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92-27 TOP-LEVEL POSITIONS FOR ECONOMIC
STABILIZATION PROGRAM

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HEARING

BEFORE THE

SUBCOMMITTEE ON
POWER AND CIVIL SERVICE

OF THE

COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

FIRST SESSION

ON

H.R. 11902

A BILL TO PROVIDE FOR ADDITIONAL POSITIONS IN GRADES
GS-16, 17, AND 18, TO CARRY OUT THE FUNCTIONS OF THE
ECONOMIC STABILIZATION ACT OF 1970

DECEMBER 1, 1971

Serial No. 92-27

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



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(B. Benton Bray, Associate Staff Director, Room B-370(b), Rayburn Building—Ext. 2821)

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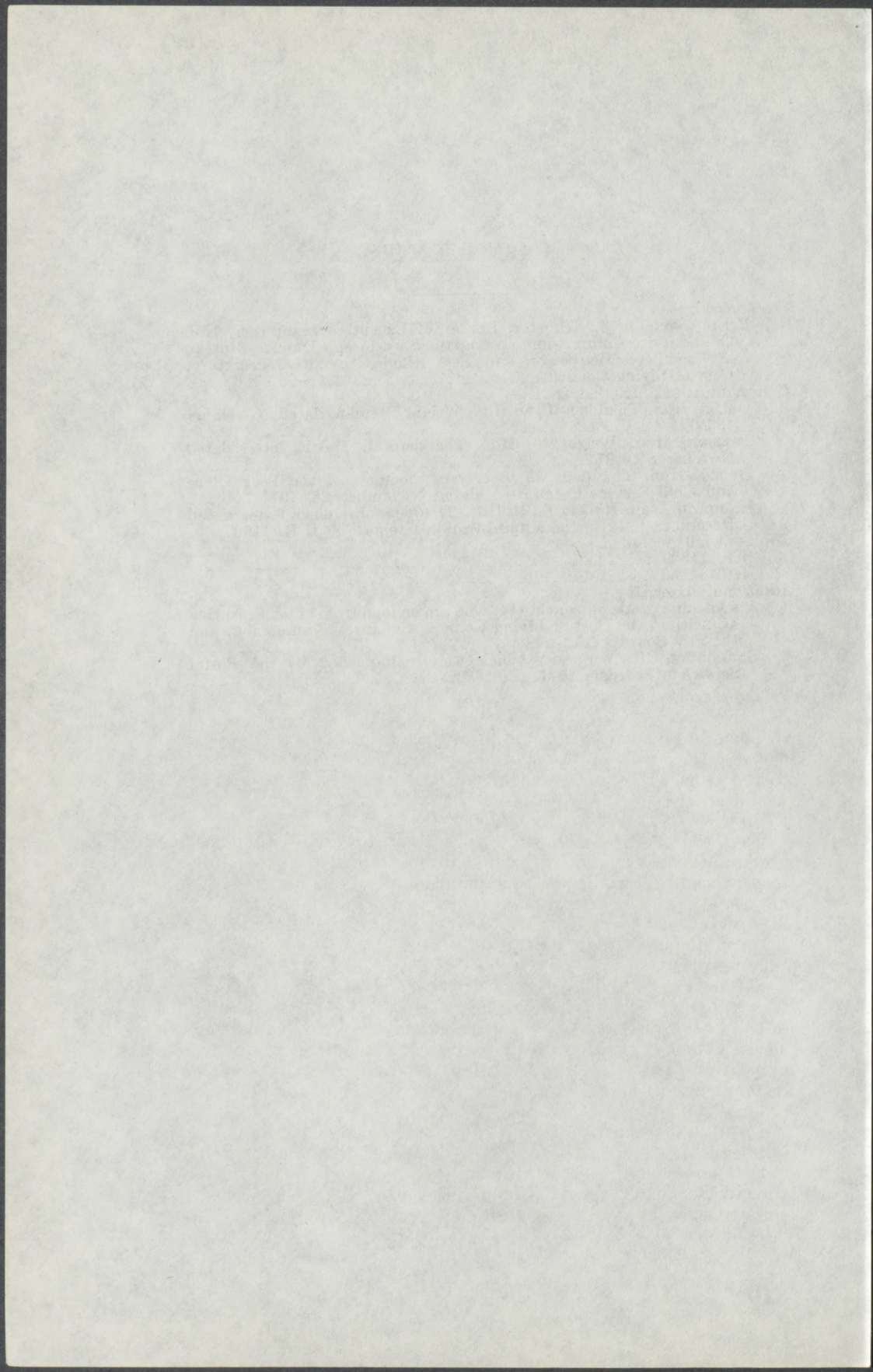
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TOP-LEVEL POSITIONS FOR ECONOMIC STABILIZATION PROGRAM

WEDNESDAY, DECEMBER 1, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE
OF THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 219, Cannon House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order.

I would like to make a brief statement for the record and for the benefit of those attending.

We are meeting this morning to consider H.R. 11902, which I co-sponsored together with Mr. Dulski, our full committee chairman.

This legislation would authorize the placement of no more than 40 positions in grades 16, 17, and 18 of the general schedule—commonly referred to as supergrades—to carry out functions under the Economic Stabilization Act of 1970.

The administration's proposal to extend the Economic Stabilization Act of 1970 (H.R. 11309) contains similar provisions and was referred to the House Banking and Currency Committee. That bill, however, would authorize compensation to be fixed for a maximum of 40 positions without regard to the civil service laws.

The bill we are considering this morning provides that the supergrade authority granted therein shall be subject to the existing statutory procedures applicable to supergrade positions under section 5108 of title 5, United States Code.

Our committee consistently has opposed legislation which attempts to provide additional supergrade authority without regard to the existing provisions of law.

We believe that the control of top-level positions in the Federal Government is a matter which falls exclusively within the jurisdiction of the Post Office and Civil Service Committee. Accordingly, we have advised the chairman of the Banking and Currency Committee of our opposition to the supergrade authority contained in H.R. 11309, and recommended that such provisions be struck from the bill before it is ordered reported to the House.

I want to emphasize that our committee has no intention of blocking any legitimate request for additional supergrades. Our position simply is that no legislation which proposes to exempt an organization from the civil service laws should be permitted to pass the House of Representatives without a thorough review by our committee.

In that connection, I have continually stated that I will give immediate consideration to any reasonable request for legislation authorizing additional supergrades.

The introduction of H.R. 11902 and today's hearing should serve as sufficient testimony to the willingness of our committee to give immediate attention to any reasonable request for additional supergrade authority.

In addition to the subject of supergrades, I want to discuss two other matters which are of vital concern to our committee and are involved in the administration's bill.

First, section 10 of the administration's proposal to extend the Economic Stabilization Act of 1970 contains the customary authority to employ experts and consultants at rates of pay not to exceed the daily rate for grade 18 of the general schedule. However, that section further provides that such contracts may be renewed from time to time without limitation. This latter provision is contradictory to section 3109 of title 5, United States Code, which prescribes a 1-year limitation on the temporary appointments of experts and consultants.

Our committee has become very concerned over the increasing utilization of experts and consultants by Federal agencies.

In my opinion, a statutory provision which authorizes unlimited appointments of experts and consultants can only lead to further abuse in the filling of high-level positions. It is an obvious attempt to bypass the supergrade limitations which this committee has attempted to establish.

Second, section 9 of H.R. 11309 authorizes additional executive-level positions to be filled by Presidential appointment without Senate confirmation. This provision will give the President authority to fill certain executive-level positions, which is comparable to authority he now has under 5 United States Code 5317.

However, I note that several bills are now being processed by other committees of the House, some of them recommended by the administration, which propose to establish executive-level positions to be filled by the head of an agency. I want you to know that this is contrary to the policy adopted by our committee in setting up the executive schedule. You will recall that, with few exceptions, the positions placed in the executive level require confirmation by the Senate, or at least a Presidential appointment, in a limited number of cases.

I call these matters to your attention and I wish that you would call them to the attention of the Office of Management and Budget. The basic policies relating to experts and consultants, supergrades, and the Executive levels were established by our Committee on Post Office and Civil Service. Should these policies now be found to be inadequate, I would want to warn you that the proper procedure is for the administration to come before our committee to present its case for changing these policies. Until this is done, you should be forewarned that we will continue to oppose such provisions being included in legislation handled by other committees of the House.

Yesterday afternoon I was informed that Mr. Hanley, a member of the Post Office and Civil Service Committee, who is also on the Banking and Currency Committee, reported that he had offered an amendment in consideration of the Economic Stabilization Act before the

Banking and Currency Committee, to remove the supergrade authority from that bill, and that his amendment was adopted. So, at the present point in the consideration of that bill before the Banking and Currency Committee, the language is out.

It would seem to me that this gives more impetus to the necessity for our hearing this morning and consideration of the bill, H.R. 11902, cosponsored by Mr. Dulski and me, so we can be as responsive as we possibly can be to the need of the Economic Stabilization operation in the very near future, assuming that the legislation now being considered in the other body as well as by the House Banking and Currency Committee will be enacted into law. That is the purpose of the hearing this morning.

Mr. Gross, for the benefit of the Commission and the executive branch representatives here this morning, on the substantive points I made, it seems to me that the hearings which I have said will be held early in the next session, possibly in February or as early as we can arrange it, on the request of the administration for the Federal Executive Service, might be broadened and should be broadened to receive the administration's and the Commission's position with regard to the problems I pointed out here so we would have in one hearing the opportunity to act on the Federal Executive Service or, failing to do that, we would have the recommendation of the Office of Management and Budget, the Civil Service Commission, and others involved in this unusual authority that keeps cropping up.

If we go the Federal Executive Service route, we should be sure it is all-encompassing. If we are not going that way, I think we should insist that the administration tell us what is wrong with the present provisions of law so they may be amended, if the case can be made, or, if not, we would have absolute assurances that at least the executive branch legislative proposals would no longer be sent with this language in it and with the approval of the administration.

Before the subcommittee receives the testimony from its first witness, without objection, the following communications will be entered in the hearing record at this point: (1) letter from Chairman Dulski to Hon. Wright Patman, dated November 4, 1971; (2) letter to Chairman Dulski from Hon. Wright Patman, dated November 9, 1971; (3) letter from Chairman Dulski to certain members of the Post Office and Civil Service Committee, dated November 26, 1971; (4) letter from Chairman Robert E. Hampton, Civil Service Commission, dated December 1, 1971; (5) a copy of H.R. 11309; and (6) a copy of H.R. 11902, subject of the hearing this morning.

(The communications referred to follow:)

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C., November 4, 1971.

HON. WRIGHT PATMAN,
*Chairman, Banking and Currency Committee,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: It has been brought to my attention that the bill to extend and amend the Economic Stabilization Act of 1970 (H. R. 11309), which is now receiving consideration by your Committee contains provisions in Section 9 which are of vital concern to our Committee.

Subsection (c) of the new Section 209, proposed to be added by Section 9 of the bill, authorizes compensation to be fixed for not to exceed forty positions without

regard to the provisions of Chapters 51 and 63 of Title 5, United States Code. Such positions ordinarily are referred to as supergrade positions.

The control of top level positions in the Federal government, as far as the House is concerned, is a matter within the jurisdiction of the Committee on Post Office and Civil Service. We currently have pending before our Committee the recommendation by the Administration to change the system of supergrade positions. The Chairman of our Subcommittee on Manpower and Civil Service, Mr. Henderson, has scheduled this matter for early consideration next year.

In order for our Committee to maintain sufficient control over the number of positions that may be placed in these top grades. I feel quite strongly that your Committee should give serious consideration to deleting the provisions of subsection (c) relating to the forty additional positions from the bill before it is reported. If the provisions are not omitted by the Committee, I would feel constrained to offer an amendment striking the provisions out of the bill when it is considered on the Floor of the House.

If additional supergrade positions are needed at the present time to staff the functions of the Economic Stabilization Act we are advised to that effect by the Chairman of the Civil Service Commission, we will initiate legislation immediately and afford the Administration an opportunity to justify the need for the additional forty supergrades so that there would be no adverse effect on the operations of the stabilization program.

The Ranking Minority Member, the Honorable H.R. Gross, and Chairman Henderson concur with me on this position.

With kindest regards,

Sincerely yours,

THADDEUS J. DULSKI, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C., November 9, 1971.

HON. THADDEUS J. DULSKI,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you very much for your letter of November 4, in which you discuss the matter of jurisdiction, specifically as it concerns Section 209, subsection (c) of H.R. 11309.

You may rest assured that I shall bring this matter up before the full Committee when it meets in executive session on Thursday, November 11.

With best personal regards, I am

Sincerely,

WRIGHT PATMAN, *Chairman.*

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C., November 26, 1971.

(Copy of letter sent to Messrs. James M. Hanley, Frank J. Brasco, Bill Chappell, Jr., and Albert W. Johnson)

DEAR —: By letter dated November 4, 1971, to the Honorable Wright Patman, Chairman of the Committee on Banking and Currency, I advised that the bill (H.R. 11309) to amend the Economic Stabilization Act of 1970 contained provisions under new section 209(c) on page 10 which were of vital concern to our Committee.

Since the provisions related to matters which were within the jurisdiction of the Post Office and Civil Service Committee, I felt they should be eliminated.

Subsection (c) would authorize, not to exceed 40, additional supergrade positions to carry out the functions of the Economic Stabilization Act. It was stated in my letter of November 4 that if the House Post Office and Civil Service Committee received a request for legislation authorizing the additional supergrades we would give immediate consideration to the matter.

The Chairman of the Civil Service Commission has discussed this matter with us, and Mr. Henderson and I, on November 19, 1971, co-sponsored a bill (H.R. 11902). The request of the Chairman of the Civil Service Commission will receive immediate attention by our Committee.

Should justification and need for the additional supergrades be established, I am confident that our Committee would approve the request. However, even if approved, we believe that the authority for the 40 additional supergrades should be subject to the usual Civil Service Commission procedures under 5 U.S. Code 5108.

These procedures authorize a position to be placed in GS-16, 17, or 18, only by action of or approval by a majority of the Civil Service Commissioners. In addition, the qualifications of the individuals to be placed in such positions must be approved by the Civil Service Commission.

The provisions of the Banking and Currency bill (H.R. 11309) would exempt the additional positions from such procedures. The Post Office and Civil Service Committee bill (H.R. 11902) would make the positions subject to such procedures.

I strongly urge that during the Banking and Currency Committee mark-up of your bill, you offer or support an amendment to strike subsection (c) beginning on page 10, line 23, down through line 6 on page 11. Should such an amendment be defeated, I suggest that you amend subsection (c) by substituting the provisions of my bill (H.R. 11902), a copy of which is enclosed.

Your consideration of this matter would be appreciated.

With kind regards,

Sincerely yours,

THADDEUS J. DULSKI, *Chairman.*

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., December 1, 1971.

Hon. THADDEUS J. DULSKI,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In your letter of November 22, 1971, you asked for the views of the Civil Service Commission with respect to H.R. 11902. This bill would provide for additional GS-16, 17, and 18 positions (not to exceed 40) to carry out the functions of the Economic Stabilization Act of 1970.

The Civil Service Commission strongly supports the proposed legislation and urges early enactment.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of our report.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON, *Chairman.*

92D CONGRESS
1ST SESSION

H. R. 11309

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 1971

Mr. PATMAN (for himself and Mr. WIDNALL) introduced the following bill;
which was referred to the Committee on Banking and Currency

A BILL

To extend and amend the Economic Stabilization Act of 1970, as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That:

FINDINGS OF CONGRESS

4
5 It is hereby determined that in order to stabilize the
6 economy, reduce inflation, minimize unemployment, improve
7 our competitive position in world trade, and protect the pur-
8 chasing power of the dollar, it is necessary to stabilize prices,
9 rents, wages, salaries, dividends, and interest. The adjust-
10 ments necessary to carry out this program require prompt
11 judgments and actions by the executive branch of the Federal

1 Government. The President is in a position to promptly and
2 effectively implement the program authorized by this Act.

3 SEC. 2. Section 202 of the Economic Stabilization Act of
4 1970, as amended (Public Law 91-379; Public Law 92-15)
5 is amended to read as follows:

6 **“§ 202. Presidential authority**

7 “The President is authorized to issue such orders and
8 regulations as he may deem appropriate, accompanied by a
9 statement of reasons for such orders and regulations, to
10 stabilize prices, rents, wages, and salaries at levels not
11 less than those prevailing on May 25, 1970; and to stabilize
12 interest rates and corporate dividends and similar transfers
13 at levels consonant with orderly economic growth. Such
14 orders and regulations may provide for the making of such
15 adjustments as may be necessary to prevent gross inequities.”

16 SEC. 3. Section 203 of the Economic Stabilization Act
17 of 1970 (Public Law 91-379) is amended by deleting the
18 period and adding the following: “, or to boards, com-
19 missions, and similar entities composed in whole or in part
20 of members appointed by the President to represent different
21 sectors of the economy and the general public. Where such
22 boards, commissions, and similar entities are composed in
23 part of members who serve on less than a full-time basis,
24 legal authority shall be placed in their chairmen, who shall
25 be employees of the United States. Nothing in section 203,

1 205, 207, 208, or 209 of title 18, United States Code, shall
2 be deemed to apply to any member of such board, commis-
3 sion, or similar entity who serves on less than a full-time
4 basis because of membership on such board, commission, or
5 entity. Funds of departments and agencies of the United
6 States shall be available for the performance of any function
7 so delegated and, at the direction of the President, any other
8 functions performed under authority of this title.”

9 SEC. 4. Section 204 of the Economic Stabilization Act
10 of 1970 (Public Law 91-379) is amended to read as
11 follows:

12 **“§ 204. Sanctions—criminal fine and civil penalty**

13 “(a) Whoever willfully violates any order or regulation
14 under this title shall be fined not more than \$5,000 for each
15 violation.

16 “(b) Whoever violates any order or regulation under
17 this title shall be subject to a civil penalty of not more than
18 \$2,500 for each violation.”

19 SEC. 5. Section 205 of the Economic Stabilization Act
20 of 1970 (Public Law 91-379) is amended to read as
21 follows:

22 **“§ 205. Injunctions and other relief**

23 ! “Whenever it appears to any officer, department,
24 agency, board, commission, or similar entity authorized by
25 the President to exercise authority under this title, that any

1 person has engaged, is engaged, or is about to engage in any
2 acts or practices constituting a violation of any such order or
3 regulation, it may request the Attorney General to bring an
4 action, in the appropriate district court of the United States,
5 to enjoin such acts or practices, and upon a proper showing
6 a temporary restraining order or a preliminary or perma-
7 nent injunction shall be granted without bond. Any such
8 court may also issue mandatory injunctions commanding
9 any person to comply with any order or regulation issued
10 under this title. In addition to such injunctive relief, the
11 court may also order restitution of moneys received in
12 violation of any order or regulation issued under this title.”

13 SEC. 6. Section 206 of the Economic Stabilization Act
14 of 1970 (Public Law 91-379) is amended to read as
15 follows:

16 **“§ 206. Confidentiality of information; subpoena power**

17 “(a) All information reported to or otherwise ob-
18 tained by an agency exercising authority under this title
19 which contains or relates to a trade secret or other matter
20 referred to in section 1905 of title 18, United States Code,
21 shall be considered confidential for the purpose of that sec-
22 tion, except that such information may be disclosed to other
23 officers, agencies, boards, commissions, or similar entities
24 empowered to carry out this title solely for the purpose of

1 carrying out this title or when relevant in any proceeding
2 under this title.

3 “(b) The head of the agency or his duly authorized
4 agent shall have authority, for any purposes related to this
5 title, to sign and issue subpoenas for the attendance and testi-
6 mony of witnesses and the production of relevant books, pa-
7 pers, and other documents, and to administer oaths. Wit-
8 nesses summoned under the provisions of this section shall be
9 paid the same fees and mileage as is paid to witnesses in the
10 courts of the United States. In case of refusal to obey a sub-
11 pena served upon any person, firm, association, or corpora-
12 tion under the provisions of this section, the head of the
13 agency may request the Attorney General to seek the aid of
14 the district court of the United States for any district in
15 which such person, firm, association, or corporation is found
16 to compel such person, firm, association, or corporation after
17 notice to appear and give testimony, or to appear and pro-
18 duce documents before the agency.”

19 SEC. 7. A new section 207 is added to the Economic
20 Stabilization Act of 1970 (Public Law 91-379) to read as
21 follows:

22 **“§ 207. Administrative review**

23 “The functions exercised under this title shall be ex-
24 cluded from the operation of the Administrative Procedure

1 Act (sections 551 et seq., title 5, United States Code), except
2 as to the requirements of section 552 of title 5, United States
3 Code.”

4 SEC. 8. A new section 208 is added to the Economic
5 Stabilization Act of 1970 (Public Law 91-379) to read as
6 follows:

7 **“§ 208. Judicial review**

8 “(a) The district courts of the United States shall have
9 exclusive original jurisdiction of cases or controversies arising
10 under this title, or under regulations or orders issued
11 thereunder.

12 “(b) The provisions of section 2201 of title 28, United
13 States Code shall apply to actions arising under this title,
14 including actions relating to orders and regulations issued
15 thereunder, notwithstanding the amount in controversy.

16 “(c) There is hereby created a court of the United
17 States to be known as the Temporary Emergency Court of
18 Appeals, which shall consist of three or more judges to be
19 designated by the Chief Justice of the United States from
20 judges of the United States district courts and circuit courts
21 of appeals. The Chief Justice of the United States shall
22 designate one of such judges as chief judge of the Temporary
23 Emergency Court of Appeals, and may, from time to time,
24 designate additional judges for such court and revoke previous
25 designations. The chief judge may, from time to time,

1 divide the court into divisions of three or more members,
2 and any such division may render judgment as the judgment
3 of the court. The court shall have the powers of a circuit
4 court of appeals with respect to the jurisdiction conferrèd
5 on it by this title except that the court shall not have power
6 to issue any interlocutory decree staying or restraining, in
7 whole or in part, any provision of this title, or the effective-
8 ness of any regulation or order issued thereunder. The court
9 shall exercise its powers and prescribe rules governing its
10 procedure in such manner as to expedite the determination of
11 cases of which it has jurisdiction under this title. The court
12 shall have a seal, hold sessions at such places as it may
13 specify, and appoint a clerk and such other employees as it
14 deems necessary or proper.

15 “(d) The Temporary Emergency Court of Appeals
16 shall have exclusive jurisdiction of all appeals from the dis-
17 trict courts of the United States in cases and controversies
18 arising under this title or under regulations or orders issued
19 thereunder, except as otherwise provided in this section.

20 “(e) In any civil action commenced under this title in
21 any district court of the United States in which the court
22 determines that a substantial constitutional issue exists,
23 the court shall certify such issue to the Temporary Emer-
24 gency Court of Appeals. Upon such certification, the Tem-
25 porary Emergency Court of Appeals shall determine the

1 appropriate manner of disposition, which may include that
2 the entire action be sent to it for consideration or it may,
3 on the issues certified, give binding instructions and remand
4 the action to the certifying court for further disposition.

5 “(f) No regulation of any agency exercising authority
6 under this title shall be enjoined or set aside, in whole or
7 in part, unless a final judgment determines that the issuance
8 of such regulation was in excess of the agency’s authority, or
9 was arbitrary or capricious. No order of such agency shall be
10 enjoined or set aside, in whole or in part, unless a final
11 judgment determines that such order is based upon facts
12 which are not supported by substantial evidence.

13 “(g) A permanent injunction restraining the enforce-
14 ment, operation or execution of this title or any regulation
15 or order issued thereunder shall not be granted by any dis-
16 trict court or judge thereof. Such injunction may be issued by
17 the Temporary Emergency Court of Appeals upon appeal,
18 or, after hearing, upon recommendation of a district court
19 or judge; such injunction may also be issued by the Supreme
20 Court of the United States as provided in this section.

21 “(h) The effectiveness of a final judgment of the Tem-
22 perary Emergency Court of Appeals enjoining or setting
23 aside, in whole or in part, any provision of this title, or reg-
24 ulation or order issued thereunder, shall be postponed until
25 the expiration of thirty days from the entry thereof, except

1 that if a petition for a writ of certiorari is filed with the Su-
2 preme Court under subsection (i) within such thirty days,
3 the effectiveness of such judgment shall be postponed until
4 an order of the Supreme Court denying such petition be-
5 comes final, or until other final disposition of the action by
6 the Supreme Court.

7 “(i) Within thirty days after entry of any judgment or
8 order by the Temporary Emergency Court of Appeals, a
9 petition for a writ of certiorari may be filed in the Supreme
10 Court of the United States, and thereupon the judgment or
11 order shall be subject to review by the Supreme Court in the
12 same manner as a judgment of a United States court of ap-
13 peals as provided in section 1254 of title 28, United States
14 Code. The Temporary Emergency Court of Appeals, and the
15 Supreme Court upon review of judgments and orders of the
16 Temporary Emergency Court of Appeals, shall have exclu-
17 sive jurisdiction to determine the constitutional validity of
18 any provision of this title or of any regulation or order issued
19 under this title, and of any provision of any such regulation
20 or order. Except as provided in this section, no court, Federal
21 or State, shall have jurisdiction or power to consider the con-
22 stitutional validity of any provision of this title or of any such
23 regulation or order, or to stay, restrain, enjoin, or set aside, in
24 whole or in part, any provision of this title authorizing the
25 issuance of such regulations or orders, or any provision of

1 any such regulation or order, or to restrain or enjoin the en-
2 forcement of any provision.

3 “(j) The provisions of this section apply to any actions
4 or suits pending in any court, Federal or State, on the date
5 of enactment of this amendment in which no final order or
6 judgment has been rendered. Any affected party seeking re-
7 lief shall be required to follow the procedures of this title.”

8 SEC. 9. A new section 209 is added to the Economic
9 Stabilization Act of 1970 (Public Law 91-379) to read as
10 follows:

11 **“§ 209. Personnel**

12 “(a) Any agency or officer of the United States Gov-
13 ernment carrying out functions under this title is authorized
14 to employ such personnel as the President deems necessary
15 to carry out the provisions and purposes of this title.

16 “(b) The President may appoint five officers to be re-
17 sponsible for carrying out functions of this title of whom
18 three shall be compensated at level III of the Executive
19 Schedule (5 U.S.C. 5314) and two at level V of the Execu-
20 tive Schedule (5 U.S.C. 5316). Appropriate titles and the
21 order of succession among such officers may be designated
22 by the President.

23 “(c) For the duration of the exercise of functions under
24 this title, compensation may be fixed for not to exceed forty
25 positions without regard to the provisions of chapters 51 and

1 53 of title 5, United States Code but at rates not above the
2 maximum rate of GS-18 of the General Schedule. This num-
3 ber of positions is in addition to the number authorized by
4 other provisions of law. Appointment may be made to these
5 positions without regard to the provisions of law governing
6 appointments in the competitive service.

7 “(d) The President may require the detail of employ-
8 ees from any executive agency to carry out the purpose of
9 this title.

10 “(e) The President is authorized to appoint, without
11 regard to civil service laws, such advisory committees as
12 he may deem appropriate for the purpose of consultation
13 with and advice to the President in the performance of his
14 functions under this title. Members of advisory committees,
15 other than those regularly employed by the Federal Gov-
16 ernment, while attending meetings of such committees or
17 while otherwise serving at the request of the President may
18 be paid compensation at rates not exceeding those author-
19 ized for individuals under section 5332 of title 5, United
20 States Code, and, while so serving away from their homes
21 or regular places of business, may be allowed travel ex-
22 penses, including per diem, as authorized by section 5703
23 of title 5 of the United States Code for persons in the Gov-
24 ernment service employed intermittently.

25 “(f) Under such regulations as the President may pre-

1 scribe, officers and employees of the United States Govern-
2 ment who are appointed to any position for carrying out
3 the functions of this title may be entitled, upon removal
4 from such position, to reemployment in the position occupied
5 at the time of appointment or in a position of comparable
6 grade and salary."

7 SEC. 10. A new section 210 is added to the Economic
8 Stabilization Act of 1970 (Public Law 91-379) to read as
9 follows:

10 **"§ 210. Experts and consultants**

11 "Experts and consultants may, as authorized by section
12 3109 of title 5 of the United States Code, be employed for
13 the performance of functions under this title and individuals
14 employed may be compensated at rates not to exceed the
15 per diem equivalent of the rate for grade 18 of the General
16 Schedule established by section 5332 of title 5 of the
17 United States Code. Such contracts may be renewed from
18 time to time without limitation. Service of an individual
19 as an expert or consultant under this section shall not be con-
20 sidered as employment or holding of office or position bring-
21 ing such individual within the provisions of section 3323 (a)
22 of title 5 of the United States Code, section 872 of the
23 Foreign Service Act of 1946, as amended, or any other law
24 limiting the reemployment of retired officers or employees."

25 SEC. 11. A new section 211 is added to the Economic

1 Stabilization Act of 1970 (Public Law 91-379) to read as
2 follows:

3 **“§ 211. Funding**

4 “(a) There is hereby authorized to be appropriated to
5 the President, to remain available until expended, such
6 amounts as may be necessary from time to time to carry
7 out the purposes of this title.

8 “(b) The President may accept and use in furtherance
9 of the purposes of this title money, funds, property, and
10 services of any kind made available by gift, devise, bequest,
11 grant, or otherwise for such purpose.”

12 SEC. 12. A new section 212 is added to the Economic
13 Stabilization Act of 1970 (Public Law 91-379) to read as
14 follows:

15 **“§ 212. Expiration**

16 “The authority to issue and enforce orders and regula-
17 tions under this title expires at midnight April 30, 1973,
18 but such expiration shall not affect any action or pending
19 proceeding, civil or criminal, not finally determined nor any
20 action or proceeding based upon an act or acts committed
21 prior to May 1, 1973.”

22 SEC. 13. A new section 213 is added to the Economic
23 Stabilization Act of 1970 (Public Law 91-379) to read as
24 follows:

1 **“§ 213. Ratification**

2 “The regulations, rules, orders, guidelines, interpreta-
3 tions, and circulars heretofore promulgated, made, or issued
4 under the authority granted to the President by the Eco-
5 nomic Stabilization Act of 1970, as amended, and in effect
6 on the date of enactment of this title, and the assignment of
7 personnel and expenditure of funds in exercising that au-
8 thority are hereby approved, ratified, and confirmed.”

9 SEC. 14. A new section 214 is added to the Economic
10 Stabilization Act of 1970 (Public Law 91-379) to read as
11 follows:

12 **“§ 214. Severability**

13 “If any provision of this title or the application of such
14 provision to any person or circumstances shall be held in-
15 valid, the remainder of the title, and the application of such
16 provision to persons or circumstances other than those as to
17 which it is held invalid, shall not be affected thereby.”

92^D CONGRESS
1ST SESSION

H. R. 11902

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1971

Mr. HENDERSON (for himself and Mr. DULSKI) introduced the following bill;
which was referred to the Committee on Post Office and Civil Service

A BILL

To provide for additional positions in grades GS-16, 17, and 18, to carry out the functions of the Economic Stabilization Act of 1970.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That (a) in addition to the number of positions which may be placed in GS-16, 17, and 18, under section 5108 of title 5, United States Code, not to exceed forty positions may be placed in GS-16, 17, and 18, to carry out the functions under the Economic Stabilization Act of 1970, as amended (Public Law 91-379; Public Law 92-15).

(b) The authority under this Act shall be subject to the procedures prescribed under section 5108 of title 5, United States Code, and shall continue only for the duration of the exercise of functions under the Economic Stabilization Act of 1970.

Mr. HENDERSON. At this time I will invite Mr. Seymour S. Berlin, Director of the Bureau of Executive Manpower of the U.S. Civil Service Commission, to present his testimony. You may introduce your associates and proceed in any way you like.

STATEMENT OF SEYMOUR S. BERLIN, DIRECTOR, BUREAU OF EXECUTIVE MANPOWER, U.S. CIVIL SERVICE COMMISSION; ACCOMPANIED BY JOSEPH DAMICO, BUREAU OF EXECUTIVE MANPOWER, AND EARL RHODE, DIRECTOR, EXECUTIVE SECRETARY OF THE COST OF LIVING COUNCIL

Mr. BERLIN. Thank you, Mr. Chairman.

I have with me today from our staff, Mr. Joseph Damico. Mr. Earl Rhode, executive secretary of the Cost of Living Council, is here to assist the committee in its deliberations.

Mr. Chairman, before I go into my prepared statement, may I make a few remarks on the statement which you have just made.

Speaking for Chairman Robert E. Hampton, the Chairman of the Commission, I know he will make known the views of this committee to the appropriate sources in the administration and in the Office of Management and Budget regarding legislative requests and experts and consultants.

Also, Mr. Chairman, I believe the statement you made about the Federal executive service proposal is completely in accord with the administration's proposal, which concerns itself with the whole question of executive and legislative oversight of the use of executive manpower resources. The administration recognizes that this has gotten out of hand in the last several years as the normal program growth of the Government has taken place. I am sure that Chairman Hampton will be most anxious to discuss with this committee the reason for the Federal executive service proposal in terms of more effective legislative and executive oversight.

Mr. HENDERSON. Let me also add this, Mr. Berlin, so it will be a matter of record, and also a personal view that you can take back to Mr. Hampton and he, in turn, to others involved in these matters.

In view of the emergency nature of the Economic Stabilization Act extension, if the authority for the so-called temporary or special supergrades here had contained the provision that those appointments would have been allocated and subject to the usual civil service responsibility of determining that the persons nominated were qualified, I think I would have been reluctant to oppose its inclusion in the bill before the Banking and Currency Committee as vigorously as I did. I still oppose it because you do two things when you create some 40 positions. The other committees make no inquiry and have no particular expertise, Mr. Gross and I think, as do others who have worked on this project, to determine the need.

Coupling that with removing them completely from the Civil Service Commission oversight is just a travesty on the procedures that we tried to establish, and that we will not permit if we can prevent it.

I think a word to the wise should be sufficient. There is some controversy about whether there is another reason, but even if there is some reason for this kind of authority in legislation going to other

committees, the chances of its getting by are much better if they still provide that the Civil Service Commission at least will determine the number needed and the qualifications of the persons filling them. Where they do not do that, you may be sure if it comes to our attention we are going to oppose it as we have done here.

Go right ahead.

Mr. BERLIN. Thank you, Mr. Chairman.

Thank you for the opportunity to appear before you today regarding H.R. 11902, which would authorize an addition of 40 positions in grades GS-16, GS-17, and GS-18 to the pool available to the Civil Service Commission.

These positions would be authorized for use in carrying out the new functions under the Economic Stabilization Act of 1970, as amended. They would be subject to the normal controls of the Civil Service Commission as to establishment of grade levels and approval of persons for appointment to the positions. Finally, they would be temporary in nature in that the authority for their establishment would continue only for the duration of the exercise of functions under the Economic Stabilization Act of 1970.

The Civil Service Commission strongly recommends that Congress make available to the administration a sufficient number of high-level positions so that the new functions under the Economic Stabilization Act can be performed. It is imperative that the new organizations established by the President have available to them the ability to attract highly skilled and professional persons needed to carry out the important functions of the organizations. Not only is it necessary to attract highly qualified persons, but the organizations have the added difficulty of attracting these highly skilled individuals for a function that is of temporary nature.

It is, therefore, extremely desirable that there be made available a sufficient number of high-grade positions to these agencies and to those continuing agencies already established which would play a supporting role, such as the Internal Revenue Service of the Department of the Treasury. We have reviewed with the appropriate members of the administration the needs of the new agencies. On the basis of information available to us at this time, the Commission has concluded that the request for 40 additional positions is reasonable. We base this judgment on an overall review of the proposed organizational structures of the agencies, especially in consideration of the need for temporary high-quality persons to staff them.

We understand that approximately 10 supergrade positions would be established in each of the 3 new organizations: the Cost of Living Council, the Pay Board, and the Price Commission. In addition, the Internal Revenue Service, which will be the field operating arm of the organizations, will need a relatively few high-level positions to staff its new temporary role.

Ordinarily, when a new program is established by the President or the Congress which requires several supergrade positions, we have been able to accommodate to these needs by judicious use of the existing spaces already made available to us by the Congress. However, we cannot at present provide this kind of assistance to the new organizations established to carry out the Economic Stabilization Act.

In the last 5 years, Congress has made available to the Civil Service Commission, for governmentwide use, only 170 supergrade positions. During this period of time we have had to meet the needs of dramatic program growth in many existing agencies, as well as assist in the establishment of new agencies and totally new programs. For example, we have had to assist in the establishment of the new Environmental Protection Agency, and the National Oceanic and Atmospheric Administration in the Department of Commerce. We have used some of the new spaces to complete the staffing of the Secretariat of the new Department of Transportation. There have been spectacular growths in some of the on-going programs of the Department of Health, Education, and Welfare. And many new programs in such areas as law enforcement, drug abuse, consumer affairs, environmental quality, telecommunications policy, and so forth, have all drained the supergrade resources available to the Commission.

It is, therefore, necessary for the Congress to provide these new positions to the executive branch so that the immediate needs of the Economic Stabilization agencies can be met to carry out the administration's vital economic programs.

If H.R. 11902 is passed, the Civil Service Commission will be responsible for carefully evaluating the executive manpower needs of the economic stabilization organizations on a position-by-position basis in the same manner as we carry out our responsibilities for all other agencies of Government. If this responsibility is placed on the Commission, we of course will do everything possible to help these organizations become established and to staff themselves with high quality executives on a timely basis.

Thank you for your attention. I should be glad to answer any questions—and I am sure so will Mr. Rhode—or to be of any assistance we can to the committee.

Mr. HENDERSON. Thank you, Mr. Berlin.

Can you or Mr. Rhode tell us at the present time how many supergrades are connected with the administration of the Economic Stabilization Act of 1970, these 40 positions being for the new responsibilities and functions under the act?

Mr. BERLIN. It is my understanding, Mr. Chairman, that at present there are none that have been specifically established under the Economic Stabilization Act of 1970 for the purposes of the new extension of the act, which is Price and Pay Control.

Mr. HENDERSON. That is true, but I wondered how many they have had allocated from the pool for the functions they presently carry out.

Mr. BERLIN. None under phase I, Mr. Chairman.

Mr. RHODE. The staff under phase I, as you may be aware, came from other agencies on a detail or loan basis.

Mr. HENDERSON. That brings me to my second question, if we may pursue this for a moment. How many of these 40 positions would you anticipate would be used to replace supergrades who have been loaned from other agencies, or another way to put it: How many supergrades do you now have on loan from other agencies?

The reason I ask this is that I want the record to be clear, Mr. Berlin, that if you have now 20 on loan from Treasury, Internal

Revenue, or elsewhere, that we would not have a piling up. If we are going to give 40 to the Economic Stabilization agency by this legislation, we want to understand that those 40 will be sufficient, and that those agencies which now have supergrades on loan would have their authority returned, because we can assume that they needed them. Yet, if we do this, specifically granting 40 to the agency, and they continue to use the others on loan, we have not got the full picture.

Mr. BERLIN. Mr. Chairman, I can assure you, first of all, that these 40 will be specifically used for the three new organizations established by the administration and for those agencies, such as Internal Revenue, that have specifically new temporary functions given to them.

Insofar as persons who are on detail from their agencies, it is our understanding those supergrade detailees would return to their agencies. Anyone who moves to one of these temporary jobs in the new organization will do so on a temporary basis, and there will not be an increased number of supergrades in the agency from which he comes.

Mr. RHODE. The people that we have now are still employed on the rolls of the agencies from which they were loaned or detailed. We have requested of the Appropriation Committees of the Congress a certain number of positions for this agency. When we have authority from the Congress and from the Commission, we will convert these people to our rolls. At that time, anyone who might have supergrade in Treasury, Commerce, or any other agency, that position would be returned and he would be on our rolls using one of our positions and not the position of the contributing agency.

Mr. HENDERSON. That is exactly what I wanted to get into the record, that that was the intention.

Counsel points out to me that under the executive order of yesterday there is a new Rent Advisory Board, and the question follows: Would they need supergrades? Let me say even though your testimony states that the 40 supergrades would be used in the present three, our legislation would not be so restrictive and you could, it seems to me, if the new Advisory Board requires supergrades, use this 40 authority, if that is a figure finally approved by the Congress and for which you get appropriations. If you find there is a future need, the proper thing to do is to make the request through the Commission back to our committee. I feel sure we would be as responsive as we can be in the light of what use you have made of the 40, or whatever number is authorized, in view of the history at that time.

This is the only way I see we can continue to have reasonable oversight, Mr. Gross and Mr. Mills, over the top-level positions, at least until some decision is made on the Federal executive service.

Mr. Berlin, I wonder if you would comment on the expert and consultant authority that is contained in the bill before Banking and Currency. It would seem to me that in the normal course of establishing a new agency or new authority within an agency, we would envision the employment of experts and consultants on a so-called temporary basis. Our present law, at least, requires a 1-year appointment. That would facilitate the employment of the high-level, competent personnel that the agency would need, that later would most logically be converted to supergrade positions if it were found that that person and that function would continue more than 1 year.

I wonder if you would comment on that authority. Would that authority in the bill, if it becomes law, not be sufficient at least to provide the early and immediate needs of the agency for at least the new hires, rather than for those who would be loaned from other agencies?

Mr. BERLIN. Of course, I think, Mr. Chairman, your last statement is true, that of the need to take care of those from other agencies would need supergrade spaces. I think using the expert or consultant authority for regular line positions in organizations, whether they be new or old, is a dangerous process.

The regulations and provisions and procedures concerning experts and consultants concern themselves with persons not in line organizations but, rather, when needed, on a temporary basis for a specialized purpose.

Certainly, they are needed for that purpose. But we have consistently discouraged agencies from using the expert and consultant authority to fill line positions that should be established as supergrades.

Mr. HENDERSON. I couldn't agree with you more, and I am very glad to have you make this response.

I asked the question because we are in something of an unusual situation here with the economic stabilization functions having been created by Executive order first, and now with statutory authority going through the Congress. It would seem to me this would be one place where the exception could be made if the agency finds that it does not have supergrade authority and we have not enacted into law supergrade authority through the reporting of this bill and through the normal legislative process.

The reason I ask this is that, although we intend to act as promptly as we can on the specific request here, I think—it would be reasonable to expect there may be some delay in the enactment of the authority. With the expert and consultant authority, as contained in the bill—I certainly agree with your response on that, in keeping with my comment in my prepared statement—it possibly could be used under the unusual emergency situation until we get authority. I wanted the record to show if this was going to be used, after the grant of supergrade authority—those experts and consultants, who were hired because of that unusual situation—would be converted to the supergrade positions.

Mr. BERLIN. Mr. Chairman, I think I can speak for the Civil Service Commission in saying that even in the absence of supergrades, we would be very reluctant to see an emergency agency use experts and consultants to fill regular positions, for a variety of reasons. It removes control of the normal personnel processes in many respects. People coming in do not have the opportunity for some of the fringe benefits—health benefits, health insurance, and so on—which they ought to have when they come in as employees of the Government.

Our feeling is that we should avoid the use of experts and consultants in regular line positions at all costs, and take whatever other emergency actions are necessary.

I can assure you that experts and consultants will not be in operating positions, especially, if the Congress gives the relief to the executive branch that it needs.

Mr. GROSS. Will the gentleman yield?

Mr. HENDERSON. I shall be glad to. I wanted to make one final comment, and then I shall yield to you.

I want to say for the benefit of Mr. Gross and Mr. Mills that the reason I felt it imperative that I introduce the bill and call this to the attention of Chairman Dulski and call the hearings this morning is that I think we should recognize that the Commission has done a commendable job on the allocation of the most recent supergrade positions to the so-called pool. As Mr. Berlin points out, we have given them only 170 in the last 5 years, and we all have been aware of the expanding responsibilities.

So we find here that for the Economic Stabilization responsibility which has most recently been created by the President's executive order, they did not have in the pool any number of supergrades unallocated that they could release to those agencies which were required to make loans to get the program going.

I felt their request for 40 positions was not an unreasonable one if we were assured that the Commission will continue its surveillance over the positions as they would under the specific legislation proposed in the bill before us.

I think we all are now pretty well aware that we cannot realistically believe this Economic Stabilization is going to be temporary, anything like 12 or 18 months. I think more realistically we could expect the function will be ongoing for some time.

I think I might have preferred that we grant additional positions to the Commission without their being specifically allocated, but I realize that to do that we would have had to have perhaps a much broader review. I thought it would not be unreasonable for us to take up this one request for the 40 positions. It will be up to the subcommittee to determine whether or not the 40 positions are a sufficient number or whether we think the number might be reduced.

Speaking for myself, I think we have to be realistic and realize that the Commission could not grant any relief because they did not have any more supergrade positions in their pool and these functions are very essential.

I also think that we can be realistic in assuming that these 40 positions will go on for more than what we normally think of as a temporary period.

I also would point out this will not in any way grant the Commission any relief in the very tight supergrade position situation. I think that is something we could get into early next year as we go into a review of the Federal executive service.

I am happy to yield to Mr. Gross.

Mr. GROSS. Thank you, Mr. Chairman.

Mr. Berlin, on page 2 of your statement, you say that the Stabilization Council function is of a temporary nature. How temporary do you think this will be?

Mr. BERLIN. Mr. Gross, we have been planning to take this through the 1-year extension of the Economic Stabilization Act. That is the only official information we have.

Mr. RHODE. The administration has taken the position, as I am sure you are aware, that this program will stay in existence no longer than is needed, at least in its present form, with a Cost-of-Living Council, a Price Commission, and a Pay Board.

Mr. GROSS. That is very fine, Mr. Rhode—

Mr. HENDERSON. Would you yield to me a moment, Mr. Gross?

Mr. GROSS. Yes.

Mr. HENDERSON. On page 2, the back of the bill, you will note language that it shall continue only for the duration of the exercise of the functions under the Economic Stabilization Act.

Mr. GROSS. I am aware of that. I am also aware of how easy it is to continue these governmental agencies.

Mr. HENDERSON. I made the decision in introducing the bill that the authority ought to continue as long as the Congress authorized the continuation of the function. Of course, we could amend the bill to provide that it would be only a 1-year authorization or a 2-year authorization or another specific time. I decided if we did that we would most likely be faced with new legislation again because the function would be ongoing, and that at least for the purpose of introducing the bill I ought to say as long as the Congress determines the function is necessary, that long we could realistically assume that the positions would be necessary.

I certainly feel, with you, something of a frustration about how long "temporary" will be. I decided it would be longer than 1 year.

Mr. GROSS. This has been going on for about 4 months, has it not?

Mr. BERLIN. Yes, sir.

Mr. GROSS. I have been puzzled throughout this 4-month period by how the administration could draw upon the Internal Revenue Service for all of these employees. How many have you gotten from the Internal Revenue Service, and what has happened to the Internal Revenue Service? How could you draw upon the Internal Revenue Service without damaging the efficiency of the Internal Revenue Service unless that Service had previously been overstaffed?

Mr. RHODE. There are two aspects to this, sir. First of all, the first 4 months the program was the same period at which fortunately, the Internal Revenue Service's tax workload is at its lowest level. During this period of time there were resources that we were able to utilize within the Service.

Mr. GROSS. How many did you get from Internal Revenue?

Mr. RHODE. In terms of actual people working, we do not have an exact count of the number of people, because there was substantial collateral responsibility. We had about 2,500 man-years of activity during phase I. We anticipate about 3,000 during phase II.

Mr. GROSS. 3,000 from Internal Revenue? Are we still talking about Internal Revenue?

Mr. RHODE. Yes, sir.

Mr. GROSS. Translate that, if you will, please, into the number of warm bodies that represents. I am not able to keep up with man-hours.

Mr. RHODE. There are approximately 1,000 warm bodies that you could identify as working full time on the stabilization activities.

Mr. GROSS. From Internal Revenue?

Mr. RHODE. Yes, sir, scattered throughout the 360 locations in the country.

In addition, there will be the equivalent of another 2,000 people, not people who are working full time on this activity, but it will be the equivalent of that.

In terms of your question about impairing the efficiency of the Service, you will recall that on August 15, in addition to the other announcements that were made, the President announced a 5 percent reduction in all Federal personnel. That 5 percent reduction when applied to the Internal Revenue Service came out to approximately 3,000 people. The Service would have been required, under the President's directive, to reduce by 3,000, and they were managing their activities so they could do this without a significant reduction in the efficiency of their activities. There would have been some loss, obviously.

When the decision was made to use the Service on a continuing basis in the second phase of the program, the decision was made to give the Internal Revenue Service relief from the 5-percent cutback. So, the 3,000 people that they would have had to reduce had the 5 percent applied to them was lifted and, in effect, the money and those positions were transferred over to work on the stabilization program.

Mr. GROSS. Then all this fine talk about a 5-percent reduction is just not taking place.

Mr. RHODE. Not in the Internal Revenue Service, sir, but it is occurring across the rest of Government. The administration anticipates the saving of, as I recall, some \$600 million as a result of the 5-percent reduction applied to the rest of Government, but in the specific case of the Revenue Service the requirement has been lifted because we needed these people to work on the economic stabilization program.

Mr. GROSS. What is the total number of personnel that you propose to have in the stabilization setup in all its aspects and ramifications?

Mr. RHODE. At the present time, in addition to the approximately 3,000 that will be engaged in the Internal Revenue Service, we have indicated a need for the equivalent of about 709 positions that will be involved in the Cost of Living Council, Pay Board, Price Commission, and the other committees that are involved.

Mr. GROSS. That includes them all, top to bottom?

Mr. RHODE. Yes, sir.

Mr. GROSS. That is about 3,709.

Mr. RHODE. That is right.

I would point out we are very early in phase II, as you recognize, and we have no really clear assessment at this point of the workload requirements. We may find in the next few months that that estimate is over or under. We may have to come back to the Congress and indicate that we need more people or less, once we have a clear understanding of what the workload will be.

Mr. GROSS. How many supergrades do you have now, both as to actual supergrades and those of equivalent pay status on the basis of consultants, advisers and experts, so-called?

Mr. RHODE. I will have to supply for the record the exact number of supergrades that are detailed or on loan or equivalent in positions, as you mentioned, but my quick estimate, based on the people that I know to be supergrades, is that we presently have about 15.

I would point out we are not close to our staffing complement of 700 at this point.

Mr. GROSS. How many consultants do you now have, or do you know?

Mr. RHODE. At the moment, I can think of only one consultant that I am aware of. We have some contractual support helping the Price Commission and the Pay Board in getting set up, but they are not consultants in the usual sense. There is only one that I am aware of.

Mr. HENDERSON. Would you supply for the record the number of supergrades that you now have and identify the agencies from which they were loaned, so we will be able in the future to determine the allocation of these 40? We expect, from your testimony, Mr. Berlin, that those agencies would be relieved if this should become law.

Mr. BERLIN. May I again assure you that we will work very closely with your staff, as we have in the past, to show completely what we have done with the 40 and how they are used, because it is clearly the intent of the Commission that these be used solely for the economic stabilization function.

(The information follows:)

SUPERGRADES PRESENTLY ASSIGNED TO ECONOMIC STABILIZATION AGENCIES

There are presently 14 personnel in supergrade positions who are on detail or loan from other executive agencies to the Cost of Living Council, the Price Commission and the Pay Board.

The attached list provides the names of these individuals, the agencies by which they are employed, the title of their position in the contributing agency and the position which the employee is presently occupying in the Economic Stabilization Program.

EXECUTIVE PERSONNEL

COST OF LIVING COUNCIL

Kosters, Marvin H., Dept. Labor, Manpower Administration, GS-18: Associate Manpower Administrator (Policy, Evaluation, & Research); Director, Office of Planning & Analysis.

Malaga, Joseph F., NASA: Excepted (GS-18 equivalent); Director, Resources Analysis Div.; Director, Operations Review.

Mullaney, Joseph E., Office of the Special Representative for Trade Negotiations, Executive Office of the President, GS-18: General Counsel; General Counsel, Cost of Living Council.

Abrams, Albert E., OEO: Presidential App't—AD-301 (Level IV Equiv.), Assistant Director, OEO; Director, Congressional & Public Affairs.

EXECUTIVE PERSONNEL—PAY BOARD

McGreagor, Jack, State Department, GS-17: Acting General Council; General Council.

Ripa, Thaddeus, HEW, GS-17: Administrator for Management; Director of Process Control Office.

Wurth, Herbert, Postal Service, GS-16: Public Information Specialist; Public Information Officer.

EXECUTIVE POSITIONS—PRICE COMMISSION

Puppa, Henry George, GSA, GS-17: Director of Programs Policy Planning; Director of Process Control.

Cassidy, Robert, OEO, GS-17: Associate Director of Administration; Director of Administration.

Osborne, Harlow D., Department of Commerce, GS-16: Economist; Economist. Leanse, J. I., Department of Commerce, GS-17: Deputy Director; Director of Price Policy.

Wortman, Don I., OEO, GS-17: Comptroller, Director of Program Operations.
 Slawson, William W., GS-18: Consultant; General Counsel.
 Helmantoler, William, GS-16: Consultant; Director of Public Affairs.

Mr. GROSS. Who is going to pay the 3,000 from Internal Revenue?

Mr. RHODE. For fiscal 1972, the equivalent of 3,000 people employed by the Internal Revenue Service will be paid from funds appropriated for the Service.

Mr. GROSS. That is the Internal Revenue Service?

Mr. RHODE. Yes.

Mr. GROSS. Then you have some 700 employees that you will pay?

Mr. RHODE. Yes, sir.

Mr. GROSS. You want through this legislation 40 supergrades for 700 employees?

Mr. RHODE. Yes, sir.

Mr. GROSS. That is without those who may be on the payroll now and the hiring of consultants?

Mr. RHODE. A small number of the 40 which will be made available will be used for the Internal Revenue Service, also, sir. They are not all 40 for the 700 positions in the other agencies.

Mr. GROSS. You mean you will make supergrades out of some of the Internal Revenue Service employees?

Mr. RHODE. There has been established within the Internal Revenue Service a new Stabilization Division for this activity. There are positions being created there, and certain people will be employed. Some of them may be from within the Revenue Service, some of them from outside, to staff these positions. Some of those positions will be at the supergrade level.

Mr. GROSS. Once the stabilization program is ended—you are shaking your head, Mr. Berlin?

Mr. BERLIN. Excuse me, sir.

Mr. GROSS. Are you indicating—

Mr. BERLIN. No, sir. Those positions that are established in this agency as well as in the Internal Revenue Service will be clearly earmarked as Economic Stabilization Agency's positions, and they will be clearly marked as temporary jobs, regardless of where the people came from.

Mr. GROSS. So, you might make a grade 18, and when he goes back to Internal Revenue Service after the so-called emergency is over, with a well-whetted salary appetite, he would be dropped back to perhaps a 14, is that correct?

Mr. BERLIN. Theoretically, sir, but it is rather difficult for me to expect that a grade 14 would go to grade 18 with the Whitten amendment and the other controls we exercise. Probably it would be more reasonable to assume that there might be a one-grade increase and that the person would have continuing permanent rights at the permanent grade from which he came, whatever that grade was.

Mr. GROSS. Looking down the road, I see more problems, Mr. Chairman. When that day comes, that will be the day.

Mr. Berlin, you said you had only 170 supergrade positions.

Mr. BERLIN. I said Congress had supplied us with only an additional 170 supergrade positions in the last 5 years.

Mr. GROSS. And they are exhausted, you say?

Mr. BERLIN. Yes, sir.

Mr. GROSS. Did you get any supergrades when the Postal Service was converted?

Mr. HENDERSON. I believe there were 20 or 23.

Mr. BERLIN. I do not have that information here.

Mr. HENDERSON. You got a total of 160, but I believe the total Reform Act itself carried—

Mr. BERLIN. We do not give supergrades to the Post Office Department now under the Postal Service Act. We did not have to supply any of the 170 to the Post Office Department.

Mr. GROSS. What happened to the 160 supergrades?

Mr. BERLIN. Sir, I do not know what the 160 refers to. You mean the 170 we were given in the last 5 years?

Mr. GROSS. The 160 you got from the Post Office Department when it was converted to a so-called corporation.

Mr. BERLIN. Sir, we did not receive 160 from the Post Office Department. There were approximately—I am just guessing—there were approximately 50. If you are looking at the total—I do not have the sheet in front of me—remember, that is the total number including equivalents. The regional directors, regional people, and some big city postmasters were paid equivalent of supergrades but were under the Postal Pay Act. Those did not come back to the Civil Service Commission.

Mr. GROSS. How many of them did you have?

Mr. BERLIN. Approximately 50, I would say. I can supply that for the record.

Mr. GROSS. Approximately 50 supergrades?

Mr. BERLIN. Right; that we received. I will supply the exact number.

(The information follows:)

Our records show that in February 1971, when the Postal Service relinquished its quota supergrade spaces to the Commission, it had a total of 156 positions of supergrade or equivalent pay levels on its rolls. Of this number, 6 were non-quota, 3 were Hearing Examiners, 4 were Public Law 313 types given only for postal scientific work, 55 were under the Postal Pay System, and 88 were quota supergrades and thus returned to the Civil Service Commission pool.

Mr. GROSS. Where did the 50 go? You are asking for 40 here. We think that is quite a few—at least I do—to go into a temporary agency.

Mr. BERLIN. This is one of the reasons that we were able to exist on a very sparse number of 170 for the rapidly increasing program in government and for the new agencies that we had helped establish.

Mr. HENDERSON. You are really saying that the 50, or whatever the number is that you picked up from the Post Office Department—

Mr. BERLIN. Were added to the 170.

Mr. HENDERSON. This actually gave them 170 plus that 50.

Mr. GROSS. But it is not 170.

Mr. HENDERSON. 170 plus the 50.

Mr. GROSS. That is right.

Mr. BERLIN. From that standpoint, Mr. Gross, you are absolutely right.

As Mr. Bray knows—and I have worked closely with him and with the subcommittee staff—we have been using spaces from many agencies, giving them to other agencies for new programs and new activities developing in the Government. One of the reasons we didn't

have to come to the committee and ask for new spaces in the last 5 years other than the 170 we got was because of the Post Office Department number that we did get back from them.

Mr. HENDERSON. You mentioned the Department of Transportation staffing. How many new supergrades have been granted to the Department of Transportation in addition to the supergrades that were existing and transferred to the Department when the functions went to that Department, such as Coast Guard?

Mr. BERLIN. Coast Guard, and the Federal Aviation had a large number, Mr. Chairman.

At the present time the Department of Transportation has a total of 411 in all types. This might be slightly different from the number you have.

Mr. HENDERSON. We have 423.

Mr. BERLIN. The 411 plus 21—they have special authority which are not exactly supergrade or equivalent types. They are special authorities given to them in their own organic statute, Mr. Chairman, and not under the control of the Civil Service Commission. I speak of the 411 under our control. Of that number, it is my recollection, as testified before your committee by the new Secretary at that time, prior to this administration, that approximately 60 were new ones given to the new Department, to assist the Secretariat in getting established. I believe it was in that dimension.

Mr. HENDERSON. That was the area that I recall. Mr. Gross' recollection may be better than mine. At that time the legislative request was 75 new positions and by our action it was reduced, so I would assume the 60 new positions would be correct and that by taking the action we took, rather than getting the 75 that would have been authorized in the bill creating the Department, we ended up with them only getting 60 because we did provide for the allocation of the Civil Service Commission.

Mr. BERLIN. The new Department initially asked for 150 new positions, as I recall. I believe it was 150 that was in the legislation at that time, that was then reduced to a lower number. When we held the hearings I remember Mr. Gross raised some questions about the Department of Transportation.

The new functions in the Department of Transportation were the ones that we assisted with the new supergrades. For example, in policy and research. We did not add supergrade spaces to any of the agencies that were taken over by the Department of Transportation. But by this committee's insisting it go to the Civil Service Commission for review we did keep it down to what I consider a reasonable number.

Mr. HENDERSON. Do you recall any instances where the agencies brought in to the Department of Transportation gave up supergrades to the Department? Did the FAA, for example, give up any supergrades? Did we get any fish out of this merger?

Mr. BERLIN. Kicking and screaming, I think some of the bureaus did give up some, especially FAA. Of course, part of the problem is that these agencies had going organizational structures on an operating basis and the departmental level was more involved in integrating and coordinating programs. It wasn't a removing of functions, generally, from the operating bureaus.

However, in certain counterpart functions that did take place at the departmental level, some supergrade spaces were given up by the bureaus; yes, sir.

Mr. GROSS. Mr. Rhode, what is the average grade level as it now exists?

Mr. RHODE. As it now exists, I am not exactly sure—and that is because we have this unusual situation of daily turnover of personnel. The 90 days were over on the 15th of November and certain of the people loaned for those 90 days are returning. We are getting new people. Our budget anticipates, if I recall correctly, that the average grade level will be approximately 11.6 for the organization once it is established and ongoing. This includes the Council, the Pay Board, and the Price Commission, but I will be happy to check that and collect it for the record if that is wrong. However, that is my recollection.

Mr. GROSS. You pose something of a problem when you come to this committee asking for 40 additional supergrades without some kind of information as to what this will do insofar as the chiefs and Indians situation is concerned. For one, I am going to have to know more about it.

Mr. RHODE. Any information you would like I can supply. Our grade average as we have calculated it presently is approximately 11.6 and that includes the proposed allocation of the 40 supergrades.

Mr. GROSS. That includes the proposed allocation?

Mr. RHODE. That is correct. Those are included in the averaging.

Mr. HENDERSON. Have you furnished to the Appropriations Committee yet your proposed organizational structure and the basis for the data upon which you would base your appropriation request?

Mr. RHODE. Yes; we have supplied that.

Mr. HENDERSON. If you could make copies of that available to us, I think it would be helpful in answering the question. We would all be interested.

Mr. GROSS. I am told, Mr. Rhode, that the grade level in Government is 8.1 and the President is insisting that it be reduced. You say you are up to 11.6.

Mr. RHODE. You really have to compare the nature of this agency to other similar types of activities. When you take the 8.1 across Government, you are including the large field structures of agencies like the Social Security Administration, the Veterans' Administration, which have a very substantial number of people at lower grade levels. The 11.6 is only the Washington staff, the Cost of Living Council, the Pay Board, and the Price Commission.

The proper agencies for comparison would be the headquarters organization of other departments and other agencies and we believe our average is reasonably consistent with the average for headquarters organizations.

Mr. HENDERSON. Suppose that you took the 3,000 IRS personnel and averaged their grade levels in with the grade level you mentioned; do you think that would bring your average down to the usual Government average?

Mr. RHODE. If I remember correctly, the average grade level for the entire revenue service is in the high sevens or approximately eight, near the governmentwide average. Since we have a thousand we

can identify specifically and we are drawing the equivalent of 2,000 from other parts of the service, our average, including the service, would probably be right at approximately the eight level, an average of eight.

Mr. HENDERSON. So this would indicate that those bodies you are obtaining from IRS are not in the high level positions.

Mr. RHODE. No. In fact, those individuals specifically assigned to Economic Stabilization activities are those people in the subdistrict offices answering the questions, dealing with the public and in most cases their grades would be somewhat below even the average of the Revenue Service.

Mr. HENDERSON. Could I ask about what time in the future would you have these on-board ratings to identify the grade level structures. Could you report to us 90 days from now?

Mr. RHODE. In 90 days we would have those people specifically identified and we could give you an average that would include the Washington staffs of the Board, Commission and Council and the Internal Revenue Service, and I think you would find that average would be much more consistent with the governmentwide average.

Mr. GROSS. I wish you could amend that to 60 days, Mr. Chairman.

Mr. HENDERSON. Could it be done in 60 days?

Mr. RHODE. We will certainly try.

Mr. GROSS. Isn't it true, Mr. Berlin, that every time you add supergrades you escalate the grade level?

Mr. BERLIN. Yes, sir; you escalate the grade level but when you take 40 supergrades against 3,000 people in Internal Revenue, it wouldn't have too much of an effect on the grade level per se.

Mr. GROSS. But we have had a separation on the part of Mr. Rhode. We are talking now in terms of about 700 people. Already the grade level is 11.6. Forty supergrades are going to jump that grade level of the so-called "Indians."

Mr. BERLIN. Mr. Gross, I think Mr. Rhode made the point the 11.6 includes the anticipated number of supergrades in the three agencies: Cost of living, price and wage, so that the 11.6 already takes into account the supergrades.

The point I was making, Mr. Gross, and I think it is necessary to make it—the chairman indicated it—if the administration decided to set up one agency—which it is trying to avoid doing because it is trying to avoid establishing a new permanent bureaucracy and a new permanent agency, but if it did establish a new agency and included the 3,000 operating-type people, the average grade level including the supergrades would be probably no greater in this new agency than it is in the rest of the service, so that actually from the grade level standpoint this does not seem unreasonable.

Mr. HENDERSON. Let's make it clear. If you can, report to us on the first of February.

Mr. RHODE. We will give you what information we have on the first of February and I think it will be complete. If not, we will update it as soon as it is complete.

Mr. HENDERSON. If you will do that, it will be most helpful.

Mr. WHITE. To arrive at a figure of 40, you must have had some sort of a diagram, or organization in mind. Do you have such an organizational chart?

Mr. BERLIN. The three new agencies have a proposed organization chart. We have gone over the organization charts with the agency. We think that 40, as indicated in our statement, appears reasonable. The Civil Service Commission is not in a position at this point in time to say that it should be 38 or 40, but since these are circumscribed, we are saying on a position-by-position basis in our normal review the next step would be to do the actual allocation. In our opinion 35 to 40 is very reasonable.

Mr. WHITE. Now, since we are talking about a possible \$1,400,000 in salaries, could this committee have the benefit of looking at those organization charts?

Mr. BERLIN. Yes.

Mr. RHODE. I believe those charts were included in the information provided the Appropriations Committee and we will supply that for your use.

Mr. WHITE. I would like to look at it.

Mr. BERLIN. I would like to stress, though, that the mere fact the agency has indicated a grade or dollar cost is no indication that the Civil Service Commission would agree that a given grade is 18 or a 17 until we review it on a position-by-position basis. That is why I indicated that on an overall basis it appeared reasonable, but we can't certify at this point every position is reasonable.

Mr. WHITE. It indicates one supergrade for 27 people. Is this about the right ratio in your mind?

Mr. BERLIN. Sir, here again, if you include the 3,000 that will be the operating arm, that ratio is much changed.

Mr. WHITE. These are allocated for the price stabilization program.

Mr. BERLIN. As will be the 3,000 working on the price stabilization program.

Mr. WHITE. There will be 3,000 working on the price stabilization program?

Mr. BERLIN. Yes, sir.

Mr. WHITE. Every last one of them will be working on price stabilization?

Mr. RHODE. As I explained to the committee, we have at least 1,000 we can identify as full-time in this activity and in addition the man-hour equivalent of the other Revenue Service employees who will be engaged in stabilization activities—what happens is a revenue agent goes out to check the tax return of a certain firm. While it is there, they ask the firm to produce the records that the executive order requires that back up their ceiling prices. They do a compliance check in effect to see if they are in fact observing the rules and guidelines established under the stabilization program. We have to make some allocation of that individual's time between these two activities. When you make those allocations, it is anticipated there will be the equivalent of 3,000 people working on it.

Mr. WHITE. That is a ratio of one supergrade to 75 employees.

Mr. BERLIN. Mr. White, if I can supply it for the record, we have never allocated supergrades under the requirements of the law and good personnel management on the basis of ratio. The law requires that they be established on the basis of duties, responsibilities and qualifications required and we review them position-by-position. If we were to do it by ratio, we would find some agencies, such as GSA,

way underrated. Other agencies that have a large number of hearing examiners, for example, that are at the grade 16 level, as determined by Congress, would have a ratio perhaps of 1 to 20. Consequently, the law requires and we review each of the individual jobs and functions performed and we allocate supergrades on that basis.

Now, if the agency appears to be unreasonable in terms of a superstructure, our control, of course, is merely not to grant that number of positions to the agency.

Mr. WHITE. The charts you have furnished the Appropriations Committee, do they show the responsibilities?

Mr. RHODE. It will show a functional distribution. I would point out, first of all, the charts are not all that firm.

Neither the Commission nor the Board nor the Council has actually had enough operating time to decide just how to structure its organization. They have only been in business for 3 weeks. While we have supplied tentative organization charts because we would like to give you the benefit of our thinking, we would probably have to make some adjustments in these.

To the extent we can identify positions we know we will probably have, like a chief legal officer of some sort, their functions should be described, but some of these other jobs, given the rapidly changing nature of the workload, it is practically impossible to define specifically what that job is going to be and what will be done there.

Mr. WHITE. Has this committee ever authorized supergrades not given out by the Civil Service Commission?

Mr. BERLIN. We have practically none left.

Mr. WHITE. Practically none or none?

Mr. BERLIN. It is hard to say none at any time. When you are dealing with 2,754 there are obviously vacancies.

Mr. WHITE. I mean that you have ever allocated. You have allocated all that we have ever given.

Mr. BERLIN. We have allocated and committed to specific programs all that have been given.

Mr. WHITE. There is a fair assumption if we permitted 40 they would be allocated.

Mr. BERLIN. No, sir. That was the point I was trying to make. The mere fact that the Congress authorizes supergrades for a specific function, if it is limited to that function, doesn't mean that the Commission allocates them unless the jobs are worth the grades requested.

Mr. WHITE. But in the past you always have allocated them.

Mr. HENDERSON. In a normal situation we would have a request from the Civil Service Commission for, say, 100. That total of 100 would be made up of, say, 50 specific requests that they had from new agencies or new functions and they would say to us, "The additional 50 will be so-called reserve or pool."

Mr. WHITE. What was the last word?

Mr. HENDERSON. A pool. We give them a reserve. We have done this from time to time.

In the testimony he points out that there has been, over the 5 years, a total of 170 authorized, where we have given them some additional number for the pool. They also picked up 50 by the reorganization of the Postal Service. So the 170 plus 50 have been what the Civil

Service Commission has used over the last 5 years. However, what we have before us here is a new function which by the legislation introduced before Banking and Currency, asked for 40 specifically, and at our request that authority has been taken out of that bill. So these 40 would be allocated or authorized—the responsibility of the Commission would be to allocate either 35, 38, or not more than 40—and our subcommittee may feel there is justification for cutting this 40 down and having them come back after they have allocated, say, 30 or 35 of the positions, but that is a judgment that we would make after we receive all of the testimony. But we do have the assurance of the Commission and, this is the important thing that I was trying to get at, that with the Commission's oversight, we retain control over supergrade authority rather than doing it through Banking and Currency legislation. With that authority the economic and stabilization program could have been allocated those 40 supergrades without regard to the Civil Service Commission. There would have been no oversight from our viewpoint as to whether the position warranted a GS-16, 17, or 18 rate, or whether the person selected was qualified to fill that position.

So, under our authority we will have both the allocation of the grade and the qualification of the person to fill that position supervised by the Civil Service Commission. We also understand they will not allocate—if we authorize the 40 supergrades—unless the case is made that the function and the responsibilities of the position carried the proper grade.

Mr. WHITE. It would be possible that you would be asked for a GS-16 and if you turned that down then it would fall back into the 15 category which the agency would carry out through its normal function.

Mr. BERLIN. Mr. White, I can give you an example of an instance where Congress, in effect, earmarked certain spaces for an agency which we have not allocated because we have not found the jobs worth it as of the present time.

In 1970 in Public Law 91-206 Congress enlarged the pool to the Commission so that the Commission could allocate seven new jobs to the new National Credit Union. At the present time we have only approved five because the others submitted we have found not worth supergrades. Even though Congress says they may have seven. The Commission has always construed its responsibility under the law that the mere fact the jobs have been given to an agency, when they are under the Commission's control, does not necessarily mean we authorize the agency to have them unless they are worth supergrade levels under the classification requirements.

Mr. WHITE. I think that is how the committee would want you to function.

Mr. BERLIN. That is why I give you the assurance, Mr. White, and as the chairman states, that would be the case with the new stabilization agencies.

Mr. GROSS. Does the fact that this committee has not given you perhaps all the supergrades you wanted have anything to do with your rather tight-fisted policy with respect to the new Credit Union organization?

Mr. BERLIN. Obviously, the pressure of this committee has always been helpful in resisting the pressure of the agencies.

Mr. GROSS. We all know the background of Mr. Berlin, but how about you; would you briefly state your background, Mr. Rhode?

Mr. RHODE. Yes, sir. My most immediate experience before my present job was with the Cost-of-Living Council during phase I where I was Mr. Weber's assistant. Before that I was his assistant when he was Associate Director of the Office of Management and Budget.

In the 4 years previous to that, I was a budget examiner in two divisions of the Office of Management and Budget; first in the Natural Resources Division where I worked on the programs in the Department of Agriculture and then I worked on the programs of the—for 2 years in the programs of the National Aeronautics and Space Administration.

Before that I was at school at the University of Minnesota. I graduated from there in 1967 with a master's in public administration. Previous to that I taught high school in Minnesota for 1 year. Previous to that I had been a research assistant to the mayor of the city of St. Cloud, Minn., and before that I was at undergraduate school—

Mr. GROSS. What is your present grade level?

Mr. RHODE. I am a 14, sir.

Mr. GROSS. What reemployment rights of the old agency do the employees have who transferred to the Council?

Mr. BERLIN. At present the Commission has authorized the Economic Stabilization Agency to grant reemployment rights to a permanent career employee who transfers to the Economic Stabilization function. His rights are back to his agency to his same position or one of equivalent grade or level as that which he left.

The Economic Stabilization Act extension would carry that provision into law which has now been given administratively.

Mr. GROSS. Are you completely satisfied with that language in the bill?

Mr. BERLIN. We assisted in the preparation of that, yes, sir.

Mr. GROSS. Do you think the language should be mandatory rather than permissive?

Mr. BERLIN. We think that situation would not necessarily be a determining factor, Mr. Gross, because insofar as any individual is concerned, if he goes over, he does it voluntarily. If he does go over on a voluntary basis, he knows his rights are back with his agency, so we think the situation expressed in the proposed legislation is satisfactory.

Mr. GROSS. You are satisfied?

Mr. BERLIN. We are satisfied with that; yes, sir.

Mr. GROSS. I didn't ask about the compensation for consultants and other so-called experts. Do you have one or more, Mr. Rhode, presently employed?

Mr. RHODE. At the moment, sir, my recollection is we have only one employed on a consultant basis and I believe he is employed at the rate of either GS-17 or 18.

Mr. GROSS. Do you mean \$100 a day or \$75 a day or \$50 a day? They are also paid on a per diem; aren't they?

Mr. RHODE. Yes. The 18 comes to about \$128 a day. It is equivalent to 1 day's pay for a GS-18.

Mr. GROSS. Plus certain other expenses?

Mr. RHODE. He gets per diem as does any other Government employee. I believe that is limited to \$25 a day.

Mr. GROSS. Is it understood you are going to provide this committee with a specific statement as to the number of consultants you have and keep this subcommittee advised as we go along of the employment of consultants?

Mr. RHODE. On whatever basis you would like.

Mr. HENDERSON. I would also point out, Mr. Rhode, my recollection is there is provision in law this shall not exceed \$135 a day. I believe this was brought out in the hearings on the Westinghouse contract in the Postal Service where they were removed from the provision of law, which was not wise on our part.

Mr. RHODE. We are aware of that and you may be sure that won't be exceeded.

Mr. GROSS. Thank you, Mr. Chairman.

Mr. HENDERSON. Gentlemen, this concludes the testimony and the inquiry, unless you have something else.

It will be my intention to get the subcommittee to act on this legislation as soon as we possibly can.

Mr. WHITE. Before we get the requested charts, Mr. Chairman?

Mr. HENDERSON. This will be a decision for the subcommittee. I would ask those charts be submitted as soon as possible.

Mr. RHODE. We can probably have the material that you have requested either this afternoon or certainly first thing in the morning.

Mr. HENDERSON. If the members of the subcommittee could stay for just a moment, there may be some decision we can make in this regard.

We thank the witnesses for appearing this morning. You have made a very good presentation.

Mr. BERLIN. Thank you, sir. We certainly appreciate the attention of the committee and the opportunity to make known the administration's real need in this situation.

(Whereupon, at 11:30 a.m., the subcommittee adjourned.)



