



Office of Inspector General
United States Department of State

ESP-19-03

Office of Evaluations and Special Projects

February 2019

Evaluation of the Department of State's Use of Schedule B Hiring Authority



HIGHLIGHTS

Office of Inspector General
United States Department of State

ESP-19-03

What OIG Reviewed

The Office of Inspector General (OIG) conducted an evaluation of Schedule B appointments by the Department of State (Department) from January 1, 2013 to January 1, 2018 to assess whether it complied with Department policies and Office of Personnel Management (OPM) regulations.

What OIG Recommends

OIG made two recommendations to the Bureau of Human Resources: (1) to adopt a policy requiring consultation with the Office of Legal Adviser when Schedule B hiring requests have characteristics similar to the examples described in this report to ensure all appointments comply with OPM regulations and relevant policies and (2) to amend the Department's Schedule B policy to detail in what circumstances Department career employee or contractor conversions are appropriate. The Bureau concurred with OIG's recommendations.

February 2019

OFFICE OF EVALUATIONS AND SPECIAL PROJECTS

Evaluation of the Department of State's Use of Schedule B Hiring Authority

What OIG Found

Schedule B appointments are a special type of hiring authority that allows an agency to hire individuals without using ordinarily applicable competitive hiring procedures. The Office of Personnel Management granted the Department of State authority to use Schedule B to appoint individuals in "scientific, professional, and technical positions at grades GS-12 to GS-15 when filled by persons having special qualifications in foreign policy matters."

Schedule B appointments must follow Department policy and OPM regulations for excepted service hiring. For instance, the Schedule B appointment cannot be to a position of a confidential or policy-determining nature. In addition, under the Department's policy, Schedule B appointments are appropriate to fill a temporary need for a special project, negotiations or conferences on a special topic, or where the applicable experience does not already exist in the Department.

OIG found that many of the Department's Schedule B appointments to fill scientific, professional, and technical positions from 2013 to 2016 did not comply with Department policy and OPM regulations. Several individuals lacked special qualifications in foreign policy matters, and, of the appointments reviewed, almost a fifth were appointments to positions that are inherently policy-determining or confidential. In addition, the Department used its Schedule B authority to convert then-current Department employees or to hire Department contractors as Schedule B employees when the expertise needed was already available within the Department. The Department's Schedule B policy, however, does not provide adequate guidance on whether and in what circumstances such hires or conversions are appropriate.

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OBJECTIVE

During the course of a prior evaluation, the Office of Inspector General (OIG) learned that the Department of State (Department) hired an attorney using its Schedule B authority, which authorizes the Department to fill scientific, professional, and technical positions with persons who have specialized experience in foreign policy. Based on concerns that this appointment was inappropriate, OIG initiated this evaluation to determine whether the Department complied with the Office of Personnel Management's (OPM) excepted service hiring authority and Department policies when making Schedule B appointments from January 1, 2013 to January 1, 2018. OIG conducted this work in accordance with the Quality Standards for Inspection and Evaluation as set forth by the Council of the Inspectors General on Integrity and Efficiency.

BACKGROUND

The Federal Civil Service comprises the workforce in the executive branch of the federal government. The federal workforce is made up of employees in the competitive service, the excepted service, and the Senior Executive Service (SES).¹ Excepted service positions are civil service positions excepted from the competitive service by law, Executive Order, or OPM regulation.² OPM has authority to except positions from regular competitive hiring requirements when it is not feasible or practical to use these hiring practices. OPM categorizes its various excepted service hiring authorities under Schedules A, B, C or D.³ OPM conducts periodic evaluations of the human capital management of federal agencies. During such evaluations, OPM reviews issues such as whether the agencies have appropriately used their hiring authorities, including Schedule B authority. If OPM finds that any personnel action is contrary to any law, rule, or regulation, it may order the agency to take corrective action.⁴

The Department has authority to fill civil service positions using the excepted service appointing authorities.⁵ Schedule B, one of the excepted service authorities, may be used when it is impractical to hold open competition or to apply usual competitive examining procedures. Importantly, the Schedule B appointing authority cannot be used to fill positions that are confidential or policy-determining in nature.⁶ Confidential positions are positions with duties that can be performed only by someone who has a close working relationship with a Department official and who thoroughly knows the goals, viewpoints, and philosophies of the official. Policy-determining positions are those that involve making or approving substantive

¹ Generally, a SES position is a managerial, supervisory or policy position classified above the GS-15 level that does not require Presidential appointment and Senate confirmation. 5 U.S.C. § 3132(a)(2).

² 5 U.S.C. § 2103; 5 C.F.R. § 213.101.

³ 5 C.F.R. § 6.2.

⁴ 5 U.S.C. § 1104(c).

⁵ Schedule A positions include attorneys, chaplains, and employees with disabilities. *See* 5 C.F.R. § 213.3102. Schedules B and C are discussed in the body of this report. Schedule D covers hiring under the Pathways Programs, including internships, recent graduates, and Presidential Management Fellows. *See* 5 C.F.R. § 213.3402.

⁶ 5 C.F.R. § 213.3201.

policy.⁷ Confidential and policy-determining appointments are made using OPM's Schedule C excepted service appointing authority and encompass positions that range from administrative support staff to policy advisors.⁸ Schedule C appointments require advance approval from the White House Office of Presidential Personnel and OPM.⁹

Schedule B hiring authority varies by agency. OPM granted the Department three Schedule B appointing authorities. One of the Department-specific Schedule B authorities is for "scientific, professional, and technical positions at grades GS-12 to GS-15 when filled by persons having special qualifications in foreign policy matters."¹⁰ Total employment under this authority may not exceed 4 years.¹¹ Department policy characterizes the applicable Schedule B authority as authority to hire for positions in the fields of foreign policy, public affairs, international development, arms control, and others if there is a paramount and documented requirement for specialized foreign affairs knowledge. The Department's policy requires a minimum of one full year of experience in a special foreign affairs field to meet the "special qualifications" requirement stated in the OPM granted authority.¹²

Before using the Schedule B appointing authority, the Department's policy also requires bureaus to ensure that: (1) all individuals meet the position qualification requirements outlined by OPM;¹³ (2) the authority is not used to circumvent the competitive service procedures; and (3) the need for the person is clearly non-permanent and the use is appropriate. Under the Department's policy, a Schedule B appointment request package must include a justification memorandum from the hiring bureau outlining the need to hire under Schedule B, a resume showing the intended appointee's unique experience, skills and abilities, a description of the position, and security clearance information. The Department's policy includes a sample justification memorandum, reprinted below.

⁷ Committee on Homeland Security and Governmental Affairs, United States Senate, 114th Congress, 2d Session, *United States Government Policy and Supporting Positions*, App. 3 (S. PRT. 114-26, Dec. 1, 2016).

⁸ 5 C.F.R. § 213.3301; see also <https://www2.oge.gov/Web/278eGuide.nsf/Content/Definitions~Schedule+C+Employee>.

⁹ Names and titles of persons holding Schedule C appointments are published every four years in the Plum Book. The Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform alternate publication of the "United States Government Policy and Supporting Positions," commonly called the Plum Book, to list the civil service leadership positions that are noncompetitive and may involve advocacy for the Administration.

¹⁰ During the period of our review, Schedule B appointing authority could also be used by the Department to appoint one non-permanent senior level position to serve as Science and Technology Advisor to the Secretary and seventeen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

¹¹ See, e.g., *Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions*, 78 Fed. Reg. 4883, 4890 (Sch. B, 213.3204(f)) (Jan. 23, 2013). This authority is published annually in the Federal Register.

¹² Department of State Schedule B Policy – Amended (Memorandum No. 07-09A), May 6, 2009.

¹³ Classifications & Qualifications, General Schedule Qualification Standards: <https://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/#url=Group-Standards>.



Sample Schedule B Memo

United States Department of State

Washington, D.C. 20520

MEMORANDUM

TO: HR/CSHRM

THRU: HR Shared Service Provider

FROM: BUREAU

SUBJECT: Request for Schedule B Appointment for Mr./Ms. XYZ

Bureau justification must include why the applicant is uniquely qualified (special qualifications in foreign policy matters) for the position to be filled.

Example of applicant's qualifications:

Mr./Ms. XYZ is uniquely qualified base on his/her wealth of knowledge and experience in the area of HIV/AIDS prevention.... This experience is demonstrated in his/her position where he/she served as project manager..... performing the following duties.....

Examples of why the need for a Schedule B appointment:

1. Special project; **or**
2. Negotiations or conferences on special topics; **or**
3. Urgent demand for special expertise in a new policy area and that expertise is unavailable within the Department in time to meet that need; **or**
4. The Department needs "state-of-the-art" experience that is not existent in the Department and which must be updated through work not readily available at the Department.

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Source: Department of State Schedule B Policy – Amended (Memorandum No. 07-09A), May 6, 2009, p 5.

Once a bureau identifies a candidate for a Schedule B appointment to a scientific, professional, or technical position, it forwards the Schedule B appointment request package to the Bureau of Human Resources (HR) for approval. The Office of Civil Service Human Resource Management (HR/CSHRM) reviews the request package, including the justification memorandum and the candidate's resume, and forwards it to the Director General of the Foreign Service and Director of Human Resources (DGHR), who approves all hiring using this authority.¹⁴

EVALUATION RESULTS

The Department used its Schedule B authority to appoint at least 137 people to “scientific, professional, and technical positions” from January 1, 2013 to January 1, 2018.¹⁵ The Department used its Schedule B authority to temporarily hire economists, speech writers, foreign policy experts, trained negotiators, and others. The experience of the Schedule B appointees included foreign policy work in the Department, in Congress, in other agencies, in think tanks, and in the private sector. Appointees filled Department hiring gaps and worked on special projects or provided technical advice to Department leaders. In our review, we found no instances in which the Department exceeded the four-year time limitation for Schedule B appointments. However, over one-third of the Schedule B appointments approved from 2013 to 2016 raise concerns that the Department improperly used this Schedule B authority.

The Department Used Schedule B Hiring Authority to Appoint Some Individuals to Confidential or Policy-Determining Positions

As noted above, OPM regulation states that agencies may not make Schedule B appointments to positions of a confidential or policy-determining nature.¹⁶ These types of positions must be filled using Schedule C, a different category of excepted hiring authority. Unlike Schedule B positions, Schedule C positions are confidential and policy-determining and require specific approval from OPM to establish or reestablish the position.¹⁷ However, OIG found that, during the period of our review, the Department used its Schedule B hiring authority for “scientific, professional, and technical positions” to appoint several individuals to positions from 2013 to 2016 that were or appeared to be of a confidential or policy-determining character.¹⁸

For example, the Department hired an individual in 2013 using this Schedule B authority to serve as a Senior Advisor to a Special Envoy. According to the appointee's resume, the appointee had been the chief of staff to the former U.S. Senator who was named to the Special Envoy position. The position description listed roles that were of a confidential nature, such as

¹⁴ According to HR, during the timeframe of 2013-2016, the Under Secretary for Management (M) also “cleared” Schedule B appointments.

¹⁵ HR provided justification memoranda for 129 Schedule B appointments and OIG found the remaining eight appointments on the Department's intranet.

¹⁶ 5 C.F.R. § 213.3201. According to HR, Schedule B appointees may provide input in the policy making process.

¹⁷ 5 C.F.R. § 6.2; 5 C.F.R. § 213.3301.

¹⁸ According to HR, some of the duties described in this section, while confidential or policy-determining, could be completed by career Civil Service Foreign Affairs Officers or Foreign Service Officers.

coordinating the Special Envoy's office travel, preparing the Envoy's itinerary, coordinating with embassies, providing briefing materials, providing recommendations on various issues related to the region, and liaising with countries in the region. The prior working relationship coupled with the tasks in the position description gives the appearance that the position is confidential in nature and not suited for Schedule B appointment.

During the period of our review, the Department used this Schedule B authority to appoint 13 people to positions on the Policy Planning Staff. The Policy Planning Staff provides independent policy analysis and advice for the Secretary, including identifying gaps in policy and initiating policy planning and formulation to fill those gaps. Staff also make recommendations and suggest alternative courses of action on Department policy matters.¹⁹

In keeping with this role, many of the position descriptions for the Schedule B appointments to the Policy Planning Staff include responsibilities concerning the formulation and execution of foreign policy, which do not appear to comply with OPM's confidential or policy-determining prohibition for Schedule B appointments. For example, position descriptions for two Schedule B appointees to the Policy Planning Staff include the following duties: "The incumbent has responsibility for making substantive recommendations regarding the formulation and execution of foreign policy with respect to a diverse array of issues associated with Russia, Ukraine, and the countries of Europe." Another Schedule B appointee's position description states: "The incumbent has responsibility for making authoritative contributions to the formulation and execution of foreign policy with respect to arms control, verification, and compliance."

Another appointee held a Schedule B appointment as a member of the Policy Planning Staff for the maximum limit of four years, and the Department then provided her a Schedule C appointment in the same office. As outlined in Table 1, the position descriptions for the Schedule B and Schedule C appointments are very similar. Because excepted hiring under Schedule C is for confidential and policy-determining positions and Schedule B is not, by definition, a position that can be filled by Schedule C authority should not be filled using Schedule B authority. OIG was not able to determine if the Department had a legitimate reason for using Schedule B appointment authority to hire members of the Policy Planning Staff because the position descriptions did not clearly differentiate the roles of the Schedule B appointees and the Schedule C appointees.²⁰

¹⁹ 1 FAM 023 (Jan. 27, 2017).

²⁰ The 2016 Plum Book lists 11 Schedule C appointments in the Office of Policy Planning, including Senior Advisors and a Foreign Affairs Officer. OIG reviewed the position descriptions for a Schedule C GS-14 appointee and a Schedule B GS-14 appointee and the descriptions are nearly identical. The only notable difference is that the Schedule C position description says, without further explanation: "This position is confidential or policy-determining in nature and the incumbent shape[s] and implements administration policies."

Table 1: Comparison of Selected Elements of the Position Descriptions for a Foreign Affairs Officer Who Held Both a Schedule B and Schedule C Appointment in the Policy Planning Staff

Schedule B	Schedule C
The incumbent has responsibility for making substantive contributions to the formulation and execution of policy [related to Democracy and Human Rights, Youth, Civil Society and Religious Freedom].	The incumbent has responsibility for making substantive contributions to the formulation and execution of foreign policy with respect to democracy, human rights, and labor; international criminal law; atrocity prevention and mitigation; open government; international religious issues; and engagement with Faith-based communities.
The incumbent will identify gaps in policy, new problem areas, and emerging situations requiring policy attention and initiating policy planning and formulation to meet these new requirements.	Incumbent will identify gaps in policy and recommend necessary changes or alternatives to meet current situations and requirements.
Incumbent will be responsible for the preparation of studies with recommendations on major policy problems and coordinates, as necessary, implementation with geographic and functional bureaus.	Incumbent is responsible for the preparation of studies and recommendations on major democracy, human rights, labor, international criminal law, and transnational religious problems and, as necessary coordinate implementation with geographic and functional bureaus within the Department.
Prepares for the Secretary, Deputy Secretary, Under Secretaries and the S/P Director, often on very short notice, analyses, talking points, and oral briefings that address the implications of current events and USG actions on U.S. foreign policy.	Prepares for the Secretary, Deputy Secretary, Under Secretaries and the S/P Director, often on very short notice, analyses, talking points, and oral briefings that address the implications of current events and USG actions on U.S. foreign policy particularly as it bears upon democracy, human rights, labor, international criminal law, open government, and trans-national religious issues.

Also, from 2013 to 2016, the Department appointed ten people to management positions using this Schedule B authority. Management positions, such as deputy assistant secretary (DAS) positions, often have responsibilities that fall into the category of policy-determining or have close and confidential relationships with the assistant secretaries, who are appointed by the President. The Department did not comply with OPM's requirements when it filled these inherently confidential and policy-determining DAS positions using the Schedule B authority.

For example, in 2014 the Department used its Schedule B authority to hire one individual as a GS-15 Deputy Assistant Secretary for House Affairs in the Bureau of Legislative Affairs. The position description lists several duties that are clearly of a policy-determining nature, such as “managing and directing the broad aspects of the Department’s overall legislative program in the House of Representatives” and “manag[ing] efforts to develop and implement legislative strategies, prepare legislative positions and action plans, and serve as a chief point of contact for foreign policy and Department initiatives presented to Congress on behalf of the Secretary and the Deputy Secretary.”²¹ OIG shared a similar DAS appointment with OPM, which agreed with OIG’s determination that it is not a position that can properly be filled under the Schedule B appointing authority.

The position description for another GS-15 Deputy Assistant Secretary in the Bureau of Political-Military Affairs using this Schedule B authority states that the appointee would be responsible for providing leadership and direction, establishing priorities, determining program emphasis, making administrative and management decisions, developing long-range policy recommendations, overseeing enhancements to organizational effectiveness, and making day-to-day program and policy decisions. The appointee started the Schedule B appointment in 2013 and was later given a non-career SES appointment to the same position.

A third Deputy Assistant Secretary position filled in 2013 using this Schedule B authority was in the Bureau of European and Eurasian Affairs. According to the resume, this DAS, also appointed as a GS-15, was responsible for managing policy developments and diplomatic relations, and coordinating European engagement on policy toward the Middle East and North Africa. About a month before the appointee reached the maximum time period for a Schedule B appointment, the Department appointed the person to the same position under Schedule C appointing authority. The DAS position description for the new Schedule C appointment stated that “the incumbent reports to the Assistant Secretary and has a close, personal and confidential relationship.”

The Department Used its Schedule B Hiring Authority to Appoint Some Individuals Who Lacked Specialized Experience in Foreign Policy

As noted above, OPM granted Schedule B hiring authority to the Department for individuals with special qualifications in foreign policy matters. The Department’s own policy clarifies that, to meet this standard, the person must have at least one full year of experience in a special foreign affairs field. However, from 2013 to 2016, OIG found at least seven Schedule B appointees whose resumes listed no specialized foreign policy experience.

For example, one person was hired in 2013 under Schedule B authority as a public affairs specialist, and that person’s resume demonstrated a significant background in public affairs, such as service as a press secretary for a Senator, a press secretary for a political party, and a communications director for a member of the House of Representatives. However, the resume

²¹ See also 1 FAM 312 (Nov. 1, 2017).

demonstrated no foreign policy experience. Another Schedule B appointee who started in 2014 had experience as a press secretary for a Senator but lacked the requisite foreign policy experience. Although the employee worked briefly for an international affairs think tank, it was not long enough to satisfy the one-year experience requirement in the Department's policy.

One Schedule B appointee was hired in 2014 as the Deputy Director for Congressional Oversight. The appointee's resume also lacked any foreign policy experience. The Department's justification memorandum instead discussed the individual's experience working on the campaign of a congressional candidate, including developing a fundraising database, and working for a firm that developed political fundraising technology that was used in gubernatorial, senatorial, and congressional races. OIG shared this appointment with OPM, which agreed that the individual lacked specialized foreign policy experience.

Another appointee, hired in 2014, had several years of experience in communications for the Office of the Vice President. The Department's justification memorandum highlighted the appointee's experience "in a fast-paced, high-level environment, managing event-specific, and long-term strategic communications plans for [the] Vice President." Neither the resume nor the justification memorandum, however, described foreign policy experience that meets the requirements of the Department's policy. OIG also shared this appointment with OPM, which agreed that the individual lacked specialized foreign policy experience.

The Department's Schedule B Policy Does Not Provide Clear Guidance Regarding the Propriety of Converting Current Department and Contractor Employees

The Department's Schedule B policy provides examples of appropriate uses of the authority to assist bureaus in seeking approval of Schedule B appointments. According to the policy, when the need is clearly non-permanent, a request for the Schedule B appointment may be for the following reasons:

- (1) When the need is related to a special project;
- (2) If there are negotiations or conferences on special topics;
- (3) Where there is an urgent demand for special expertise in a new policy area and that expertise is unavailable within the Department in time to meet that need; or
- (4) Where the Department needs "state-of-the-art" experience that is not existent in the Department and which must be updated through work not readily available at the Department.

During the period of OIG's review, the Department appears to have converted 20 then-current Department employees or contractors to Schedule B appointments. OIG reviewed the justification memoranda for these appointments and found that some did not provide a rationale that fits into one of the policy's examples of appropriate uses. In the absence of additional guidance regarding conversions, these appointments raised concerns regarding

compliance with Department policy because the expertise may have already existed in the Department.

For example, one individual was a career employee detailed to the National Security Council from the Department's Office of Legal Adviser. After the detail concluded, the Department used its Schedule B authority to appoint the individual in 2014 to the Office of the Under Secretary for Civilian Security, Democracy, and Human Rights to work on atrocities prevention, an effort that had been ongoing for many years. This appointment does not appear to fit into the Department's policy as a special project or negotiations or conferences on a special topic as there is no discussion of a particular project in the justification memorandum. The justification memorandum instead noted that the Department needed a Schedule B appointment to meet the increasing demands and special role in advancing the President's atrocity prevention goals. While this could be described as an urgent need under the policy, the employee's expertise was available within the Department because she was already a Department employee and the Department could assign her to work on tasks related to atrocities prevention after the conclusion of her detail to the National Security Council. Further, in 2016, the Department used its Schedule B authority to appoint this individual to Deputy Ambassador-At-Large in the Office of Global Criminal Justice, a position likely having responsibilities of a confidential or policy-determining character. Other appointments raise similar concerns, as the Department converted some career employees to Schedule B positions without any explanation of why the career employee could not be reassigned.²²

Similarly, the Department used Schedule B authority to convert several employees of Department contractors. For example, during the time period of our review, the Department used its Schedule B authority to appoint five contractors to positions in the Office of the U.S. Global AIDS Coordinator. None of the justification memoranda for these five appointments describe a special project or negotiations/conferences on a special topic. In fact, the Department has been working on the President's Emergency Plan for AIDS Relief in this office since 2003. The justification memoranda additionally provide no explanation on why these individuals were not already providing the needed expertise in their capacity as contractors. To illustrate, one appointee had worked in a contractor capacity for over three years before continuing the same assignments as a Schedule B appointee. The justification memorandum lists duties and responsibilities the appointee performed as a contractor, and stated that "these major duties and responsibilities are identical [to] those in the position description of the proposed [Schedule B] assignment." OIG shared this appointment with OPM, and it concurred with our determination.

The Department used its Schedule B authority to convert another contractor employee to a Foreign Affairs Officer position in the Bureau of Conflict and Stabilization Operations in 2014. The Department's justification memorandum stated that the appointee had been providing the necessary expertise to the Bureau for the previous year as a contract employee. The justification further explains: "The technical expertise in simulation techniques involving deterministic, agent-based modeling that [the individual] brings to this position does not exist

²² Agencies have broad authority to reassign civil service employees. 5 C.F.R. § 335.102(a).

within the Department...” However, the justification does not explain why this individual could not continue providing the same expertise as a contractor.

The Department’s use of Schedule B appointments for current employees and contractors in the specific cases analyzed by OIG do not appear to fit within the examples of appropriate use in the Department’s Schedule B policy because the expertise already existed in the Department. OIG acknowledges that the Schedule B policy is silent on whether it is appropriate to convert current employees or contractors to Schedule B appointees and, if so, under what circumstances. The Department may have legitimate reasons for converting a career employee or contractor to a Schedule B appointment; however, because such appointments are an exception to the normal competitive process, the Department should clarify its policy to ensure that it is properly using the Schedule B authority when converting individuals whose expertise already exists in the Department. The current policy language does not offer adequate guidance for Department personnel or explain to them when conversion may be appropriate.

CONCLUSION

OIG’s review of appointments made by the Department using Schedule B hiring authority, especially between 2013 and 2016, revealed many appointments that did not comply, or did not appear to comply, with OPM regulations or Department policy. The Department used the authority for positions of a confidential or policy-determining nature. The Department also hired individuals who did not have specialized foreign policy experience. Finally, the Department’s policy is unclear on whether it was appropriate to convert current employees and contractors to Schedule B positions.

RECOMMENDATIONS

To ensure that the Department complies with OPM regulations and relevant policies when making future appointments using Schedule B authority, OIG has issued the following recommendations to the Bureau of Human Resources. Its complete responses can be found in Appendix B. The Bureau also provided technical comments that OIG incorporated as appropriate into this report.

Recommendation 1: The Bureau of Human Resources should adopt a policy requiring consultation with the Office of the Legal Adviser when Schedule B hiring requests have characteristics similar to the examples described in this report to ensure all appointments comply with OPM regulations and relevant policies.

Management Response: In its December 3, 2018, response, the Bureau of Human Resources agreed with this recommendation and stated that the Department has taken steps to limit use of Schedule B hiring authority to its "intended purpose." The Bureau also stated that that it will "further strengthen internal controls by requiring consultation with the Office of the Legal Adviser when hiring authority requests appear to deviate from OPM regulations and relevant policies."

OIG Reply: OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation that the Department has adopted a policy providing detailed guidance concerning Schedule B hiring requests. In order to ensure that the appointment complies with OPM regulations, the new policy should include examples of positions that could be construed as confidential or policy-determining in nature. The policy should also require clearance by the Office of the Legal Adviser for requests (1) for positions that could be construed as confidential or policy-determining in nature, (2) when the applicant does not appear to have the requisite foreign policy experiences, or (3) for appointments that involve a person who is a Department employee or contractor.

Recommendation 2: The Bureau of Human Resources, in conjunction with the Office of the Legal Adviser, should amend the Department's Schedule B Policy, Number 07-09A, to clarify the circumstances, if any, in which it would be appropriate to appoint current career employees or contractor employees to Schedule B positions.

Management Response: In its December 3, 2018, response, the Bureau of Human Resources agreed with this recommendation and stated that it will work with the Office of the Legal Adviser to clarify the Schedule B Policy and to "remove any ambiguity" about which circumstances warrant use of Schedule B hiring authority.

OIG Reply: OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts a copy of the amended policy addressing appointments of current career employees or contractor employees to Schedule B positions.

APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

During the course of a prior evaluation, the Office of Inspector General (OIG) examined the Department of State's (Department) hiring of an attorney using Schedule B appointing authority. Schedule B is a type of excepted service hiring authority. Although the Department has several excepted service appointing authorities, in this instance, the Department hired the attorney through its Schedule B authority intended to fill scientific, professional, and technical positions at grades GS-12 to GS-15 when filled by persons having special qualifications in foreign policy matters. However, the attorney did not appear to possess any such qualifications.

OIG was thus concerned that the Department was not using its Schedule B authority in accordance with relevant regulations and policies. OIG accordingly examined a larger subset of individuals hired using the authority. Many of these appointments raised the same concerns. OIG forwarded documentation, including justification memoranda, Standard Form 50s, resumes and position descriptions for this subset to the Office of Personnel Management (OPM), the federal agency responsible for issuing guidance and providing oversight related to the federal workforce. Based on the information reviewed, OPM agreed with most of OIG's observations that appointments may not have complied with relevant policies. Cases with OPM concurrence are noted in the text.

OIG then initiated an evaluation to determine whether the Department complied with OPM's excepted service hiring authorities and Department policies when making Schedule B appointments.

To conduct this work, OIG requested justification memoranda from the Department's Bureau of Human Resources (HR) for Schedule B appointments under 5 C.F.R. § 213.3204(f)¹ from the past five years. OIG then reviewed personnel documentation, including resumes, Standard Form 50s, and position descriptions for all appointments beginning on January 1, 2013 or later. OIG reviewed new and amended appointments for 137 Schedule B employees from January 1, 2013 to January 1, 2018. Amended appointments include changes in the grade level of the appointment or changes in title or position.

The issuance of this report was delayed because of the lapse in OIG's appropriations that occurred from December 21, 2018, through January 25, 2019.

¹ 5 C.F.R. § 213.3204 is published annually in the Federal Register.

APPENDIX B: DEPARTMENT OF STATE RESPONSE



United States Department of State

Washington, D.C. 20520

UNCLASSIFIED

December 3, 2018

TO: OIG – Jeffrey McDermott, Assistant Inspector General, Evaluations and Special Projects

FROM: William E. Todd, Office of the Director General

A handwritten signature in blue ink, appearing to read "William E. Todd".

SUBJECT: OIG Evaluation of the Department of State's Use of Schedule B Hiring Authority

The Bureau of Human Resources (DGHR) is pleased to present the following responses to recommendations 1 and 2 of the OIG Evaluation of the Department of State's Use of Schedule B Hiring Authority.

Recommendation 1: The Bureau of Human Resources should adopt a policy requiring consultation with the Office of the Legal Adviser when Schedule B hiring requests have characteristics similar to the examples described in this report to ensure all appointments comply with OPM regulations and relevant policies.

DGHR Response: We agree with this recommendation. Most of the examples provided in the report concern Schedule B hiring from 2013-2014. Since that time, the Department has taken steps to limit use of the Schedule B Hiring Authority to its intended purpose, and DGHR will further strengthen internal controls by requiring consultation with the Office of the Legal Adviser when hiring authority requests appear to deviate from OPM regulations and relevant policies.

Recommendation 2: The Bureau of Human Resources, in conjunction with the Office of the Legal Adviser, should amend the Department's Schedule B Policy, Number 07-09A, to clarify the circumstances, if any, in which it would appropriate to appoint current career employees or contractor employees to Schedule B positions.

DGHR Response: We agree with this recommendation. DGHR will work with the Office of the Legal Adviser to clarify the Schedule B Policy and to remove any ambiguity about which circumstances warrant use of this hiring authority.

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ABBREVIATIONS

C.F.R.	Code of Federal Regulations
DAS	Deputy Assistant Secretary
DGHR	Director General of the Foreign Service and Director of Human Resources
FAM	Foreign Affairs Manual
GS	General Schedule
HR	Bureau of Human Resources
HR/CSHRM	Bureau of Human Resources, Office of Civil Service Human Resource Management
OIG	Office of Inspector General
OPM	Office of Personnel Management
S/P	Policy Planning Staff
USG	United States Government
U.S.C.	United States Code

OIG TEAM MEMBERS

Amy Bowser, Senior Investigative Counsel
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If you fear reprisal, contact the
OIG Whistleblower Coordinator to learn more about your rights.

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