel system alternatives not authorized under title 5 and which do not require testing. Also, improve the demonstration project authority by eliminating certain restrictions and permitting their conversion to alternative personnel systems.

2. Summary of Provisions--

- a. Eliminate most current restrictions on demonstration projects, including limits on the number and size of projects; authorize OPM to convert successful projects to alternative personnel systems with no time limits; and require OPM, upon its determination that a demonstration project merits Governmentwide implementation, to submit legislation to that effect.
- b. Authorize agencies, in partnership with employees and subject to OPM approval, to plan, implement, and terminate alternative personnel systems under which provisions of title 5 and regulation may be waived as under a demonstration project.
- c. Authorize OPM to approve and terminate alternative personnel systems, and to make a determination whether a proposed alternative personnel system should be tested as a demonstration project.
- d. Conduct demonstration projects and establish alternative personnel systems under a comparable framework of permitted waivers and common criteria for maintaining consistency with merit system and veterans preference principles, refraining from prohibited personnel practices, and upholding the best interests of the Government.

B. Specifications--

1. Demonstration Projects

- a. Restrictions:
 - (1) Eliminate the restrictions on the number of projects that can be conducted and the number of employees that can be covered.
 - (2) Eliminate the requirement for a public hearing.
 - (3) Continue to prohibit any waiver of provisions of law relating to merit system principles, prohibited personnel practices, equal employment opportunity, the Hatch Act, and leave, retirement, and other benefits.
- b. Role of OPM:
 - (1) A demonstration project may be converted to an alternative personnel system when OPM determines that the project's success warrants its being made permanent.
 - (2) Before the end of a demonstration project's 5-year period, require that OPM must determine whether to terminate the project, extend it for further validation, or convert it to an alternative personnel system.

- (3) Require that OPM shall, upon its determination that a demonstration project merits Governmentwide implementation, propose legislation to remove statutory barriers to such implementation.

2. Alternative Personnel Systems

- a. Definition of alternative personnel system: An alternative personnel system (APS) for human resource management is an agency-based system that is designed to enhance an agency's ability to accomplish its mission, requires a waiver of one or more provisions of title 5, and does not require testing and evaluation as a demonstration project.
- b. Employee Involvement: Establish requirements for involving employees and their elected representatives that are parallel to the existing requirements for such involvement in establishing demonstration projects.
- c. Agency-based systems:
 - (1) Establish that agencies may, subject to OPM approval and other requirements, implement, evaluate, and terminate one or more APS's.
 - (2) Require the agency to develop a strategic plan that establishes how use of the alternative system authority will help the agency accomplish its basic goals and objectives.
 - (3) Require the agency to establish an APS plan that meets specified criteria.
 - (4) Require the agency to inform employees who are likely to be affected by the APS.
- d. Role of OPM:
 - (1) Authorize OPM to approve an APS, and require OPM to publish notice of an approved APS.
 - (2) Authorize OPM, upon request, to provide assistance to agencies in designing, implementing, and operating an APS, including such assistance as may be necessary to develop a demonstration project in lieu of an APS where OPM determines that a proposed APS would benefit from first being tested as a demonstration project.
 - (3) Authorize OPM to take whatever steps are necessary to insure that rates of pay for employees covered by an APS can be used in determining the pay disparity in each locality.
 - (4) Authorize OPM to terminate an APS on the basis that it is not consistent with merit system and veterans preference principles, general APS requirements, or the best interests of the Government.

Title V -- Classification Reform

A. Introduction

1. Basic Purpose--To provide greater flexibility to agencies and a wider selection of options in the white collar classification system. The recommendations cover improvements to the existing Governmentwide system and optional alternatives that agencies could use without prior approval by OPM.
2. Summary of Provisions--
 - a. Retain the 15-grade General Schedule salary structure, but abolish statutory definitions of grade levels. Governmentwide criteria for the 15-grade classification system would be established and maintained administratively, with appropriate OPM oversight to maintain the integrity of the Government's white collar classification system.
 - b. Authorize agencies to use broad-banding in accordance with Governmentwide criteria.
 - c. Modify OPM's statutory oversight authority.
 - d. Provide additional pay flexibilities in the General Schedule.

B. Specifications

1. Retain the General Schedule's 15-grade structure, but abolish statutory definitions of grade levels.
 - a. Statutory grade definitions: Abolish language in 5 U.S.C. 5104 defining each grade of the General Schedule.
 - b. Governmentwide grade criteria: Authorize OPM to establish Governmentwide grade level criteria for the General Schedule by regulation.
2. Create a new subchapter in chapter 51 establishing Governmentwide criteria for broad-banding and authorizing agencies to establish broad-banded systems.
 - a. Governmentwide broad-banding criteria: Direct OPM to establish Governmentwide criteria for agency broad-banded systems and to consult with employee organizations in accordance with 5 U.S.C. 7117(d).

- b. Criteria: Specify that the Governmentwide criteria for broad-banded systems must, at a minimum, address the following issues:
 - (1) The minimum and maximum number of grades that may be combined into pay bands.
 - (2) Requirements for adjusting pay within a band.
 - (3) Requirements for setting the pay of supervisory employees in pay bands.
 - (4) Requirements and methods for setting pay upon conversion to a banded system, initial appointment, change of position or type of appointment, and movement between systems.
 - c. Agency systems: Allow agencies to establish broad-banding systems without prior approval for all or any portion of their organizations provided that all provisions of the agency system conform with the Governmentwide criteria.
 - d. Administration of locality pay system: Direct OPM to take whatever steps may be necessary to ensure the Government's continued ability to compare the rates of pay of employees covered by a broad-banded system with non-Federal rates of pay in each pay locality.
3. **Modify OPM's statutory oversight authority.**
- a. Employee requests for review: Provide that OPM may require an agency, at an employee's request, to review an agency classification determination on the employee's position; and provide for an OPM review of the agency's determination on the employee's position, at the employee's request.
 - b. Assessing agency compliance: Establish that, in order to ensure the integrity of the white collar classification system, OPM may undertake such reviews as it deems necessary to assess agency compliance with:
 - (1) statutory requirements to classify positions in conformance with, or consistently with, standards published by OPM, and
 - (2) in the case of broad-banded systems, Governmentwide criteria for broad-banding; andthat OPM may order corrective action where an agency is not in compliance.
 - c. Other OPM authorities: Repeal OPM's authority to revoke an agency's classification authority, but affirm OPM's general authority to review the classification of positions.

4. Provide new pay flexibilities to agencies.

- a. Eliminate the ten fixed step rate pay structure of the General Schedule: - Modify the General Schedule's fixed 10-step framework to include a more flexible pay scheme whereby each GS grade would have minimum and maximum pay rates and an employee's rate of basic pay would be set, in accordance with applicable pay administration statute and regulation, within the grade's pay range. Eliminate the requirement that the initial rate in grade equal a fixed step rate.
- b. Establish "performance increases": Redesignate "periodic step increases" (within-grade increases) as "performance increases" to emphasize their being contingent on performance meeting established expectations, and establish their value as equal to one-ninth of the difference between the minimum and maximum rates of the pay range.
- c. Establish variable "exceptional performance increases": Redesignate "additional step increases" (quality step increases) as "exceptional performance increases," and authorize them in amounts less than a full performance increase.

Title VI -- Labor Law Reform

A. Introduction

1. Basic Purpose--To enhance the ability of agencies and employee unions to develop and sustain effective labor-management partnerships for the purpose of achieving a more effective government.
2. Summary of Provisions--
 - a. Establish the "Good Government Standard" as a framework for the collective bargaining relationship.
 - b. Codify Executive Order 12871 with respect to the establishment of the National Partnership Council, the establishment of agency labor-management partnerships, and the status of subjects of collective bargaining formerly considered "permissive" subjects.
 - c. Authorize agency-level partnership councils to establish agency-level policies binding on subordinate units.

B. Specifications--

1. Establish a Good Government Standard as the public policy framework for collective bargaining, including dispute resolution. The Standard would read as follows: "An agency and a labor organization are obligated to bargain collectively in good faith and consistent with the promotion of increased quality and productivity, customer service, mission accomplishment, efficiency, quality of work life, employee empowerment, organizational performance, and, in the case of the Department of Defense, military readiness."
2. Codify Sec. 1 of Executive Order 12871 by establishing a statutory authority for the National Partnership Council, including its membership, responsibilities, and functions.
3. Codify those parts of Sec. 2 of Executive Order 12871 pertaining to agency establishment of labor-management partnerships.
4. Implement Sec. 2(d) of Executive Order 12871 by deleting from 5 U.S.C. 7106(b)(1) the limitation that bargaining over staffing patterns and technology of doing work may be at the election of the agency.
5. Authorize an agency-level partnership council to develop agency policies and regulations affecting conditions of employment that are binding on agency components and bargaining units subordinate to the council.