

# CRS Report for Congress

## **Federal Personnel: Conversion of Employees from Appointed (Noncareer) Positions to Career Positions in the Executive Branch**

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# Federal Personnel: Conversion of Employees from Appointed (Noncareer) Positions to Career Positions in the Executive Branch

## Summary

The term “burrowing in” is sometimes used to describe an employment status conversion whereby an individual transfers from a federal appointed (noncareer) position to a career position in the executive branch. Critics of such conversions note that they often occur during the transitional period in which the outgoing administration prepares to leave office and the incoming administration prepares to assume office. Conversions are permissible when laws and regulations governing career appointments are followed, but they can invite scrutiny because of the differences in the appointment and tenure of noncareer and career employees.

Appointments to career positions in the executive branch are governed by law and regulations that are codified in Title 5 of the *United States Code* and Title 5 of the *Code of Federal Regulations*, and are defined as personnel actions. In taking a personnel action, each department and agency head is responsible for preventing prohibited personnel practices; for complying with, and enforcing, applicable civil service laws, rules, and regulations and other aspects of personnel management; and for ensuring that agency employees are informed of the rights and remedies available to them. Such actions are required to adhere to the merit principles and prohibited personnel practices that are codified at 5 U.S.C. §2301(b) and §2302(b), respectively. These principles and practices are designed to ensure that the process for selecting career employees is fair and open (competitive), and without political influence. The Office of Personnel Management (OPM) has general authority to examine conversions. Additionally, from March 17, 2008, through January 20, 2009, conversions of employees from noncareer positions to career positions in the competitive service and the career Senior Executive Service are subject to pre-appointment review by OPM. Certain senior politically appointed officers are prohibited from receiving financial awards during the Presidential Election Period, defined in statute and currently covering June 1, 2008, through January 20, 2009.

As part of its oversight of government operations, Congress also monitors conversions. In the 110<sup>th</sup> Congress, staffing at the Departments of Homeland Security (DHS) and Justice (DOJ) has been of particular interest. Both departments received letters from Members of Congress reminding them to examine conversions: the Chairman of the House Committee on Homeland Security, Representative Bennie Thompson, wrote to the DHS Secretary in February 2008, and Senators Dianne Feinstein and Charles Schumer, members of the Senate Committee on the Judiciary, wrote to the Attorney General in July 2008 about this issue. In assessing the current situation, Congress may decide that the existing oversight is sufficient. If Congress determines that additional measures are needed, OPM, and the departments and agencies, could be directed to include information on conversions in their annual performance plans accompanying the budget justifications. The Government Accountability Office and OPM could be asked to explore options that might result in their recommending and taking timely remedial actions that are seen as necessary to address conversions that occurred under improper procedures. This report will be updated as events dictate.

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# Federal Personnel: Conversion of Employees from Appointed (Noncareer) Positions to Career Positions in the Executive Branch

## Background

Some individuals, who are serving in appointed (noncareer) positions in the executive branch, convert to career positions in the competitive service, the Senior Executive Service (SES), or the excepted service.<sup>1</sup> This practice, commonly referred to as “burrowing in,” is permissible when laws and regulations governing career appointments are followed. While such conversions may occur at any time, frequently they do so during the transition period when one administration is preparing to leave office and another administration is preparing to assume office.

Generally, these appointees were selected noncompetitively and are serving in such positions as Schedule C, noncareer SES, or limited tenure SES<sup>2</sup> that involve policy determinations or require a close and confidential relationship with the department or agency head and other top officials. Many of the Schedule C appointees receive salaries at the GS-12 through GS-15 pay levels.<sup>3</sup> The noncareer and limited tenure members of the SES receive salaries under the pay schedule for senior executives that also covers the career SES.<sup>4</sup> Career employees, on the other

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<sup>1</sup> Appointments to career competitive service positions include requirements for approved qualification standards, public announcement of job vacancies, rating of applicants, and completion of a probationary period and three years of continuous service; career SES positions include review by the Office of Personnel Management (OPM) and certification of a candidate’s ability by a Qualifications Review Board; and career excepted service positions allow agencies to establish their own hiring procedures, but require those systems to conform to merit system principles and veterans preference.

<sup>2</sup> Appointments to SES positions that have a limited term may be for up to 36 months, and those that are to meet an emergency (unanticipated or urgent need) may be for up to 18 months.

<sup>3</sup> GS refers to the General Schedule, the pay schedule that covers white-collar employees in the federal government. As of January 2008, the salaries from GS-12, step 1, to GS-15, step 10, in the Washington, DC, pay area ranged from \$69,764 to \$149,000.

<sup>4</sup> Salaries for members of the SES are determined annually by agency heads “under a rigorous performance management system,” and range from the minimum rate of basic pay for a senior level (SL) employee (120% of the minimum basic pay rate for GS-15; \$114,468, as of January 2008) to either EX Level III (\$158,500, as of January 2008), in agencies whose performance appraisal systems have not been certified by OPM as making “meaningful  
(continued...)

hand, are to be selected on the basis of merit and without political influence following a process that is to be fair and open in evaluating their knowledge, skills, and experience against those of other applicants. The tenure of noncareer and career employees also differs. The former are generally limited to the term of the administration in which they are appointed or serve at the pleasure of the person who appointed them. The latter constitute a work force that continues the operations of government without regard to the change of administrations.

Paul Light, a professor of government at New York University, who has studied appointees over the past several administrations, reportedly believes that the pay, benefits, and job security of career positions underlie the desire of individuals in noncareer positions to “burrow in.”<sup>5</sup> The President of the Senior Executives Association, Carol Bonosaro, echoed this viewpoint in stating the following:

Remember, not everybody who comes in is going to have a very high-profile job where they are going to be able to leave and make really good money.... Not everyone has had necessarily a strong enough background to go back out. They may just have been a campaign worker.<sup>6</sup>

Beyond the fundamental concern that the conversion of an individual from an appointed (noncareer) position to a career position may not have followed the legal and regulatory requirements, “burrowing in” raises other concerns. When the practice occurs, there may be these perceptions (whether valid or not): that an appointee converting to a career position may limit the opportunity for other employees (who were competitively selected for their career positions, following examination of their knowledge, skills, and experience) to be promoted into another career position with greater responsibility and pay; or that the individual who is converted to a career position may seek to undermine the work of the new administration whose policies may be at odds with those that he or she espoused when serving in the appointed capacity. Both perceptions may increase the tension between noncareer and career staff, thereby hindering the effective operation of government at a time when the desirability of creating “common ground” between these staff to facilitate government performance has been emphasized.<sup>7</sup>

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<sup>4</sup> (...continued)

distinctions based on relative performance,” or EX Level II (\$172,200, as of January 2008), in agencies whose performance appraisal systems have been so certified.

<sup>5</sup> Christopher Lee, “Political Appointees Burrowing In,” *Washington Post*, October 5, 2007, p. A19.

<sup>6</sup> Ibid.

<sup>7</sup> See, for example, Maranto, Robert, *Beyond a Government of Strangers: How Career Executives and Political Appointees Can Turn Conflict to Cooperation*, Lanham: Lexington Books, 2005; and Dana Michael Harsell, “Working With Career Executives to Manage for Results,” in IBM Center for The Business of Government, *Essays on Working in Washington*, The Center: January 2005, pp. 34-44.

## Selected Law and Regulations

Appointment to a career position in the executive branch is governed by law and regulations, and is defined in law as a type of personnel action.<sup>8</sup> In taking any personnel action, including appointment to a career position, each department and agency head is responsible for preventing prohibited personnel practices; for complying with, and enforcing, applicable civil service laws, rules, and regulations and other aspects of personnel management; and for ensuring that agency employees are informed of the rights and remedies available to them. Personnel actions must adhere to the nine merit principles and 12 prohibited personnel practices that are codified in Title 5 of the *United States Code* at 5 U.S.C. §§2301(b) and 2302(b), respectively. **Table 1** below presents these principles and practices.

**Table 1. Merit System Principles and Prohibited Personnel Practices**

Merit System Principles	Prohibited Personnel Practices
Recruit from qualified individuals to achieve a workforce from all segments of society; selection and advancement solely on the basis of relative ability, knowledge, and skills; and assure equal opportunity through fair and open competition.	Discriminating for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.
Fair and equitable treatment of employees and applicants for employment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.	Soliciting or considering any recommendation or statement, oral or written, with respect to any individual who requests, or is under consideration for, any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it, and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of such individual, or an evaluation of the character, loyalty, or suitability of such individual.
Equal pay for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition for excellence in performance.	Coercing the political activity of any person (including the providing of any political contribution or service) or taking any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
Employee adherence to high standards of integrity, conduct, and concern for the public interest.	Deceiving or willfully obstructing any person with respect to such person's right to compete.
Efficient and effective use of the federal work force.	Influencing any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

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<sup>8</sup> The law, codified at 5 U.S.C. §2302(a), defines personnel actions as appointments; promotions; adverse actions or other disciplinary or corrective action; details, transfers, or reassignments; reinstatements; restorations; reemployment; performance evaluations; decisions concerning pay, benefits, or awards, concerning education or training, if such may reasonably be expected to lead to a personnel action; a decision to order psychiatric testing or examination; and any other significant change in duties, responsibilities, or working conditions.

Merit System Principles	Prohibited Personnel Practices
<p>Retain employees on the basis of the adequacy of their performance; correct inadequate performance; and separate those who cannot or will not improve performance to meet required standards.</p>	<p>Granting any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.</p>
<p>Provide employees effective education and training to improve organizational and individual performance.</p>	<p>Appointing, employing, promoting, advancing, or advocating such, in or to a civilian position any individual who is a relative of such employee if such position is in the agency in which such employee is serving as a public official or over which such employee exercises jurisdiction or control as an official.</p>
<p>Protect employees against arbitrary action, personal favoritism, or coercion for partisan political purposes, and prohibit the use of official authority or influence to interfere with or affect the result of an election or a nomination for election.</p>	<p>Taking or failing to take, or threatening such, a personnel action with respect to any employee or applicant for employment because of any disclosure of information, including to the Special Counsel or an agency Inspector General, by the individual which he or she reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; provided the disclosure is not specifically prohibited by law and if such information is not specifically required by executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.</p>
<p>Protect employees against reprisal for the lawful disclosure of information reasonably believed to evidence a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.</p>	<p>Taking or failing to take, or threatening such, any personnel action against any employee or applicant for employment because of the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation; testifying for, or otherwise lawfully assisting, any individual in the exercise of any right referred to above; cooperating with or disclosing information to, the Inspector General of an agency, or the special counsel, in accordance with the law; or for refusing to obey an order that would require the individual to violate a law.</p>
	<p>Discriminating for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the individual or the performance of others; except this shall not prohibit an agency from taking into account, in determining suitability or fitness, any conviction of the employee or applicant for any crime under federal, state, or District of Columbia law.</p>
	<p>Knowingly taking, recommending, or approving, or failing to do such, any personnel action if the taking of, or failing to take, such action would violate a veterans' preference requirement.</p>
	<p>Taking or failing to take any other personnel action if such would violate any law, rule, or regulation implementing, or directly concerning, the merit system principles.</p>

Department and agency heads also must follow regulations, codified at Title 5 of the *Code of Federal Regulations*, that govern career appointments. Among these are Civil Service Rules 4.2 and 7.1:

**Sec. 4.2. Prohibition against racial, political or religious discrimination.** No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or [sic] applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation, or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation, or religious beliefs, except as may be authorized or required by law.

**Sec. 7.1 Discretion in filling vacancies.** In his discretion, an appointing officer may fill any position in the competitive service either by competitive appointment from a civil service register or by noncompetitive selection of a present or former Federal employee, in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

Other regulations provide that Office of Personnel Management (OPM) approval is required before employees in Schedule C positions may be detailed to competitive service positions, public announcement is required for all SES vacancies that will be filled by initial career appointment, and details to SES positions that are reserved for career employees (known as Career-Reserved) may only be filled by career SES or career-type non-SES appointees.<sup>9</sup>

During the period June 1, 2008, through January 20, 2009, defined as the Presidential Election Period, certain appointees are prohibited from receiving financial awards.<sup>10</sup> These appointees, referred to as senior politically appointed officers, are

- individuals serving in noncareer SES positions;
- individuals serving in confidential or policy determining positions as Schedule C employees; and
- individuals serving in limited term and limited emergency positions.

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<sup>9</sup> These regulations are codified at 5 C.F.R. §300.301(c), 5 C.F.R. §317.501, and 5 C.F.R. §317.903(c), respectively.

<sup>10</sup> 5 U.S.C. §4508 and 5 C.F.R. §451.105.



## Oversight of Conversions from Noncareer to Career Positions

When a department or agency, for example, converts an employee from an appointed (noncareer) position to a career position without any apparent change in duties and responsibilities, or that appears to be tailored to the individual's knowledge and experience, such actions may invite scrutiny. OPM and the Government Accountability Office (GAO) each conduct oversight related to conversions of employees from noncareer to career positions to ensure that proper procedures have been followed.

In addition to its general oversight authority, OPM conducts pre-appointment reviews of certain appointments to career positions in the competitive service and the SES during the transition. The agency announces this review in a memorandum to the heads of departments and agencies early in the year in which the presidential election occurs. OPM released the memorandum covering the 2008 transition on March 17, 2008, and it is effective from that date through January 20, 2009. According to the memorandum, OPM must specifically authorize the following actions by a department or agency:

Proposed competitive service appointment actions that involve a current or former (within the last five years) incumbent of an executive branch position excepted from the competitive service under Schedule C.

Proposed competitive service appointment actions that involve a current or former (within the last five years) Noncareer Senior Executive Service (SES) appointee.<sup>11</sup>

When a department or agency proposes selections to the SES that involve a current or former Schedule C or noncareer SES appointee, OPM will conduct merit reviews before the candidate is formally presented to a Qualifications Review Board.<sup>12</sup>

A "Pre-Appointment Review Checklist" is included as an attachment to the OPM memorandum and lists the documentation that a department's or agency's Director of Human Resources must submit to OPM along with a dated cover letter. The documentation includes the following:

- The position descriptions for the candidate's current or former appointment and the proposed appointment, including information

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<sup>11</sup> U.S. Office of Personnel Management, Memorandum for Heads of Departments and Agencies, from Linda M. Springer, Director, *Appointments and Awards During the 2008 Presidential Election Period*, March 17, 2008, Attachment 1. (Hereafter referred to as *Appointments and Awards During the 2008 Presidential Election Period*.)

<sup>12</sup> According to OPM, "Qualifications Review Boards (QRBs) are OPM-administered independent boards of senior executives that assess the executive core qualifications of SES candidates [that] must certify that an SES candidate has the broad leadership skills to be successful in a variety of SES positions."

on why and how the respective positions were established and the relationship between the positions.

- A statement that explains the disposition of the proposed selectee's current Schedule C or noncareer SES position, if vacated.
- The complete file for the proposed merit selection, including the vacancy announcement published in USAJOBS on OPM's website; recruiting sources and advertising methods used in addition to USAJOBS; the job analysis, justification of any selective factor, and rating schedule/crediting plan; applications from all candidates who applied with information on how each was rated; information on how the regulatory requirements of the Interagency Career Transition Assistance Program were met; and the referral list(s) issued to the selecting official and the completed referral list documenting the tentative selection.
- A description of candidate sources considered other than from a competitive vacancy announcement and the resulting referral lists forwarded to the selecting official, if any.
- The name, title, telephone number, and type of appointment (e.g., career SES, Schedule C, presidential appointee) of the selecting official.

OPM cautions departments and agencies not to

[C]reate or announce a competitive service vacancy for the sole purpose of selecting a current or former Schedule C or Noncareer SES employee.

[R]emove the Schedule C or Noncareer SES elements of a position solely to appoint the incumbent into the competitive service.<sup>13</sup>

To assist departments and agencies, OPM also publishes the *Presidential Transition Guide to Federal Human Resources Management* every four years.<sup>14</sup> The current edition, released in June 2008, includes detailed guidance on standards of ethical conduct, appointments, and compensation for federal employees.

GAO's oversight focuses on review, after the fact, of conversions from noncareer to career positions. The agency has begun to collect data from executive branch departments and agencies on such conversions that have occurred since its last evaluation was published in May 2006. The results of that audit covered the period May 2001 through April 2005, and provide the most current retrospective data. The evaluation found that, of 130 conversions at GS-12 or higher,

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<sup>13</sup> Appointments and Awards During the 2008 Presidential Election Period, Attachment 4.

<sup>14</sup> U.S. Office of Personnel Management, *Presidential Transition Guide to Federal Human Resources Management*, June 2008, available at [<http://www.chcoc.gov/Transmittals/Attachments/trans1300.pdf>].

for 37 of these conversions it appears that agencies did not follow proper procedures or agencies did not provide enough information for us to make an assessment. For 18 of the 37 of these conversions, it appears that agencies did not follow proper procedures. Some of the apparent improper procedures included: selecting former noncareer appointees who appeared to have limited qualifications and experience for career positions, creating career positions specifically for particular individuals, and failing to apply veteran's preference in the selection process.<sup>15</sup>

The GAO findings are examined closely by Congress, as evidenced by correspondence sent to the OPM director by Representatives Henry Waxman (then the Ranking Member, and now the Chairman of the House Committee on Oversight and Government Reform) and Danny Davis (then the Ranking Member, and now the Chairman of the House Subcommittee on Federal Workforce and Agency Organization) following the most recent evaluation. In a letter dated May 25, 2006, both Members directed OPM's attention to the GAO evaluation and urged the agency to consider whether its procedures for pre-appointment review of conversions "are sufficient to prevent further abuses." The letter emphasized that, "The merit-based federal workforce is critical to ensuring a competent government that will enforce laws consistently across administrations" and stated that selecting political appointees on the basis of favoritism jeopardizes this.<sup>16</sup>

## The Current Transition Period

Members and committees of Congress scrutinize conversions as part of their oversight of government operations. Particular focus in the 110<sup>th</sup> Congress, for example, has been on staffing at the Departments of Homeland Security (DHS) and Justice (DOJ), especially in the wake of the leadership and management deficiencies at DHS during and after Hurricane Katrina, and improper procedures used by DOJ staff in selecting and removing United States attorneys.<sup>17</sup>

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<sup>15</sup> U.S. Government Accountability Office, *Personnel Practices; Conversions of Employees from Noncareer to Career Positions May 2001-April 2005*. GAO-06-381 (Washington: GAO, May 2006), pp. 4-5. For a discussion of findings from earlier GAO evaluations, see CRS Report RS20730, *Presidential Transitions and Administrative Actions*, by L. Elaine Halchin, June 5, 2001.

<sup>16</sup> Letter from Representatives Henry A. Waxman and Danny K. Davis, to Linda M. Springer, Director of the Office of Personnel Management, May 25, 2006.

<sup>17</sup> See, for example, U.S. Congress, House Select Bipartisan Committee to Investigate the Preparation For and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation For and Response to Hurricane Katrina*, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, February 15, 2006); U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A Nation Still Unprepared. Special Report*, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 109-322 (Washington: GPO, 2006); and U.S. Department of Justice, Office of Professional Responsibility and Office of the Inspector General, *An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General*, July 28, 2008.

In a January 2008 report to the DHS Secretary on the transition, the Homeland Security Advisory Council recommended that the department “consider current political appointees with highly specialized and needed skills for appropriate career positions.”<sup>18</sup> That same month, an entry in the DHS leadership journal, published on the department’s website, discussed transition planning. Then Acting Deputy Secretary Paul Schneider wrote that,

as part of this planning, we’re filling some of the top jobs previously held by political appointees with career professionals. For example, last year, we made Jay Ahern, a 30-year veteran of the federal government, second-in-command of our Customs and Border Protection component. Just recently, at our Transportation Security Administration, we filled our deputy slot with Gale Rossides, who also has had a 30-year federal career and has served at TSA since its inception six years ago. And we are training and cross-training such senior career people to ensure that DHS will have the continuity of leadership it needs following the transition.<sup>19</sup>

The *Wall Street Journal* discussed the initiative in a January 11, 2008, article noting that DHS “has begun an unusual — and potentially controversial — effort to smooth the transition to a new administration.”<sup>20</sup> On February 7, 2008, Representative Bennie Thompson, Chairman of the House Committee on Homeland Security, wrote a letter to DHS Secretary Michael Chertoff. He reiterated his concerns about personnel vacancies at DHS and stated these views:

I am sure that you would agree that it would be inappropriate to fill career non-political executive level positions with political appointees absent an open and fully competitive process. While I understand that some could argue that these individuals may be well-qualified and can provide continuity during a transition period, others could well argue that to permit political appointees to occupy non-political positions could be viewed by some as an attempt to insulate political appointees from the vagaries of the political appointment system and provide an internal obstruction to the policies of the new administration. Clearly, the latter interpretation is deeply troubling.<sup>21</sup>

Representative Thompson also requested that Secretary Chertoff “issue a policy directive to prohibit the ‘burrowing in’ of political appointees into non-political career positions within the Department.”<sup>22</sup> CRS research did not locate a publicly available record of any such directive.

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<sup>18</sup> U.S. Department of Homeland Security, Homeland Security Advisory Council, *Report of the Administration Transition Task Force*, January 2008, p. 6.

<sup>19</sup> U.S. Department of Homeland Security, Leadership Journal, “Transition: Heads We Win, Tails You Lose,” January 19, 2008, available at [<http://www.dhs.gov/journal/leadership/2008/01/transition-heads-we-win-tails-you-lose.html>].

<sup>20</sup> Siobhan Gorman, “Politics and Economics: Homeland Security Handoff; Career Employees Move Into Positions Once Held by Political Appointees,” *Wall Street Journal*, January 11, 2008, p. A5.

<sup>21</sup> Letter from Representative Bennie G. Thompson to Michael Chertoff, Secretary of the Department of Homeland Security, February 7, 2008.

<sup>22</sup> *Ibid.*

With regard to personnel actions at the Department of Justice, Senators Dianne Feinstein and Charles Schumer, members of the Senate Committee on the Judiciary, reportedly wrote a letter to Attorney General Michael Mukasey on July 24, 2008. According to the *Washington Post*, the letter asked the Attorney General to “exercise vigilance” against political appointees moving into career positions, and stated that

When unqualified political appointees take over jobs better left to skilled candidates, it threatens the agency’s professionalism and independence. We don’t need ideological stowaways undermining the work of the next administration.<sup>23</sup>

## Considerations to Enhance Oversight

In assessing the current situation, Congress may decide that the existing system of oversight is sufficient. However, if Congress determines that additional measures are needed to further ensure that conversions from appointed (noncareer) positions to career positions are conducted according to proper procedures and transparent, the following options could be considered:

- OPM could be directed by Congress to report on the results of its examinations of conversions, including those that are subject to pre-appointment review. The report could be included in the agency’s annual performance plan that accompanies the budget justification submitted to the House and Senate Committees on Appropriations each February. It could provide information on conversions that did not follow proper procedures and the remedial actions taken, and discuss whether any amendments to current law are needed to ensure that the legal and regulatory requirements are met. OPM is authorized to review awards programs at departments and agencies. Congress could direct OPM to review awards granted in the executive branch and certify in its annual performance plan that awards were not granted during the Presidential Election Period.
- OPM could be directed by Congress to report on whether any changes are needed in the time period covered by the agency’s pre-appointment review of conversions, or in the Presidential Election Period, that restricts awards to senior politically appointed officers. OPM issued its memorandum on pre-appointment review for 2000 on February 18; for 2004, on March 18; and for 2008, on March 17. As discussed above, the dates of the Presidential Election Period are defined by law, and in a presidential election year, cover the period from June 1 through the following January 20.
- Congress could mandate that the annual performance plans that accompany department and agency budget justifications submitted to Congress in February of each year include information on

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<sup>23</sup> Carrie Johnson, “Mukasey Asked to Watch for Lingerers,” *Washington Post*, July 25, 2008, p. A8.

conversions during the applicable fiscal year. The performance plan submitted in the month following the inauguration of the President could include a certification that awards were not granted during the Presidential Election Period.

- Departments and agencies could mandate that all officials with hiring authority be required to annually certify, in writing, that they understand the legal and regulatory requirements on the conversion of employees from appointed (noncareer) positions to career positions and on the prohibition on awards during the Presidential Election Period. A training session, that could be available electronically, could be provided to those officials who desire to review their knowledge and understanding of the procedures. A hiring official's failure to follow the proper procedures could be noted on the individual's performance evaluation.
- GAO and OPM could jointly explore options for the personnel agency, and the departments and agencies, to expedite the transmittal of information on conversions to GAO so that any necessary remedial actions can be recommended by GAO and taken by OPM quickly, and closer to the time that the conversions occurred.