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# STATUTORY EXCEPTIONS TO THE COMPETITIVE SERVICE

A REPORT  
TO THE  
COMMITTEE ON  
POST OFFICE AND CIVIL SERVICE  
OF THE  
UNITED STATES SENATE  
BY THE  
U.S. CIVIL SERVICE COMMISSION  
JULY 1973



Printed for the use of the Committee on Post Office and  
Civil Service—September 1973

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1973

K.F. 5337  
A 625

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IV. VIEWS OF THE CIVIL SERVICE COMMISSION

This concluding section summarizes the views of the Civil Service Commission on the major statutory exceptions from the competitive service. These opinions were reached after study of the agency reports that are reproduced in the two-volume appendix to this report. /1

Basis for the Commission's Views

The Commission's views are based on an evaluation of the reasons presented by the reporting agencies; the views are not based on investigation and evaluation of the personnel policies and practices of the agencies. We do not question the historical reasons for the exceptions; we do examine statements of present circumstances in support of each exception. Moreover, the Commission has made no attempt to take into account administrative convenience and other non-personnel considerations. For these reasons, the views are submitted not as legislative recommendations but as technical opinions of the Commission.

Agency Reasons for Continuing Exceptions

Almost no agency wants to be deprived of the freedom to act with a minimum of legislative or regulatory control, especially control that is exercised by another agency. With but few exceptions, the agencies recommended that their statutory exceptions from the competitive service be continued. This the Commission can understand. The Commission is concerned, however, over the agencies' apparent inability to articulate specific reasons for continuing the statutory exceptions.

Many of the reasons for continuing the statutory exceptions from the competitive service were stated in vague and general terms. A number of the reasons pertained to exceptions from the classification and pay provisions of title 5, or were otherwise not pertinent to a statutory exception from the laws and regulations governing examination, appointment, selection, promotion, and removal.

1/ Forty-four agencies were asked to submit information on statutory exceptions. Reports were received from 43. Three of these agencies reported no significant statutory exceptions (the Federal Deposit Insurance Corporation, the Government Printing Office, and the Railroad Retirement Board). One agency filed no report (the Equal Employment Opportunity Commission).

Commission does not consider such reasons as the source of funding of employees, the overseas location of a duty station, the need for a written examination is inappropriate for a group of positions, or the need for unexplained flexibility, for example, as valid reasons for continuing an exception.

Commission firmly believes that there are few circumstances at which require that an agency or group of positions be excepted from the rules applied to Federal agencies and positions in general.

#### Principles of the Competitive Service

Competitive service is based on the public interest in the application of merit principles of open competition for Federal employment, the application of uniform qualification standards, and the selection of the best qualified from among those available for appointment. The competitive service also provides for equitable treatment of employees in terms of tenure, eligibility for transfer and reinstatement, and protection for employees in adverse-action and reduction-in-force situations.

#### Alternatives to Statutory Exceptions from the Competitive Service

Starting with the assumption that a central merit system for the Federal Government is desirable; it then follows that the system should apply to all agencies unless there are compelling reasons for an exception. The Commission believes that whenever a civil service law, regulation, or practice is found to be out-of-date or inappropriate under certain circumstances, the law, regulation, or practice should be examined and, if necessary, adjusted to maintain merit principles under changed conditions. Rather than except an agency or a group of positions from the competitive service, it would promote sound personnel management to the features of the competitive service to new or different needs.

An alternative method of recognizing valid need for special procedures for certain positions is the granting of an exception from the competitive service by administrative action. The Civil Service Commission is authorized to make exceptions by placing positions or groups of positions in Schedule A, B, or C as appropriate, or by designating them as Noncareer Executive Assignment. The standards for these exceptions are well known. They are used, for example, for policy positions, for positions to be appropriately filled by aliens.

As of June 30, 1972, there were 17,400 competitive service employees in overseas positions. There were 10,300 employees in the excepted competitive service overseas.

or undercover agents, and for positions for which written examinations are impractical.

#### Accountability

A large number of exceptions from the civil service laws and regulations, regardless of the justification from the standpoint of individual agencies, raises a question of accountability. Neither the President nor the Congress can, realistically, without the assistance of a staff agency, control the detailed personnel actions of each agency of the Government. Staff agencies assist the President in regulating Federal establishments in accordance with policies defined by him and by the law. Whenever independent personnel systems or exceptions to the civil service laws are made, it becomes more difficult to hold agencies accountable for personnel policies and practices.

#### Cost

A central personnel system has a cost advantage. For open competition to be successful, it is necessary for the administrative agency to be able to provide readily available information on a widely dispersed geographical basis. One agency, with a large number of local offices and aided by occupational specialists, can more efficiently perform this service for all.

Although the Commission could handle additional examining functions, we realize that if a substantial number of positions in different agencies were brought into the competitive service, there would be staffing and funding implications for the Commission. These problems would arise not only in the initial conversion but also in the performance of such continuing functions as recruiting, examining, and certification. The additional costs incurred by the Commission would, however, be more than offset by the savings through the elimination of duplicate personnel management costs.

#### Future Action

The Civil Service Commission recognizes that, to arrive at a final and official position on statutory exceptions, the Committee on Post Office and Civil Service will need in-depth studies and hearings at which interested groups are given the opportunity to comment. The Commission believes that the Committee's interest in the topic of exceptions from the competitive service represents a significant step toward the improvement of personnel management in the Federal Government. We are convinced that the subject is worthy of further consideration.

As a result of this study of existing statutory exceptions to the competitive service, the Commission has reached the following conclusions:

- ✓ - That many of the historical reasons for the statutory exceptions have ceased to exist;
- ✓ - That a large number of independent personnel systems increases the problems of the President and the Congress in holding agencies accountable for their operations; and
- That an independent excepted system should be established only when it is determined that an agency has needs so unique or unusual that the competitive service system cannot be adapted to meet those needs.

The Civil Service Commission is concerned with the breadth of coverage of the competitive service system. The Commission also regards it of great importance that there be a continuing review of the effectiveness of the policies and practices under the civil service system, and that there be continuing review of the responsiveness of that system to the needs of public personnel administration.

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**APPENDIX: REPORTS FROM  
FEDERAL AGENCIES**

**Volume A  
JUNE 1973**

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DEPARTMENT OF JUSTICE  
Federal Bureau of Investigation

I. Identification of and basis for the exception. (The information in this section is based on material submitted by the agency and supplemented by research of the Civil Service Commission staff.)

A. Statutory citation.

P.L. 626, 81st Congress, section 5, July 28, 1950 (64 Stat. 380).

B. Coverage.

All positions in the FBI are in the excepted service.

C. Position coverage.

No number is given. Positions include stenographic, clerical and managerial personnel.

D. Historical basis for the exception.

The FBI in its present form dates from 1924 when J. Edgar Hoover became director. At the time the Identification Division was founded in 1924, Fingerprint Classifiers were secured through CSC referral. The rest of the positions were not covered by civil service, though this exception was not by statute. In 1938 an Executive order placed all stenographic, clerical, and managerial personnel of the FBI under civil service as of February 1, 1939. Mr. Hoover appeared before the Subcommittee of the Committee on Appropriations on April 27, 1939 to ask that FBI positions be placed in the excepted service. At this point a rider was attached to the FBI appropriation bill which stated that none of the funds appropriated for the Bureau were to be spent on civil service employees' salaries, with the exception of the fingerprint classifiers. The appropriation bill passed in that form.

An Executive order of June 29, 1939 (which amended the civil service rules) provided that during the period from July 1, 1939 to June 30, 1940, all FBI positions except fingerprint classifiers would be in the excepted service. On June 3, 1941 Executive Order No. 8768 excluded all positions from the competitive service. The FBI appropriation bill of 1942 carried a provision against paying appropriated funds for civil service employees' compensation, and each statute since that time has included that provision.

✓ The FBI is currently exempted from civil service laws by P.L. 626, July 28, 1950 (64 Stat. 380, section 5).

II. Current agency personnel policy, practices, and procedures for the excepted positions.

A. Recruitment and selection.

1. Use of announcements or other publicity.

"...the normal news media (radio, television and newspapers) through public service announcements and publications of news items concerning the FBI keep the organization actively in the public eye and inspire many applicants to seek employment therein."

2. Positive recruiting methods.

Officials and special agents explain the work of the FBI to civic groups, schools, colleges, etc.

3. Job evaluation system and qualification standards.

"With respect to job evaluation, it is observed that the FBI is under the position classification and is obliged to classify its positions in accordance with standards published by the CSC. Although as an excepted agency we are not obliged to follow the CS position qualification standards, we do refer to those standards in applying appointive and promotional policy."

4. Examining methods and techniques.

a. Written tests and other ranking devices. Stenographic, typing and spelling tests and language proficiency examinations are used. Applicants file written applications. All applicants have an in-depth interview and are subjects of a full-field investigation. Supervisory personnel at Bureau headquarters handle final review of processed applications and appointments.

b. Registers or other employment lists. These are not mentioned.

5. Selection and appointment practices.

a. Veteran preference. "...preference is given to veterans who are applicants for employment with the FBI.

b. EEO. "This Bureau follows a policy of scrupulously

insuring that appointments, promotions, assignments, the full range of personnel actions are made without regard to considerations of race, color, creed, national origin or sex."

B. Promotion policies.

Promotion is based on merit. Seniority becomes the determining factor only when two or more employees have comparable qualifications. There is a career ladder promotion plan for clerical employees, based on ability, in which trial assignments are used. When promoting, all deserving employees are considered. There must be written justification when passing over employees with more seniority, and those employees must be informed of the reasons. Special agents enter at GS-10; under a career development plan they are eligible for consideration for promotion to GS-11, GS-12, and GS-13 after a specified time, though promotion is not automatic. Supervisory personnel at Bureau Headquarters review each case before approval. The Bureau is subject to the time-in-grade restrictions of title 5, U.S.C.

C. Removal.

After work-related delinquencies or instances of personal misconduct are investigated, the employee is advised of the charges against him so that he may have an opportunity to answer them. Memoranda summarizing the charges are prepared and forwarded through several administrative levels to the Director, who makes the final determination. All employees have the right to appeal to the Director any adverse action against them. Grievance and appeal procedures of the CSC are not applicable to the FBI, except for certain provisions concerning veterans.

D. Agency comments on its use of merit principles.

"It is abundantly clear that, in each and every case involving personnel actions defined above, all applicable information is developed and final action taken after due consideration strictly on the merit principle."

I. Agency analysis of need for continuing the exception.

A. Comparison of present and original conditions.

The Agency makes no comparison.

B. Agency reasons for continuing the exception.

"The sensitive nature of the Bureau's mission and the imperative necessity that the impact of results achieved be at the optimum level are such that we must insure those selected for employment meet the very high standards we have set as an agency in the excepted service. Further, we know the Soviets, for instance, and even domestic organizations we investigate place high priority on penetration of the FBI. Accordingly, the FBI should retain the complete authority and flexibility to organize and operate its selective process." Though excepted agencies come under CSC scrutiny in many program areas, the Director of the FBI must have authority in the areas of recruitment, promotion, and discipline to set the requirements necessary to continuation of effective and efficient operation.

C. Agency recommendation.

"It is my very considered opinion that, in order to insure the continuation of performance required to properly discharge its responsibilities, it is imperative that the FBI be continued in the excepted service."

U.S. Civil Service Commission  
Opinion on Continued Statutory Exception from the  
Competitive Service of All Employees of the  
Federal Bureau of Investigation  
in the Department of Justice

For all practical purposes, the Federal Bureau of Investigation has been excepted from the competitive service since 1924. The only positions in the competitive service over a long period of time were those of fingerprint classifiers. These, however, were excepted by Executive Order 8768 of June 3, 1941. The Bureau is subject to other personnel legislation administered by the Civil Service Commission including the classification and pay provisions of title 5, U.S.C.

The Bureau's reply to the Commission's request states that continued exception from the competitive service is necessary in the areas of recruitment, promotion, and discipline. It makes no comparison with other circumstances. However, the information provided fails to demonstrate any objectives which cannot be attained through the competitive service. FBI procedures described in these three areas are either parallel or would be compatible with civil service procedures. Moreover, the functions performed by the FBI are essentially the same as those performed by other law enforcement agencies such as the Secret Service and the Bureau of Narcotics and Dangerous Drugs which are under the competitive service. Where needed, Schedule A and B exceptions can be authorized, as has been done for both these groups.

More specifically, the Bureau's practice of utilizing agents and officials as recruiters and speakers is not only compatible with recruitment through civil service methods, but would be welcomed by the Civil Service Commission. The examining process, as it has been very briefly described, appears to be similar to civil service procedures. In-depth individual interviews as utilized by the Bureau are also required by some agencies in the competitive service. When it is demonstrated that positions require selective factors which can best be measured through personal interviews, the Commission has no objection to this procedure. The Bureau's report does not provide the requested specific information on procedures which would indicate if candidates are ranked in some fashion to assure selection of the best qualified with appropriate preference for veterans. The Civil Service Commission appreciates the need for the Bureau to conduct full field investigations of prospective employees prior to appointment. There is nothing about placing positions in the competitive service that would be incompatible with this procedure.

The Bureau's report does not specify any special requirements in the areas of promotion and internal placement, and adverse action which

cannot be obtained through the competitive service. On the contrary, since its report states that promotions are based on merit, one assumes that the promotion policies generally parallel those of agencies in the competitive service. In the adverse action area, inclusion in the competitive service would extend appeal rights to the non-veteran employees of the Bureau who at present have no such protection. This would not mean the authority to discipline and remove unsatisfactory employees would be diminished. Questions which might be raised about the greater or lesser degrees of use of disciplinary authorities in various agencies really do not go to the adequacy of the authorities but to institutional attitudes and willingness to use the authorities as well as the need for their use. Accordingly, there would be no reason for the FBI to change its highly respected standards.

In summary, the Civil Service Commission sees no unique requirements which cannot be accommodated within the competitive service. If exceptions are needed for specific purposes (e.g., for reasons of "undercover" or "special" assignments) they can be granted administratively, as the Commission has already done for the Bureau of Customs, the Internal Revenue Service, and the Bureau of Narcotics and Dangerous Drugs. As stated previously, both the FBI and other law enforcement units which have been under the competitive service for many years have very similar functions and requirements. The Commission cannot agree with the Bureau's inference that inclusion in the competitive service would lower the high standards it has set for itself in the areas of selection, promotion, and discipline. The opinion of the Commission is that continued statutory exception from the competitive service is unwarranted.

I trust that this response provides useful information for the Commission's report and supports the premise that it would be inadvisable to give complete civil service status to Federal attorneys.

Sincerely,

*Kenneth J. Stallo*  
Kenneth J. Stallo  
Director of Personnel and Training



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

February 21, 1973

Address Reply to the Division Indicated and Refer to Initial and Number

Mr. Raymond Jacobson  
Director, Bureau of Policies  
and Standards  
Civil Service Commission  
Washington, D. C.

Dear Mr. Jacobson:

This responds to Mr. Rosen's request for a report on positions excluded by statute from the competitive service.

There is attached a copy of an address given by Attorney General Richard C. Kleindienst on September 16, 1970 when he was the Deputy Attorney General, before the National Convention of the Federal Bar Association General Councils Committee. The address covers in detail the history of the Federal attorney's position within the Federal Government and the pros and cons of a career merit system for the Federal attorneys.

There are also attached a report on Excepted Positions in the Immigration and Naturalization Service relating to attorney positions classified in the GS-905 occupational series, and a copy of a memorandum from the Acting Director of the Federal Bureau of Investigation describing the history of the statute which excludes all positions in the FBI from the competitive service.

As concerns the Legal and Administrative Activities of the Department, the Bureau of Prisons and the Bureau of Narcotics and Dangerous Drugs, there is attached a computer print out which lists the number of excepted positions by organization and identifies the series of each position. The total number of Attorneys in these organizations as of December 15, 1972 follows:

Staff Offices and Divisions	1,495
Offices of the U.S. Attorneys	1,287
Immigration & Naturalization Service	196
Law Enforcement Assistance Administration	14
Bureau of Narcotics and Dangerous Drugs	14
Federal Prison Service	7
U.S. Marshals Service	1
Attorneys - Total -	2,914



Assistant Attorney General for Administration  
Attention: Mr. Kenneth J. Stallo

February 6, 1973

Acting Director, FBI

#### REPORT ON EXCEPTED POSITIONS

In response to your communication of January 10, 1973, the following is being furnished concerning positions in the FBI.

All positions in the FBI are in the excepted service, excluded from the competitive service by statute. Support for placing all FBI positions in the excepted service is based upon the nature of the agency's responsibilities and attendant personnel requirements which could not be efficiently and effectively met in the competitive service. By way of background, there have been periods when certain positions in the FBI were not in the excepted service. From the inception of the Identification Division in 1924, Fingerprint Classifiers were secured through Commissioned Personnel. In addition, in 1938, an Executive Order placed all the stenographic, clerical and managerial personnel of the FBI under Civil Service effective February 1, 1939. On April 27, 1939, Mr. Hoover appeared before the Subcommittee of the Committee on Appropriations of the House of Representatives and strongly recommended positions in the FBI be placed in the excepted service. Subsequent to his appearance a rider was attached to the appropriation bill for the FBI to the effect that none of the funds appropriated for the Bureau were to be expended to pay the salaries of Civil Service employees, with the exception of the Fingerprint Classifiers, and the appropriation bill was passed in that form.

There then followed an Executive Order dated June 29, 1939 (amending the Civil Service rules) to the effect that during the period beginning July 1, 1939, and ending June 30, 1940, all positions in the FBI except Fingerprint Classifiers were placed in the excepted service. On June 3, 1941, President Roosevelt signed an Executive Order which exempted all positions in the FBI from the competitive service. The FBI appropriation bill approved for 1942 and each year since has included that provision.

Code of Federal Regulations, Title 28, Chapter 1, Subpart X 0.137, which delegates authority to the Director of the FBI by the Attorney General, states that, with exception of the positions of Assistant Director and above, the Director of the FBI is authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employees, direction and general administration (including appointments, assignments, training, promotion, demotion, compensatory leave, classification and separation) of personnel, including personnel in wage board positions, in the FBI.

The role of the FBI has demanded that the investigative staff and supporting personnel measure up in terms of very high standards set in the areas of performance, character, loyalty, reputation, and associates to promote the most effective and efficient operation. The very nature of the Bureau's work responsibility, security considerations, and other factors fully justify and make essential our retention in the excepted service.

Assistant Attorney General for Administration  
Attention: Mr. Kenneth J. Stallo

March 2, 1973

Acting Director, FBI

## REPORT ON EXCEPTED POSITIONS

In response to your advice concerning additional information requested by the Civil Service Commission on captioned subject matter, the following is being furnished concerning positions in the FBI.

### II. Current Agency Personnel Policy, Practice and Procedures for Excepted Positions

#### a. Recruitment and Selection

The vast majority of FBI recruiting is done by our Agent personnel assigned to our 59 field offices incidental to their daily investigative assignments. Such assignments bring our Agents in contact with school officials, businessmen and women, professional groups, police departments, sheriffs' offices, military groups, housewives, and the like. Through such sources they learn of desirable and interested applicants and follow through by insuring same are furnished information concerning career opportunities in the FBI.

In addition, officials and other Special Agent personnel address civic groups, schools, colleges and other institutions of learning for the purpose of generally explaining the work of the FBI. This provides further means for disseminating information concerning the organization which in turn results in many applicant inquiries. Further, the normal news media (radio, television and newspapers) through public service announcements and publication of news items concerning the FBI keep the organization actively in the public eye and inspire many applicants to seek employment therein.

All applicants must file a written application which supplies the basic information concerning personal history such as education, previous employment, general background and veteran status. Each applicant is interviewed in depth in order to develop information

concerning his or her overall qualifications, aptitude and general suitability for the position for which applied. Tests are afforded which appropriately measure ability to perform in the position sought, i. e. stenographers are given stenographic, typing and spelling tests, and translators are given a language proficiency examination. Every applicant, prior to appointment, is the subject of a full-field investigation to determine character, reputation, loyalty and general fitness for employment. The FBI has a centralized personnel management system and supervision of applicant investigations and final review of processed applications and appointive action is vested in supervisory personnel at Bureau Headquarters.

With respect to job evaluation, it is observed that the FBI is under the Position Classification Act and is obliged to classify its positions in accordance with standards published by the Civil Service Commission. Although as an excepted agency we are not obliged to follow the Civil Service position qualification standards, we do refer to those standards in applying appointive and promotional policy.

With respect to application of veterans preference, it is noted that in the excepted service veterans have the same rights in connection with adverse action procedures and reemployment entitlement upon return from active duty as those in the competitive service. In addition, in concert with evaluation of qualifications, preference is given to veterans who are applicants for employment with the FBI. Concerning application of the Equal Employment Opportunity Act, no difference is observed between the obligations of the competitive service and the excepted service. This Bureau follows a policy of scrupulously insuring that appointments, promotions, assignments, the full range of personnel actions are made without regard to considerations of race, color, creed, national origin or sex.

#### b. Promotion Policies in Effect

Promotion in the FBI is based upon merit. Seniority is a secondary consideration and becomes a determining factor only when two or more employees have comparable qualifications. The FBI

long ago established a career ladder promotion program for its clerical employees in which the employee's ability is considered the controlling factor in determining whether or not he or she should be advanced. All promotions are approved at FBI Headquarters. A formal trial assignment is usually the vehicle for determining suitability for promotion. There are very stringent controls to insure all deserving employees are given the opportunity to advance and, at time of recommendation to place an employee in a promotional assignment, there must be clear indication he or she is the best-qualified candidate including consideration of those in military service or on maternity leave. Justification must be presented for passing over employees with more seniority, and those with greater seniority being passed over are informed of the reason or reasons for such action. With respect to Special Agents, they enter on duty in grade GS-10 and under our career development program are eligible for consideration for promotion to grades GS-11, GS-12 and GS-13 after a specified period of time. Promotion is in no way automatic and again is based upon demonstrated capacity to perform at the higher level. In each instance approval is made by supervisory personnel at Bureau Headquarters after review of the merits of each case. Grade promotions of employees in the excepted service are subject to the same legal restrictions of the Whitten Amendment with respect to time in grade as those in the competitive service.

**c. Removal Bases and Procedures in Effect**

When work-related delinquencies or instances of personal misconduct are brought to light, necessary inquiry to develop completely the essential facts regarding the matter is promptly instituted. The employee involved is fully and specifically advised of the charges against him in order that he may have an opportunity of fully answering them. Summarizing memoranda are prepared and forwarded through several administrative levels with final determination made by the Director. All employees are advised that they always have the right to appeal to the Director any adverse action taken against them. However, with the exception of certain


provisions pertaining to veterans, grievances and appeal procedures established by the Civil Service Commission are not applicable to the FBI either because of specific exclusion or because the FBI is in the excepted service. Avenues of redress are specifically brought to the attention of all employees during the orientation period immediately following entrance on duty. Of course, veterans in the excepted service have the same rights as those in the competitive service with respect to adverse action procedures, as previously noted.

- d. Are the methods of recruiting, selection, promotion and removal considered to be based upon the merit principle?

It is abundantly clear that, in each and every case involving personnel actions defined above, all applicable information is developed and final action taken after due consideration strictly on the merit principle.

**III. Agency Analysis of Need for Continuing the Exception**

The responsibilities of the FBI encompass a wide area of investigative matters in the criminal and security fields and include a very extensive support function through such as the operations of the FBI Laboratory and Identification Divisions. The sensitive nature of the Bureau's mission and the imperative necessity that the impact of the results achieved be at the optimum level are such that we must insure those selected for employment meet the very high standards we have set as an agency in the excepted service. Further, we know the Soviets, for instance, and even domestic organizations we investigate place high priority on penetration of the FBI. Accordingly, the FBI should retain the complete authority and flexibility to organize and operate its selective process. It is my very considered opinion that, in order to insure the continuation of performance required to properly discharge its responsibilities, it is imperative that the FBI be continued in the excepted service. It is observed that agencies in the excepted service come under scrutiny of the Civil Service Commission in many program areas. It is our experience, however, that in the areas of recruitment, promotion and discipline the Director of the FBI must have authority to set those requirements which are so necessary to the continuation of the most effective and efficient operation of this Bureau.

  
CENTRAL INTELLIGENCE AGENCY  
WASHINGTON, D.C. 20505  
OFFICE OF THE DIRECTOR

12 February 1973

Mr. Raymond Jacobson  
Director, Bureau of Policies and  
Standards  
U. S. Civil Service Commission  
1900 E Street, N. W.  
Washington, D. C. 20415

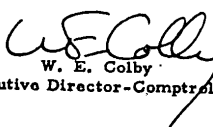
Dear Mr. Jacobson:

Attached is a report concerning the statutory exception from the requirements for the competitive service for the positions in the Central Intelligence Agency. The report is in the format suggested by Mr. Rosen in his letter of 15 December 1972.

If you should require additional information,

Mr. Harry Fisher, our Director of Personnel, will be happy to assist you.

Sincerely,

  
W. E. Colby  
Executive Director - Comptroller

Enclosure

**L. Identification and historical basis of exceptions in the department or agency.**

- a. Section 8(a) of the CIA Act of 1949, as amended (50 U.S.C. 403j).
- b. The exception covers all positions and all personnel of CIA except the Director and the Deputy Director. Those positions are to be filled by Presidential appointees with the advice and consent of the Senate (50 U.S.C. 403a).
- c. [The number of CIA positions is classified and, therefore, would not be appropriate for a report of this nature. But we of course will be glad to discuss with you both the numbers in general terms and the kinds of positions. Similarly, classification and security problems preclude the identification of all kinds of positions covered by the exception; however, our positions include analysts of various kinds, scientists of various disciplines, medical doctors, secretaries, computer and data control positions, security personnel, communications personnel, positions requiring paramilitary training, positions requiring intelligence-gathering training and skills, lawyers, clerical positions of various kinds, training personnel, budget and finance officers, etc.]
- d. The historical basis for the exception from the competitive service was and is the fact that CIA functions and activities require stringent secrecy and security measures. The statute was enacted shortly after World War II when the experience of OSS (a predecessor agency to CIA) was fresh in the minds of those seeking and enacting the legislation. Even before the CIA Act (1949), and after the Agency was established in 1947 by the National Security Act, in recognition of the security problems particular to intelligence, the Agency had been excepted from the competitive service by action of the Commission. It was recognized in that period, as it is today, that the accomplishment of intelligence activities requires special authorities and exceptions from normal government procedures and requirements. The CIA Act, therefore, provided not only the authority exempting CIA from competitive service but also

various other authorities and exemptions from reporting and publishing requirements, which, among other things, enable the Agency to avoid disclosure of certain persons as CIA employees. See sections 3, 4, 5, 6, 7 and 8 of the CIA Act, as amended (50 U.S.C. 403c-j). Several court decisions have upheld the authority of the Director to terminate employees under his statutory authority (50 U.S.C. 403c), without regard to other law.

II. Current agency personnel policy, practice, and procedures for the excepted positions.

a. Recruitment and Selection

The functions of recruitment and selection, particularly of professional and technical employees, involve an intimate awareness of Agency operations and of the qualification requirements stemming therefrom. Ours is a job of procuring and organizing people trained in a broad range of skills and disciplines to carry out the Agency's missions, through methods and procedures which, though not unusual in themselves, are followed in ways that insure both flexibility and the protection of sensitive information. Our methods and procedures incorporate the essential characteristics of the competitive service and are based on merit principles, but are adapted in practice to the security and cover requirements of the Agency.

1. Use of announcements or other kinds of publicity of vacancies.

External, or public, announcements of job opportunities and manpower needs include:

a. Advertising in newspapers and in professional and technical journals.

b. Job listings (brief job descriptions with instructions on how to apply) in the placement publications of professional societies and organizations such as the Association of American Geographers, the National Registry for Economists, the American Medical Association, the Modern Language Association, the American Association for the Advancement of Slavic Studies, etc.

c. A full-page institutional ad each year in the College Placement Annual, copies of which are distributed to every college placement office in the U. S. and to all military bases.

d. Distribution of job information and recruitment literature in Federal Job Information Centers nationwide and in cooperation with "Project Transition," the Armed Forces outplacement service in military bases.

e. Distribution of flyers and specific job announcements to academic departments, student advisors and placement officers.

f. Talks by Agency representatives to student and faculty groups at high school through graduate school levels.

Internal announcements of job opportunities are made through a Vacancy Notice System, coordinated and monitored in the central Office of Personnel, and through vocational counseling activities of personnel placement officers who, located in the central Office of Personnel, are currently aware of staffing needs throughout the Agency and serve the interest of all operating components. A consistent effort is made to fill vacancies as they arise through internal reassignment before going to external recruitment.

2. Use of positive recruiting methods.

The Office of Personnel operates a nationwide recruitment program. Full-time professional and/or clerical/technical field recruiters are assigned on a regional basis in 15 key cities throughout the U. S., including Washington, D. C. and interviewers are maintained in a Washington Area Recruitment Office to handle "walk-in" traffic. The efforts of these recruiters are supplemented by operating officials of the Agency who participate in the recruitment process to serve particular component needs.

Recruiters are kept currently aware of requirements through a system of written descriptions of positions that require new personnel from time to time, through oral and written direction from the Chief, Recruitment Division through travelers from Headquarters to the field, and through their own trips to Headquarters for briefings and specialized component guidance.

Through long experience in their respective regions, supplemented by the collective knowledge and advice of employees already in the Agency, recruiters have a detailed knowledge of the sources of potential candidates for employment. To develop and exploit these sources they employ a variety of positive recruitment methods. In summary, these include:

a. Direct contact with placement directors, career counselors and departmental placement officers in colleges and universities. These are key contacts who provide access to students and academic departments, distribute information about the Agency's needs and application procedures, assemble resumes for review and follow-up by the recruiters, and identify and refer able students in fields of interest to us.

b. Recruiters and other Agency officials cultivate acquaintance with faculty members in disciplines of interest to acquaint them with our needs and to generate referrals of candidates.

c. Student interest is generated by selective advertising and by meetings with classes and other student groups, with follow-up by interview with students who respond.

d. Written employment inquiries which reflect qualifications of potential interest are followed up by field recruiter interviews.

e. Recruiters maintain contact with military installations in their respective regions where people are to be found who are leaving the service with skills and experience appropriate to Agency needs. Prospects are identified, usually with the help of "Project Transition" officers, and interviews are conducted.

f. Recruiters, often in collaboration with appropriate Agency specialists, attend meetings of professional societies and associations and, working with the placement function normally available at the meeting, identify candidates and arrange interviews.

- g. Contact is maintained with U. S. and state employment services throughout the country to publicize our needs and obtain candidate leads.
- h. Recruiters participate in "career days" and "job fairs" in schools at all levels including high schools, vocational and technical institutions as well as colleges and "job fairs" organized to assist veterans in obtaining employment.
- i. Minority recruitment is emphasized, and special efforts are made to generate applications and referrals in the predominantly black schools and through organizations supporting Equal Employment objectives. Black employees already in the Agency participate actively in this effort and a black professional recruiter is involved full time.

Once the candidate has been identified, recruitment begins with an interview. The nature and location of the initial interview and follow-up action are determined by considerations of security and cover; i. e., if the individual appears to be a likely candidate for assignment in a covert capacity, precautions are taken from the outset to avoid his or her public identification with the Agency. In any case, the interview is an initial exchange of communication which serves primarily to establish a presumption of serious interest and employability. When it produces a completed application, the next steps in the processes of selection begin.

3. Job evaluation system and qualification standards followed.

The CIA follows a job evaluation system based on that established under the Classification Act of 1949. The basic occupational coding system established by the Civil Service Commission for Federal positions has been adapted to CIA positions. The position grades and grade definitions of the Classification Act are utilized, as well as the pay schedule, the step-rate system, premium pay rates and other benefits applicable to General Schedule employees.

Civil Service Commission position standards are used in the classification of CIA positions to the extent that they are applicable.

Agency position standards have been developed for positions not covered by CSC Standards. These include supergrade positions, intelligence and operations officers, and various technical and support positions. Job comparison is a standard method used in classification where standards are not available. Internal comparison and comparison with positions outside the Agency are both used.

Qualification standards established by the Civil Service Commission are followed.

The Agency system provides for a periodic classification review of all positions at least once every three years, for accuracy of position levels and category as well as for effective employee utilization.

The CIA was exempted from CSC classification system on August 8, 1949 by authorization of the CSC Chief, Personnel Classification Division.

Upon the enactment of Public Law 429 - 81st Congress, the "Classification Act of 1949" on October 28, 1949, the CIA was specifically exempted from Federal classification law.

4. Examining methods and techniques practiced.

Evaluation of the applicant's academic and professional background and level of performance is based on review of transcripts, certificates, honors achieved and other related evidence which is a matter of record in the application. Proficiency tests are used only to verify claimed and measurable skills in such fields as foreign languages, shorthand, typing, certain types of office machine and computer operations and communications equipment. The tests used in such instances are standard measures in general use in government and private enterprise.

For clerical applicants a general aptitude test is used, again a standard and widely used instrument.

Specialized aptitude tests are used for applicants for certain technical fields of work; e. g., computer operations, communications, photo interpretation, who are otherwise qualified

but lack established skills. The objective is to obtain some measure of trainability and probable adjustment to the field of work involved.

The basic instrument used in measuring and assessing the qualities of professional applicants is a Professional Applicant Test Battery. It consists of a series of standard measures plus an essay which in the aggregate provide a profile of the individual's interests, aptitudes, intellectual level, vocational preferences and probable adaptability to typical Agency work situations. It is administered for the Agency by the Educational Testing Service at test centers located throughout the country. It is not a pass-fail test. The results are evaluated by the Agency's Psychological Services Staff and are reported to selection officers in the form of interpretative comment.

With the exception of basic skills tests such as typing and shorthand, these tests have no absolute value and are not used to rank applicants in any formal or structured manner. Test results are only one part of the evidence considered in the selection decision. The evaluation of applicants is on a comparative and competitive basis to select the best from among the total number available. The final decision is the result of multiple appraisals of all available evidence, in relation to the positions to be filled.

No formal registers or other employment lists are maintained, but significant qualifications data are entered for future reference in a computerized Qualifications Inventory and applicant file summaries are preserved.

5. Selection and appointment practices utilized.

It is in the selection from among all applicants of those who are to be accepted for clearance processing that the widest Agency participation is involved. The process typically operates as follows.

New professional applicant files are placed initially in a central repository in the Office of Personnel and made available for component inspection. They are grouped according to fields of qualification and are summarized in

an Acquisitions List which is compiled and distributed daily to the personnel officers in all components. They are retained for open inspection for a period of seven days, after which they may be withdrawn for further component review. Those not selected during this period of initial review are re-evaluated by selection officers in the central Office of Personnel and are "shopped" to appropriate components which may have overlooked them in the first place or may have prospective needs not yet taken fully into account. The objective is to insure the widest possible consideration of all applicant files, and to obtain a timely decision to accept for employment processing or to reject. Those selected are put into the process of medical and security clearance, and arrangements are made for the applicant to be interviewed further by officials in the prospective employing office.

After receipt of medical and security clearance, the final decision to hire is made by the head of the employing component.

The Agency is exempted by law from automatic and invariable application of veteran preference, but in practice preference is given to the veteran wherever possible. We consider military service to be a valuable additional qualification, either specifically or in general, and in instances of approximately equal qualifications, the veteran will be considered over the non-veteran.

Observance of the principles and objectives of Equal Employment Opportunity has come to be an important and emphasized feature of our personnel system. Reference was made earlier to special recruitment efforts in this area, efforts which are resulting in increased numbers of minority applicants and entrants on duty. Minority applications are monitored carefully in the selection process, both by the Office of Personnel and by the Deputy Directors of the major components, and decisions to hire or reject are confirmed by the Deputy Director in charge of the area concerned. Component performance in minority employment is reported periodically to the Executive Director-Comptroller and is reviewed by him with the Deputy Directors. Components



of the United States, the procedures set forth in the paragraphs immediately above will normally be followed, although in certain cases they may be impracticable or inadvisable. The Director, therefore, may determine it to be in the interests of the United States to direct a termination without further action.

d. Are the Methods of Recruiting, Selection, Promotion and Removal Considered to be Based on Merit Principles?

Yes. This was confirmed recently when the chairman of the Civil Service Commission advised the Director, Office of Management and Budget, "The Commission, recognizing the necessary qualifications and caliber of persons holding career type appointments in the CIA, considers the non-competitive entry of such persons to the competitive service as compatible with merit system principles. The on-site observations of a Commission team assure us that the operations of the CIA personnel system are consistent with merit principles." (Letter from Commissioner Hampton to the Director, OMB, dated 3 December 1971, recommending an Executive Order for the President's approval.)

III. Agency analysis of need for continuing the exception.

a. Essentially the employment conditions and staff problems of today are unchanged from those existing when the statutory exemptions were enacted. At that time, the Agency's functions and activities to a large degree bore directly on national defense and hence were subject to careful security; this remains true today. Thus, recruitment, the establishment of positions, the number and types of positions, the disclosure of certain of our people as CIA employees and related personnel policy and practice are matters of classified information. Then, as now, changes in the types of positions and skills needed occur as the intelligence requirements placed on the Agency change and these changes and patterns also are classified.

b. It is essential that the statutory exception for CIA be continued; the reason obviously is the continuing need to provide for secrecy for our operations and functions. As indicated, there are continuing changes in our recruitment and personnel needs and patterns which are matters of classified information. It would not be possible to provide the necessary security in connection with our personnel policy and program through the normal competitive service practices and requirements. For example, the Director's authority to terminate employees is in the broadest terms and does not require that charges be placed from which administrative appeals may ensue, etc. See Section 102 (c) of the National Security Act (50 U. S. C. 403(c)). Decisions by the Director under the CIA Retirement Act of 1964 are not subject to appeal. See Section 201(c) of the CIA Retirement Act of 1964 for Certain Employees (50 U. S. C. 403 Note). The recruitment of employees from lists maintained by the Commission of course would serve to identify those individuals as CIA employees. The establishment or approval of CIA positions by the Commission in some instances would indicate areas of CIA activity where CIA interest in such activities must be classified and protected from disclosure. These considerations apply not only with respect to employees recruited for intelligence gathering duties and intended to be placed in situations where their CIA employment is not to be revealed. Our career employee concept contemplates that all employees are subject to reassignment and to assignment abroad.

## II. Current agency personnel policy, practices, and procedures for the excepted positions.

### A. Recruitment and selection.

#### 1. Use of announcements or other publicity.

External announcements of job opportunities include: advertising in newspapers, professional and technical journals, the College Placement Annual, job listings in professional societies, placement publications, recruitment literature in Federal Job Information Centers and the Armed Forces outplacement centers in military bases, and job announcements sent to academic departments, student advisors and placement officers. Internally, job opportunities are publicized through a vacancy notice system and through vocational counseling activities. The Agency tries to fill vacancies by internal reassignment if possible.

#### 2. Positive recruiting methods.

Full-time recruiters for both professional and clerical/technical positions are in 15 cities throughout the U.S. Recruiting methods also include: contact with placement officers in colleges and universities and with faculty members in "disciplines of interest", contact with military installations, attendance at professional society meetings, use of Federal and State employment services, attendance at "career days" and "job fairs" at all levels from high school up, and active recruitment of minority groups. Once the candidate has been identified, recruitment begins with an interview.

#### 3. Job evaluation system and qualification standards.

The CIA's job evaluation system is based on that established under the classification provisions of title 5, U.S.C. The basic occupational coding system of the Civil Service Commission for Federal positions has been adapted for CIA positions. Position grades, grade definitions, the pay schedule, the step-rate system, and premium pay rates are used as well as other benefits applicable to General Schedule employees. CSC position standards are used in classification of CIA jobs as far as applicable. Agency position standards are used for jobs not covered, including super-grade jobs, intelligence and operations positions, and other positions. Where standards are not available, job

comparison is a usual method of classification. Classification standards of the CSC are followed. The CIA provides for a periodic classification review at least every three years. The CSC excepted the CIA from its classification system in 1949, and it was not until 1978 by statute later that year.

#### 4. Examining methods and techniques.

a. Written tests and other ranking devices. A Professional Applicant Test Battery is used to assess qualities of professional applicants. Background evaluation is based on a review of transcript certificates, honors achieved, and other relevant evidence. Proficiency tests are used to verify claimed and measurable skills in foreign languages, shorthand, typing, etc. A general aptitude test is used for clerical applicants. Specialized aptitude tests are used for technical fields of work, such as computer operations, communications, photo interpretation, etc. Tests, except for basic skills tests, do not have no absolute value and are not used in ranking applicants. Final decisions rest on multiple appraisals of all evidence.

b. Registers or other employment lists. Though registers are maintained, "significant qualification data" are saved in a "computerized Qualification Inventory." Applicant file summaries are kept.

#### 5. Selection and appointment practices.

a. Veteran preference. The CIA, though exempt by law from automatic application of veteran preference in practice gives preference to the veteran where possible. "...in instances of approximately equal qualifications, the veteran will be considered the non-veteran."

b. EEO. Special recruitment efforts are made to attract minority applicants. Special attention is paid to minority applications and "component performance in minority employment." "Components which appear to be lagging become the object of follow-up action by the Agency Equal Employment Opportunity Office."

### B. Promotion policies.

"For many years the Agency has operated under a policy of competitive selection for promotion." An employee's

performance, qualifications, length of service, and value to the Agency are competitively evaluated. Those employees who have been downgraded without personal cause are given competitive consideration for promotion to their former grades. Each Career Service is a competitive area for promotion for the employees in that Service. Separate areas of competition may be established in that Service if necessary because of differences in occupation or function. Promotions are limited to one-grade advancements, except by specific recommendations of the Director of Personnel. Competitive promotion evaluation of personnel in grades GS-09 through GS-14 is done at least annually. Employees in GS-08 and below are evaluated for promotion when the heads of Career Services consider it appropriate. Competitive evaluation is not required for these grades, but the principle of competitive evaluation is followed in selection for promotion.

Separations of surplus personnel are handled under the authority of the National Security Act of 1947 as amended. The surplus employee is notified in writing of his proposed separation and his right to submit within ten days a request for an opportunity to present orally or in writing his reasons for not being declared surplus. The Director of Personnel may, after review, ask the head of the employee's office to reconsider the declaration. Attempts will be made to place the surplus employee elsewhere in the Agency. If these attempts fail, the Director of Personnel recommends to the CIA's Director that the employee be declared surplus. At the same time the Director of Personnel informs the employee in writing of this action and of the employee's right to present information to the CIA Director within ten days. When he is informed of an employee's being declared surplus, the Director may refer the action to the Inspector General, terminate the employee, or disapprove of the recommendation of the Director of Personnel. Whether the employee is removed or not, he is notified in writing by the Director of Personnel.

Voluntary separations may result from varying reasons, including inefficiency, failure to meet Agency security or medical standards, misconduct, etc. During the trial period, an employee may be separated after a review by the Director of Personnel. After completion of the trial period, the employee, upon notice of separation, will have the opportunity to answer orally or in writing within ten days. Under statutory authority, the Director may separate an employee immediately, with or without appeal rights, when necessary in the interests of the United States.

D. Agency comment on its use of merit principles.

CIA quotes from a letter from the Chairman of the Civil Service Commission to the Director of the Office of Management and Budget: "The Commission, recognizing the necessary qualifications and caliber of persons holding career-type appointments in the CIA, considers the non-competitive entry of such persons into the competitive service as compatible with merit system principles. The on-site observations of a Commission team assure us that the operations of the CIA personnel system are consistent with merit principles." This letter was written on December 3, 1971.

E. Additional information submitted: Personnel operating policies for attorney positions.

The Agency seeks to recruit some of its lawyers internally, because the intelligence function is an Agency specialty. They also recruit lawyers with or without legal experience who are well qualified on the basis of their law school records, professional backgrounds, and personal qualities. In establishing grades for hiring and promoting, the Agency seeks to be competitive with government practice generally. Cover and security considerations may require special recruiting and assignment. The Agency recommends continued exception.

III. Agency analysis of need for continuing the exception.

A. Comparison of present and original conditions.

The Agency feels that employment conditions and staff problems are essentially the same as they were at the time of statutory exception. The Agency functions and activities still largely bear on national defense. Recruitment, establishment of positions, their number and type, acknowledgement of certain people as CIA employees, and other personnel policies are still classified.

B. Agency reasons for continuing the exception.

The Agency says that it is essential that its statutory exception be continued because of the continuing need for secrecy. The Director's broad authority to terminate employees does not require changes from which administrative appeals may result. Under the CIA Retirement Act of 1964, termination decisions by the Director are not subject to appeal. Also, recruitment of employees from Commission registers would identify those individuals as CIA employees. Having the Commission establish or approve CIA positions would sometimes indicate areas of CIA activity where they should not be disclosed. Since all employees, not only those recruited for intelligence gathering, are subject to reassignment abroad, their number and positions are not to be revealed.

C. Agency recommendation.

The Agency recommends continued exception.

U.S. Civil Service Commission  
Opinion on Continued Statutory Exception from the  
Competitive Service of the Central Intelligence Agency

U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
(Commissioned Corps)

Although the organic legislation establishing the Central Intelligence Agency did not provide a specific exception from the competitive service for CIA employees, the Civil Service Commission placed them in Schedule A. In 1949, the CIA was excepted by statute which provided that appropriated or nonappropriated funds might be spent to obtain "personal services without regard to limitations on types of persons to be employed..." The CIA is also exempt from reporting and publishing requirements, and the Director may terminate any employee immediately if he deems it necessary.

The CIA has its own employment system, which appears with respect to the operations visible to us to be a working merit system. It provides for written examinations, a competitive promotion plan, and procedures for removal designed to protect the employee.

Because of the covert nature of some CIA positions, these positions cannot be subject to the laws and regulations governing appointment and removal in the competitive service. Moreover, the agency states that it is necessary to have some mobility between the "undercover" positions and those which are openly acknowledged. Although the civil service laws and regulations could be applied to those positions for which the CIA accepts applications on an open basis, the Commission is of the opinion that a single, excepted personnel system for CIA best meets the needs of the agency.

I. Identification of and basis for the exception. (Section based on information submitted by agency in its report and supplemented by research of Civil Service Commission staff.)

A. Statutory citation.

Section 16, P.L. 17 (40 Stat. 87), 1917.

B. Coverage.

The entire Commissioned Corps of the National Oceanic and Atmospheric Administration is excepted.

C. Position coverage.

Currently 340 officers are on active duty. The strength of the Corps is controlled by Congress through the annual appropriations.

D. Historical basis for the exception.

The Commissioned Corps of NOAA formerly was part of the Coast and Geodetic Survey, which dates in one form or another back to 1807. During its early history, army or navy officers served tours of duty with it. This informal use of army or navy officers led gradually to the development of a separate uniformed corps. Section 16 of P.L. 17, 40 Stat. 87, provided for the transfer of the Coast and Geodetic Survey officers to the War and Navy Departments during periods of national emergency. The President at that time was authorized to appoint the field officers of the Survey with the advice and consent of the Senate. In 1920 an act (41 Stat. 603) authorized the same pay and allowances for Survey officers as for officers of the Navy with whom they held relative rank. This authorization, however, was repealed in 1962 (76 Stat. 499). The sections referring to pay and allowances for the uniformed services in title 32 now refer also to the Commissioned Corps.

In 1956, Congress adopted parts of title 10 for the CGS to provide that the authority vested by title 10 in the Secretary of Defense with respect to provisions of law that apply to the Armed Forces "shall be exercised with respect to the CGS, by the Secretary of Commerce or his designee."

The CGS in 1965 became part of the Environmental Science Services Administration (ESSA), established by Reorganization Plan 2 of