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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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APRIL 20, 1979

B-115398

The Honorable Abraham Ribicoff  
Chairman, Committee on Governmental Affairs  
United States Senate

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Dear Mr. Chairman:

Your October 26, 1978, letter requested our assistance in providing oversight of the transition and establishment of the Merit Systems Protection Board, Office of Personnel Management, and the Federal Labor Relations Authority. As a result, we now have staff at these agencies to monitor their activities and implementation of the Civil Service Reform Act.

DLG-00028

DLG-00084

As part of our monitoring activities we reviewed the budget, current staffing and operations of the Board and the Office of Special Counsel. In our opinion, with their present staffing and funding, the Board and particularly the Special Counsel do not have adequate resources to establish full operations and effectively carry out the duties and responsibilities assigned to them under the Civil Service Reform Act. As a result, the intent of the legislation cannot be achieved. We believe the Board and Special Counsel should receive immediate attention and action on their budget requests. Your attention to this matter may help.

The Board and the Special Counsel were established on January 1, 1979, by Reorganization Plan number 2 of 1978. The plan transferred the adjudicatory, appellate and certain merit system enforcement functions previously performed by the Civil Service Commission. Also transferred were those personnel, funds and other resources related to the functional transfers under the reorganization plan. A total of 289 positions were initially transferred to the Board and 19 positions to the Special Counsel to perform these functions. Subsequently, the functions and responsibilities of the Board and Special Counsel were expanded and strengthened under the Civil Service Reform Act of 1978 which took effect on January 11, 1979. However, no personnel or additional funds were transferred. As a result, certain program responsibilities and functions of the Board and Special Counsel have not been implemented because of inadequate resources. Following are those functions and responsibilities which we feel do not



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have adequate resources. We have discussed these matters with the Special Counsel, his staff, and staff of the Board.

The Office of Special Counsel

The Special Counsel currently lacks the staff and resources to timely review and investigate complaints and allegations of wrongdoing, initiate independent investigations of possible prohibited personnel practices and perform necessary management and regulatory functions.

Currently the Special Counsel only has a total professional staff of six attorneys and three investigators (three additional investigators are being recruited). The Special Counsel has requested resources for an additional 43 positions which he feels is the minimum number needed to initially staff headquarters and 3 field offices.

Because of limited staffing, no field offices have yet been established. According to the Special Counsel, the small staff size and limited funds make it virtually impossible to timely and adequately initiate investigations on allegations at locations outside the Washington, D.C., area. Approximately 80 percent of the complaints and allegations being received are from outside the Washington, D.C., area. Many of these cases involve potentially serious violations of reprisals and other prohibited personnel practices. The Special Counsel has not requested Board or Office of Personnel Management assistance in investigating complaints at departmental or agency field locations because it could create an appearance of conflict and dependence. The Special Counsel estimates that with present resources it can process only about 10 percent of the complaints and allegations being received. As of March 16, 1979, 325 cases were pending before the Special Counsel.

The Special Counsel also does not have the staff or resources needed to initiate in the absence of an allegation independent investigations into possible prohibited personnel practices. The Special Counsel told us that there are several such situations which he is already aware of which should be investigated but which have not been due to inadequate resources. The Special Counsel has also delayed the development of proposed regulations because available professional staff have been assigned to process cases. In addition, several key management positions remain vacant. The Deputy

Special Counsel, Associate Special Counsel for Prosecution and Associate Special Counsel for Operations have not yet been filled.

Without additional staff and resources, the Special Counsel cannot act timely and adequately on allegations of personnel system abuse and other violations. Most importantly, at this time, however, is the need for the Special Counsel to establish its credibility by quickly and effectively investigating and acting on matters brought to its attention. We believe that without adequate resources the current and future effectiveness of the Special Counsel is likely to be seriously impaired.

#### The Merit Systems Protection Board

The Board, like the Special Counsel, does not have the personnel or resources to effectively carry out the full range of its statutory functions and responsibilities. As a result, the Merit Systems Review function has not been staffed or implemented, other program functions are understaffed, and the Board continues to be dependent for certain administrative services on the Office of Personnel Management. Also, a large backlog of cases carried over from the former Federal Employee Appeals Authority and Appeals Review Board continues to place additional burdens on the Board's limited resources.

One of the most important functions for which the Board is responsible is the conduct of special studies relating to the adequacy and fairness of merit systems in the Federal service. Because of inadequate staff, the Board has not assigned or recruited staff to perform this function. In its budget statements, the Board explained that several program functions, including merit systems studies and review, were assigned under the Reorganization Plan and congressionally affirmed under the Reform Act, but no personnel were transferred to perform the functions. An initial minimum staffing requirement of 10 positions for the Merit Systems Review function was included in the Board's fiscal year 1979 supplemental budget request. However, according to the Board's Managing Director, the requested supplemental positions and funding are not expected for several months. Additionally, in the Board's analysis of the adequacy of its resources in light of its statutory responsibilities several offices, such as the Office of General Counsel and Office of Opinions are understaffed in terms of the Board's expanded responsibilities under the Civil Service Reform Act.

The Board currently does not have the capability to provide full administrative support for its headquarters and field offices. Personnel to perform these functions were not transferred from the former Civil Service Commission. Payroll, personnel, accounting, and other support services are now provided by the Office of Personnel Management. Until staff and resources are available, the Board will continue to rely on the Office of Personnel Management for administrative support.

The Board is responsible for deciding appeal cases which were pending before the former Federal Employee Appeals Authority and Appeals Review Board. As of February 6, 1979, 1,933 Appeals Review Board cases and 2,452 Federal Employee Appeals Authority cases were pending before the Board. The number of Federal Employee Appeals Authority cases has been reduced to 1,650 as of March 24, 1979. Approximately 2,500 Appeals Review Board cases are now pending. Additional appeals from old cases may be made to the Board because there were no specific time limitations for them under the previous system.

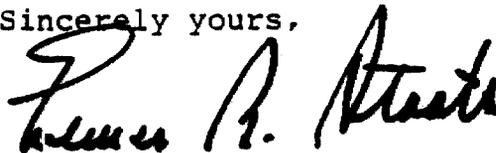
The Board's ability to dispose of the old cases hinges on the number of new cases it receives. The Board has announced a 120-day goal for processing new appeal cases and also has a statutory 120-day time limit for processing appeals involving discrimination. Because of this, the Board has decided to place priority first on processing new appeals involving discrimination and second on other new cases under the Civil Service Reform Act. As a result, decisions on old cases are likely to be further delayed. At present, over 50 percent of the former Federal Employee Appeals Authority cases have been pending for more than 3 months.

To address these operational deficiencies, the Board has asked for 102 additional positions for fiscal year 1979 and additional funding of \$1,426,000. Of the 102 positions, 43 positions are to be assigned to the Special Counsel. The Board views the additional resource requests as the minimum levels necessary for the Board and Special Counsel to initially staff their program functions.

In our opinion, the Board and particularly the Special Counsel presently lack the resources necessary to adequately implement the functions and responsibilities which they were assigned by the Civil Service Reform Act. We feel it is critical that the Board and Special Counsel establish their

presence and credibility as soon as possible. Your concern and attention to the Board's and Special Counsel's additional funding and resource needs may be helpful in getting appropriation action on this matter. As arranged with your staff, we are also sending copies of this letter to the House and Senate Appropriations Committees and to Senator Percy.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James A. Stacks". The signature is written in a cursive style with a large initial "J".

Comptroller General  
of the United States