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THE FEDERAL EXECUTIVE SERVICE

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON
ANPOWER AND CIVIL SERVICE

OF THE

COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 3807

A BILL TO AMEND TITLE 5, UNITED STATES CODE, TO
ESTABLISH AND GOVERN THE FEDERAL EXECUTIVE
SERVICE, AND FOR OTHER PURPOSES

APRIL 18, 21, 25, 1972

Serial No. 92-41

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



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1972

76-957

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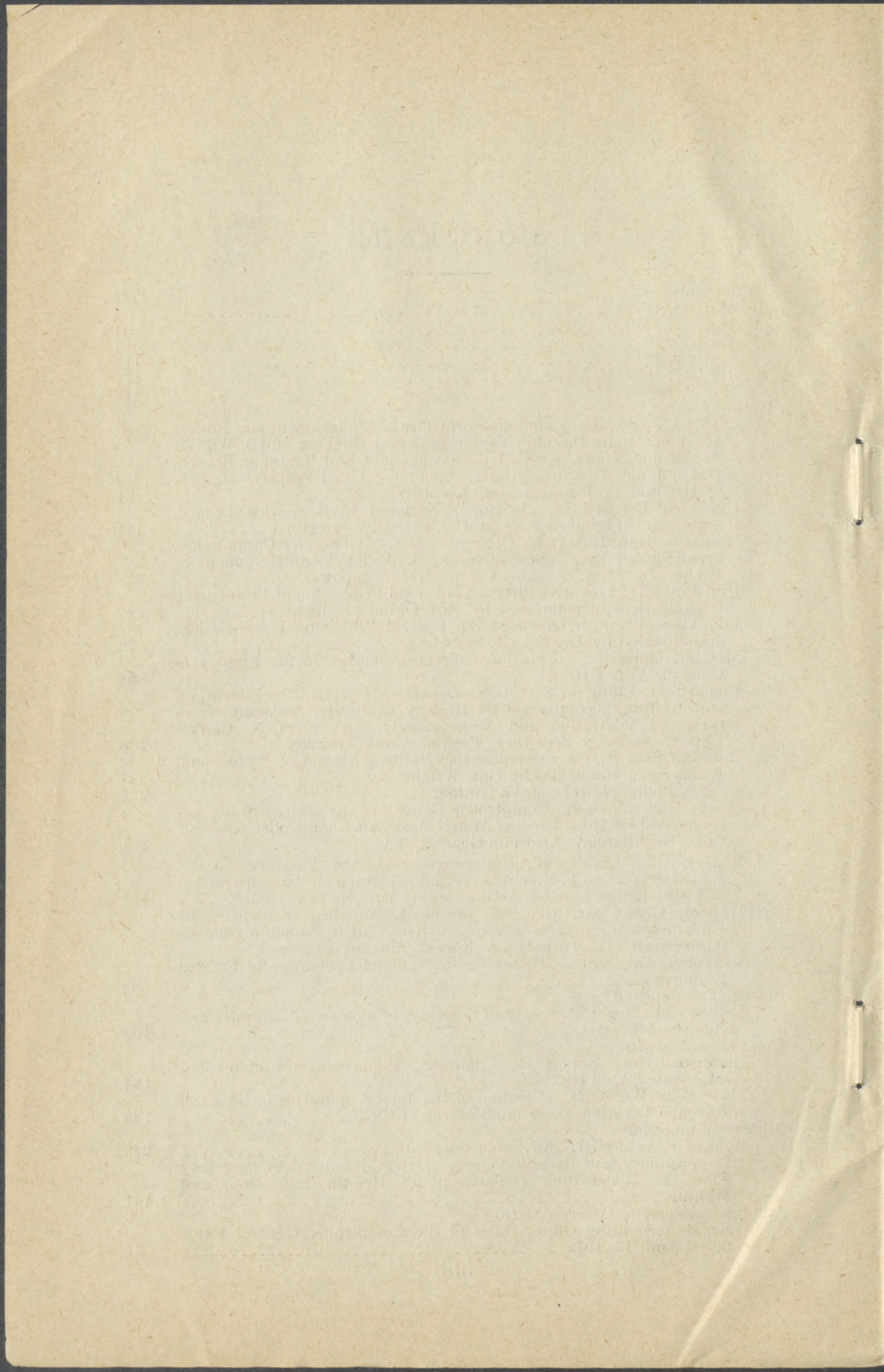
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THE FEDERAL EXECUTIVE SERVICE

TUESDAY, APRIL 18, 1972

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 9:40 a.m., in room 210, Cannon House Office Building, Hon. David N. Henderson (chairman) presiding.

Mr. HENDERSON. The committee will come to order. We are opening hearings this morning to consider H.R. 3807, a bill cosponsored on official request by Chairman Thaddeus J. Dulski and the late Hon. Robert J. Corbett; and Representative Gerald Ford has also introduced a bill identical to H.R. 3807; namely, H.R. 6772.

The purpose of H.R. 3807 is to amend title V, United States Code, to establish a Federal Executive Service to replace the present top executive positions in the executive branch.

The present supergrade program in the Federal Government began in 1947 when the Secretary of War was authorized 30 positions for people specializing in scientific research with salaries ranging from \$10,000 to \$15,000 per annum. At that time, \$10,000 was the highest pay grade in the classification series.

In 1949, by passage of the Classification Act, the existing schedule was extended to three new grades: GS-16, GS-17, and GS-18. This legislation created 400 of these top grade positions, with no more than 75 positions in GS-17, and no more than 25 in the GS-18 level.

Through the years, the Congress has authorized additional top level positions to fit the increasing needs of the departments and agencies. Now there are 2,745 positions in grades GS-16, GS-17, and GS-18 under the quota control of the Congress.

Resulting from pressure by departments and agencies for scientific and engineering positions, the Congress in 1962 enacted legislation for supergrade positions outside of the quota control of the Congress in the physical or natural sciences, medicine, and engineering professions whose primary concern was research and development.

There are now 1,950 of these engineering and scientific positions. The executive branch of the Federal Government today represents some 11,000 people who are making from \$29,680 as GS-16, to \$60,000 as a Cabinet member in executive level I.

Of the 11,000, 5 percent are in the executive schedule and 53 percent are in the general schedule (namely, GS-16, GS-17, and GS-18), 11 percent are engineering and scientific types, and 31 percent represent several other salary systems.

The other salary systems include the Foreign Service, AEC, TVA, Panama Canal Zone, and doctors in the Veterans' Administration. The control of top level positions in the Federal Government, as far as the House of Representatives is concerned, is within the jurisdiction of the Committee on Post Office and Civil Service.

Since 1961, the committee has had a procedure for controlling supergrades. The Congress, by approving H.R. 7377 in 1961, Public Law 87-367, gave complete jurisdiction to the House and Senate Committees on Post Office and Civil Service.

In turn, the committee holds the Commissioners of the U.S. Civil Service Commission responsible for evaluating jobs as to pay grade levels, assigning priorities for the filling of these jobs, and evaluating the nominees for such positions.

Over the years, and this year has been no exception, several congressional committees have brought to the House floor bills with provisions for additional supergrades. These actions not only infringe on this committee's jurisdiction, but also violate statutory standards and controls relating to Federal employment.

The Civil Service Commission which is the executive agency responsible for the overall administration of the Government's personnel system, seemingly, at times, has lost control over these top Federal positions.

With these facts in mind, the Civil Service Commissioners have come to the Congress with proposals to amend this control procedure.

Of the 11,000 executive positions, about 7,000 are top executive positions in the executive branch, mostly under the Classification Act. The proposed legislation is aimed at this group of 7,000 Federal executives.

The legislation before the subcommittee today would make the following changes: The present method of classifying these top jobs would be abolished. Instead, individuals would be paid on a scale comparable to the position requirements.

The number of Federal executives would be based on the agency's request, subject to the Civil Service Commission's approval. The Commission would report its authorizations to Congress on April 1 of each year.

The authorization would become effective in 90 days unless Congress disapproved. All career supergrades would be given an opportunity to sign initial 3-year agreements at salaries not less than step 6 of grade 15, or higher than executive level 5.

At the end of the 3-year agreement, the agency has the option either to renew or not to renew the agreement.

At the expiration of an agreement, the agency would have the option of offering the executive a 3-year renewal. Should the agency choose not to renew, or should the executive decline an offer of renewal, the agency could separate him involuntarily if he has completed 30 years of service, thus making him eligible for immediate retirement annuity.

In all other cases the executive must be offered a GS-15 position and would be entitled to 2 years saved pay.

The ratio of career and noncareer personnel would be 75 percent and 25 percent respectively, which is about what it is at the present time.

We are today fortunate to have as our leadoff witness the Honorable Robert E. Hampton, Chairman of the Civil Service Commission.

We also have Commissioner Andolsek and Mr. Seymour S. Berlin, Director of the Bureau of Executive Manpower.

I know you have looked forward to this hour a long time, Commissioner Hampton. There have been many reasons we have not been able to stay on schedule, but I am delighted we are able to get underway at this time, and we are delighted to have you and your associates with you, and I want to afford you every opportunity to make your presentation. It is the intent of the Chair for us to proceed with the hearings on subsequent days and to afford the Commission and the executive department every opportunity to put all of the testimony and evidence into the record that is desirable.

We are delighted to have you this morning, and I welcome you, Mr. Andolsek, and Mr. Berlin.

STATEMENT OF HON. ROBERT E. HAMPTON, CHAIRMAN, CIVIL SERVICE COMMISSION, ACCOMPANIED BY HON. L. J. ANDOLSEK, COMMISSIONER, CIVIL SERVICE COMMISSION; AND SEYMOUR S. BERLIN, DIRECTOR, BUREAU OF EXECUTIVE MANPOWER

Mr. HAMPTON. Thank you very much, Mr. Chairman. We are pleased to have this opportunity at this time to discuss our proposal to establish the Federal Executive Service. I would like to say that the delays in having the hearings do not necessarily lie solely with the committee, but as you know, we have requested delays ourselves several times.

Mr. Chairman, I would like to depart from our usual procedure here if it is agreeable with the committee. I would like to read a portion of my statement and then place the rest of it in the record, and then go back and summarize some specific provisions of the bill.

I think this would save the committee's time and leave more time for questions that the members might have. So if you have no objections, I would proceed on that basis.

Mr. HENDERSON. I certainly have no objection, and you may proceed to do that.

Mr. HAMPTON. Thank you. Since the committee has had the proposal and the section analysis for review, I will not outline in detail today every provision of the proposal. I can perhaps be of more service to the committee by concentrating on five main features of the proposal, and the purposes they will serve. I am sorry that my remarks will be somewhat lengthy, but the existing system is complex and has generated a complex set of problems which we have tried to solve in the proposal.

The Federal Executive Service is a new and modern personnel management system for the upper levels of the civil service. We commonly know this group as the supergrades and their equivalents.

The question has properly been raised as to why we are pressing for a major change in law. The issue is one to which we have given considerable thought. We have recognized for a number of years inadequacies in our management of executive manpower.

In 1967 we instituted the Executive Assignment System under existing legal authorities. We knew at the time that there were fundamental problems not addressed by the Executive Assignment System. But we felt it incumbent on us to clear away any inefficiencies in our own management of executive manpower before asking for new authority.

The FES proposal is not a hastily assembled collection of reforms. It is a carefully constructed, comprehensive system for managing the executive resources of the Federal service.

One or two of the FES features have captured considerable attention and have been highly publicized. But it is important that these not be blown out of perspective. The FES proposal is made up of many essential parts. Its provisions are linked together to form a total rational personnel system to meet the special needs of top level manpower. Years of experience with patching have convinced us that a sound new fabric is needed.

The FES will help insure that the Nation's business is in the hands of the most capable executives available. It will give career executives greatly expanded opportunities to exercise their abilities in positions of the highest importance.

It will integrate resource allocation with program needs and plans on a current basis. It will give top agency managers broad authority to use their executives as needed for most effective program accomplishment.

And it will—for the first time—make it possible for the administration and Congress to exercise meaningful oversight over the management of executive manpower in its totality.

First, I would like to take up five critical features of the FES. Following these I will speak to the matters of coverage and transition. The five features are:

1. Managing the number of executive spaces.
2. Setting the compensation of executives.
3. Monitoring the numbers and use of career and noncareer executives.
4. Appointing and assigning executives, and
5. Maintaining the quality of executives.

Feature 1, managing the number of executive spaces.

First, is the authority to manage executive spaces.

Under the present system, the authority to employ an individual in an executive position is derived from several different laws, rules, and regulations. As a result, the agency must take a variety of steps to accomplish what is one unified action in the eyes of the manager—filling an executive position.

First, the agency must have authority to establish the position. This authority itself may be obtained in a number of different ways. Then the agency, generally, but not always, must have the grade level of the position established by the Civil Service Commission.

Next, in some cases but not in others, the agency must have the qualifications of the proposed appointee approved by the Commission.

Under some authorities the Commission must approve a proposed salary in relation to the qualifications of the nominee. And, finally, there are a number of other possible complications requiring Commission action. These would include requests for appointment above the minimum of the grade and Whitten amendment waivers.

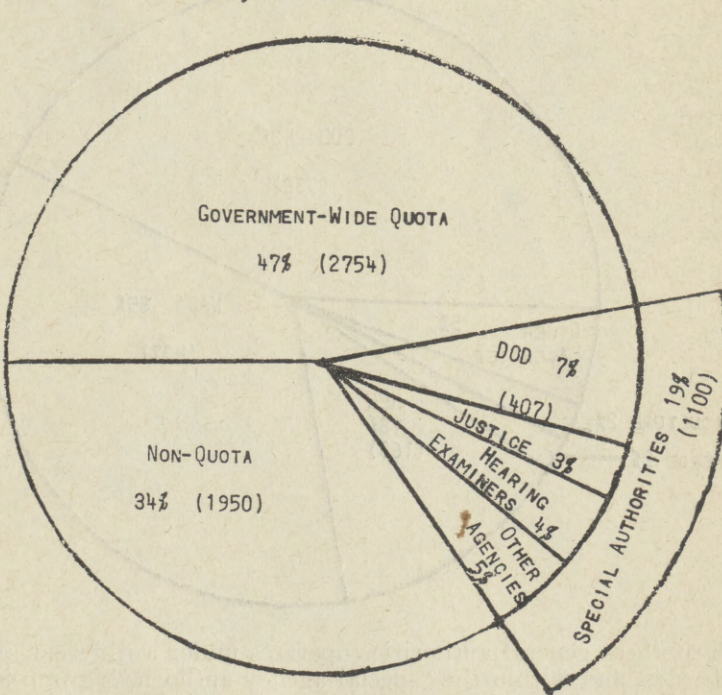
I will discuss the compensation and qualifications approval parts of the process later and will limit myself here to authorization of positions.

We have been talking about an executive structure which Governmentwide totals about 11,000 positions—less than one half of 1 percent of the total Federal civilian work force.

Of these, about 4,000 are in executive levels I to V, the Foreign Service, and other special salary systems. This leaves approximately 7,000 positions which to some extent come within the purview of the Civil Service Commission, 5,800 general schedule positions at GS-16, 17, and 18, and the so-called supergrades, and 1,200 public law positions paid in the same salary range.

For these 7,000 there are a number of sources for the authority to establish positions as shown below.

**General Schedule
5,804 Total**

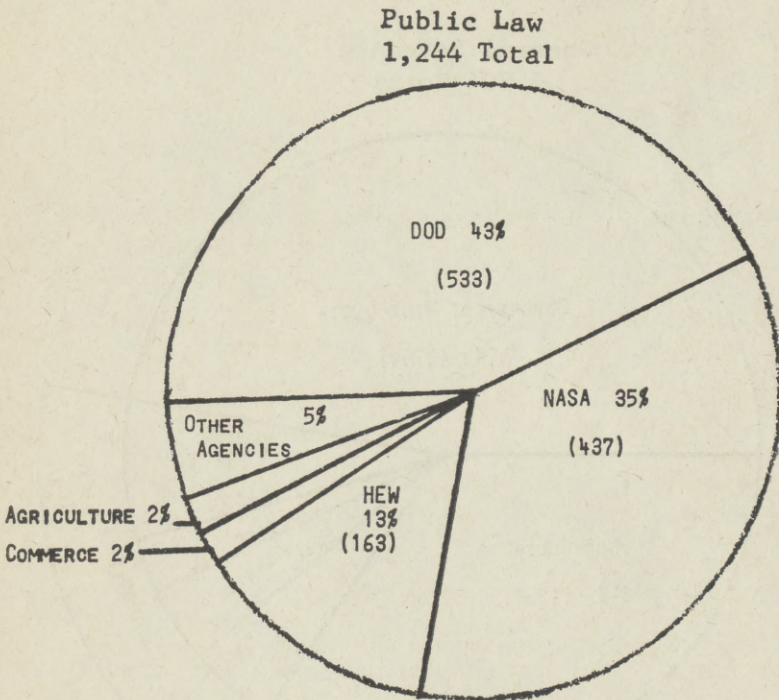


Of these positions, 2,754 are established by the Civil Service Commission from the pool of spaces authorized under the Governmentwide quota.

Another group, about 1,950 at present, are authorized by the Commission without regard to quotas. Their authorization is based on the representation of the agency that the position is primarily concerned with hard sciences and professions. These are the so-called nonquota positions.

In addition, an increasing number of positions are being authorized for one agency or another by direct legislation, providing a given number of executive positions for that agency. These are what we call special agency authority positions. They amount to 1,100 positions today.

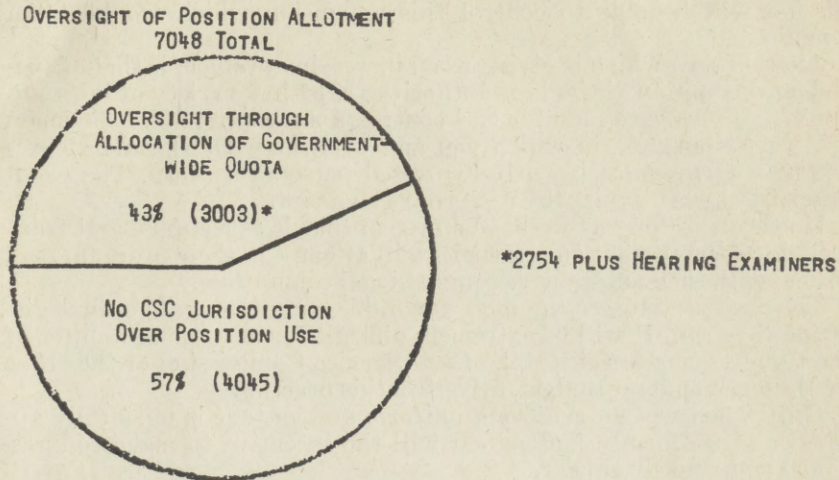
Another 1,244 positions shown below are established by Public Law 313-type authorizations. These, too, are generally (but not always) for scientific-type positions.



Each of these general authorities operates under a different set of ground rules, and within the "special agency authority" group itself there is a bewildering variety of provisions.

The Civil Service Commission, as I said, has some sort of authority over these 7,000 positions; but have full authority—for allotting positions, classifying them and approving qualifications of individuals

proposed to fill them—over only the 2,754 positions under the Government-wide quota. The extent of our responsibility is indicated below.



For over 4,000 of the 7,000 positions, our responsibility is limited to merely approving personnel actions for positions which have already been authorized to a given agency.

In every case, furthermore, where the Civil Service Commission has responsibility for allotting positions, we must do so on a case-by-case basis.

Our role is solely to determine whether the job is worth supergrade classification and, if so, whether one of the quota spaces should be allotted to it.

At no point in the process do we have legal authority or are we able to look at the totality of executive use within an agency and within the Government.

Another major weakness of the present system is that we have no way to adapt rapidly and flexibly to changing programs. Once positions are established in a particular agency program, there is a tendency for them to continue even though there are program cutbacks or new areas of program authority. Agencies understandably treat position authorities as permanent and resist attempts to take them away.

There is a special problem which applies to nonquota authorities. By definition, these are not subject to numerical limitation. Agencies do not have to weigh the relative need for a supergrade position among competing programs. The specific and only concerns of the Civil Service Commission are limited to whether the position legally meets the criteria for nonquota authority and whether it is classifiable at a given level.

If I might parenthetically remark here, I well remember that several years ago when I appeared before this committee, great concern was expressed about the rapid growth of nonquota authorities.

I promised at that time that our forthcoming recommendations would address this problem directly. In fact, one of the primary purposes of the FES is to assure the Congress that the Civil Service Commission will be able to control this expansion which troubled the committee.

Another area which is giving us an increasing problem is that of special agency authorities. These authorities exist in a variety of laws and are most difficult to monitor and control. I am aware, Mr. Chairman, that this is an area in which you and Chairman Dulski and Representative Gross have recently expressed personal concern. The Commission has great sympathy with your viewpoint.

However, as long as we have a system that is as complex and fragmented as the present one, agencies will attempt in their program zeal, to deal with their substantive congressional committees.

They will try to get the most favorable executive manpower legislation they can. It will be extremely difficult for any one committee of the Congress, or for either the Civil Service Commission or the Office of Management and Budget, to control this practice.

Only when we can achieve a uniform system that is uniformly applied and uniformly understood will the incentive to make congressional end-runs disappear.

Not only are these special authorities a disorderly way to do business, but they have serious built-in disadvantages:

They are very inflexible. They can be used only by one agency and often only in a specific program of that agency.

They can be abolished only by repealing legislation. Therefore, they remain in existence permanently regardless of current program needs of that agency.

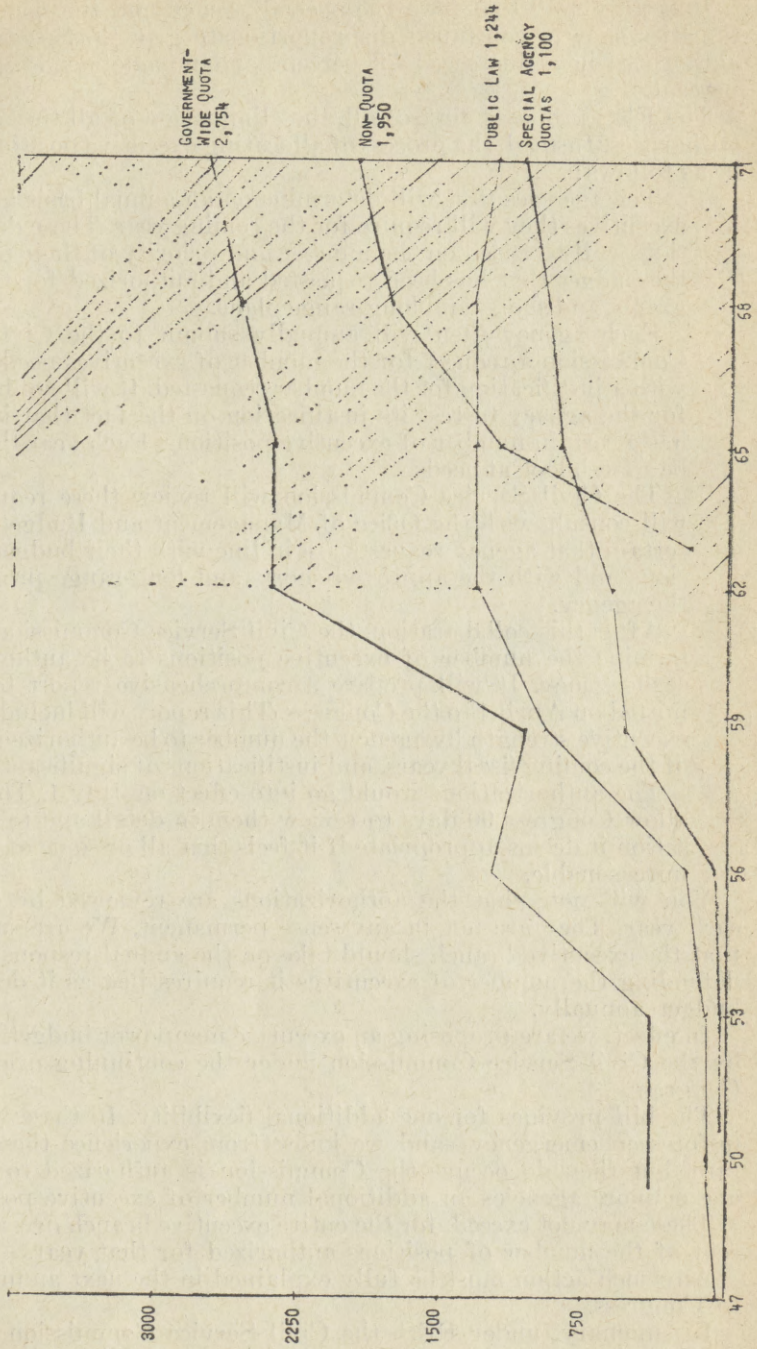
Furthermore, a special authority often comes to be regarded as a floor and not a ceiling. Pressures to use all spaces granted by special legislation become most difficult to resist even if the needs for these numbers are marginal.

Then, too, these special authorities are often written at a level of specificity which is damaging in the long run. Some of the laws even include qualifications requirements. The need to change law when you need to change a position or its qualifications requirements defies every principle of sound administration.

Finally, to avoid any outside control, agencies often ask that these special authorities be exempted from civil service classification and qualification laws. These civil service requirements have been built up over a period of years by this committee and by the Commission. We think they are the best way to carry out effective and nonpartisan administration. Removing positions from under the civil service places them beyond any effective executive control. In addition, it prevents oversight by this committee of the operations of the merit system as it applies to the Government generally.

The following chart illustrates the nature and scope of the problem of uncontrolled growth. The shaded area to the right reflects the last 10 years. It is clear that during this period the Government-wide quota and public law positions have remained reasonably stable. The quota positions have increased only 15 percent and the public law positions have decreased 4 percent.

GROWTH OF POSITION AUTHORITIES



It is also clear that both the special agency and the nonquota authorities show a continued disproportionate growth. Special agency authorities have increased 78 percent and nonquota authorities 900 percent.

The FES proposes, first of all, the elimination of all these separate authorities. Instead, the process of allocating executive positions would be as follows:

The agencies first will determine on an annual basis how many executives they will require for the coming year. These determinations will be based on the number and priority of their programs, the budget that has been requested and authorized for these programs, and short- and long-range plans.

Each agency then will annually submit to the Civil Service Commission a request for the number of executives needed, along with a justification for the number requested. It will not be enough for the agency to rest its justification on the fact that it already has a certain number of executive positions. Each year there must be a fresh look at needs.

The Civil Service Commission will review these requests. We will consult with the Office of Management and Budget to make certain that agency requests are in line with their budget submissions and with the approved short- and long-range programs of the agency.

After this collaboration, the Civil Service Commission will determine the number of executive positions to be authorized for each agency. It will prepare a comprehensive report to be submitted on April 1 to the Congress. This report will include current executive strength by agency, the number to be authorized for each of the coming fiscal years, and justifications of significant changes.

The authorizations would go into effect on July 1. This would allow Congress 90 days to review them in detail and to take any action it deems appropriate if it feels that all or some of them are unreasonable.

You will note that the authorizations are reviewed by Congress each year. They are not in any sense permanent. We are suggesting that the executive branch should take on the annual responsibility of defending the number of executives it requires just as it defends its budget annually.

In effect, we are proposing an executive manpower budget allocated by the Civil Service Commission under the continuing oversight of Congress.

The bill provides for one additional flexibility. In the event of an unforeseen emergency—and we know from experience these will be rare, but they do occur—the Commission is authorized to allot to one or more agencies an additional number of executive positions.

These may not exceed, for the entire executive branch overall, 1 percent of the number of positions authorized for that year.

Any such action must be fully explained in the next annual report to Congress.

In summary, under FES, the Civil Service Commission will, for the first time, have the authority necessary to establish coherent management over executive manpower in the Federal Government.

This committee will have, for the first time, annual oversight over the total executive manpower management picture, rather than the limited, sporadic, and fragmented review it now has.

Mr. Chairman, I would like now to place the rest of the statement in the record and to summarize for the members of the committee the key features of the total proposal.

Mr. HENDERSON. Without objection, so ordered.

(The remaining portion of Mr. Hampton's prepared statement follows, as ordered by the Chair, and appears as though read in full:)

Mr. HAMPTON. Closely related to managing the number of spaces is the second main feature of the FES, setting executive compensation.

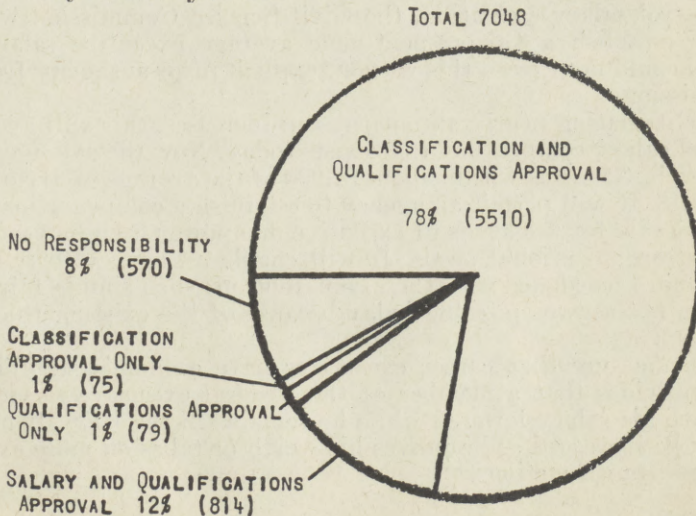
Just as a variety of laws today provide for authorization of positions, so, too, are there many laws under which executive pay is set. The rules and regulations stemming from the original Classification Act (now covered in title 5 of the United States Code) and the related decisions of the courts and of the Comptroller General are totally different from those pertaining to public law-type positions.

Laws and resulting regulations differ, too, depending on whether the executive is appointed from within or from outside the Federal service. Examples are such laws as those pertaining to payment above the minimum of the grade, those applying to promotion actions under the Whitten amendment, and those applying to payment for travel to first post of duty.

The compensation plan of the general schedule with periodic step increases is a different system from that applied to positions of the public law type. In the latter, the agency may establish an individual's salary anywhere within a broad dollar range and he is not entitled to any periodic pay increases.

Another variation is that some public law salaries must be approved by the Civil Service Commission, while other agencies have the authority to establish such salaries without outside review. Not even all general schedule positions are subject to Civil Service Commission classification authority, and thereby pay-setting action.

The extent of our responsibility in this area is shown below. For almost 10 percent of the 7,000 positions the Civil Service Commission has no salary authority at all.



The variety of laws, rules, and regulations affecting pay, means that individuals having almost exactly the same responsibilities are treated differently for compensation purposes.

A further complication has grown up over the years. Pay systems have become status symbols. Individual executives have a decided preference for being placed under a particular salary system without regard to its concrete advantages or disadvantages. For example, in some agencies, a public law-type position is the apex of a scientific career and many consider a supergrade allocation to be of inferior professional value.

Pressures for higher grade classifications under the general schedule arise from "status" considerations and not solely from the worth of the job. We encounter many instances where pressure for a GS-16, 17, or 18 is based on an individual's needs to command the respect of those he deals with. This is true even though the salary differentials often are practically nonexistent. The frequent result is a continuing pressure for grade escalation based on nonpay factors.

Another consideration is that under the present system we have no way to evaluate dollar costs being spent for executive manpower. Congress originally applied some controls when it established a set number of quota authorities and limited the proportion of these that could be classified in GS-17 and GS-18. But as the nonquota and special agency authorities expanded in number—and they now exceed the number of quota positions—this control was nullified.

To eliminate most of these pay problems, we are proposing under the FES a simpler system that would apply generally for all supergrades and equivalents. It is not entirely new. What we have done is to adapt the general approach of the public law compensation systems. These systems have been in use for over 20 years and, we think, have proved more suitable for executive manpower than the general schedule, which was originally devised for the lower grades.

What we are proposing is that agencies pay their executives within a compensation band between a set minimum and maximum salary. To control salary escalation, the Civil Service Commission will annually establish a Government-wide average executive salary. An agency could not exceed this without explicit prior authority from the Commission.

By eliminating nearly automatic step increases, this will avoid the marked salary compression that exists today. Now the average salary of those in GS-16 is within about \$2,000 of the average salary of those in GS-18. It will permit an agency to establish a compensation structure suitable for the kinds of executive manpower it employs and for its own organizational needs. It will enable an agency to pay individuals in accordance with their contribution; such simple fair treatment is not always possible today because of the existing thicket of requirements.

To make sure that career executives have economic stability, the FES provides that a member of the Federal executive service may not have his salary lowered while he remains in the FES. It may, of course, be increased as he proves his worth or takes on more exacting and important functions.

Each year, as part of its annual submission to the Civil Service Commission, an agency will report its present and proposed executive salary structure. If necessary, it will at this time request to be allowed to exceed the established Government-wide average executive salary. It must provide full justification for the request.

We think that the Civil Service Commission will be able to control costs for executive manpower by the method, Mr. Chairman, which you have been advocating; that is, by dollar limitation rather than by an arbitrary ceiling on the number of executives. The Civil Service Commission will annually report average salaries to the Congress and will fully justify any exceptions granted. This procedure gives both the executive branch and the Congress much more effective controls over expenditures for executive manpower than presently are available.

The next feature of the FES which I would like to discuss is the relationship between career and noncareer executives.

UNDER THE PRESENT SYSTEM

The difficulty we have had in explaining what we propose in this area under the FES results mainly from the confusion that exists under the present system. We find that when the average person thinks of a "career" executive, he has in mind a long-term Government employee—one who has worked his way up from the lower grades. This notion, of course, has no basis in law or practice.

Under the law, a career employee is one who was appointed after having had his qualifications evaluated on an open competitive basis against those of other candidates. The civil service is not a closed system. It has always provided for competitive entry at every grade level from the lowest to the highest. This means that many career executives entered the Federal service at senior levels of responsibility.

The career-noncareer issue is further complicated because we use a different definition of career for positions than the one we use for people. For about 20 years now, we have been making distinctions among executive positions along career-noncareer lines.

- One type of noncareer position we call schedule C (in 1967 the name was changed to noncareer executive assignment for super-grades). These generally are positions which have responsibility for the formulation or advocacy of administration policies, or which involve a confidential relationship with a Presidential appointee.

- Another type of noncareer position is known as schedule A. It covers positions for which it is not practicable to examine. Because of legal restrictions, attorneys fall into this category.

- Then, there are a small number of schedule B positions, in which qualifications are evaluated but not on a competitive basis.

- Finally, there are a number of positions excluded by law from the competitive service. Typical of these are the 425 public law positions in NASA.

A major difficulty has arisen because of these differing definitions of noncareer. A career employee, duly appointed by a competitive

process, loses his career protection if he accepts a position which has been labeled noncareer. And this is by no means a rare occurrence—typically from a third to a half of the schedule C—noncareer executive assignment positions are occupied by former career employees. The average length of Federal service of all executives currently in non-career executive assignments is 11 years.

Furthermore, since the noncareer executive assignment positions are defined in terms of policy formulations and advocacy, they are apt to be concentrated more at the GS-18 and GS-17 levels than at GS-16. This means that a career executive has comparatively few opportunities to advance to the top levels of responsibility unless he gives up his career status. For a rising young executive with a number of working years before him and high personal economic commitments, this poses a difficult choice. We have reason to believe that it directly results in the loss to the Government service of some of our most able career people.

Moreover, we have serious doubts that designating positions as career or noncareer is realistic. From our 20 years' experience in doing this, we conclude that no sharp two-way break exists. Only a small number of positions are unmistakably career or noncareer according to the present definitions. The great majority of positions are ambiguous in this respect. And as the Government becomes involved more and more in social programs, the old distinction between policy and administration becomes increasingly blurred. The bulk of top-level positions today require high public policy sensitivity.

As I have mentioned, a high proportion of noncareer executive assignments are filled by former career employees. Also, our studies of other noncareer executives show that they do not remotely resemble the old stereotype of a "political hack." They are as highly educated as career employees, and most of them are respected members of their professions. It is clear that their acceptance of a noncareer position is based on their sympathy with a given program approach, not merely on partisan political activity.

UNDER THE FES

We have, therefore, had to question seriously whether our present system of identifying positions as career or noncareer continues to serve a useful purpose. After careful study, we have concluded that it does not. The FES would eliminate this procedure. It would, however, maintain the sharp distinction in appointment and tenure between executives who are in the career competitive service and those in the noncareer service. I will discuss this in detail in feature 4.

The FES proposes a change in the definition of career executive. It will still provide for competitive appointment under merit principles. But it will also tie career status to career commitment.

We are also proposing to update the definition of noncareer executive. Under the FES, this category would include any executive com-

ing to the Government with no intention of making a career of Federal service. This would cover—

Individuals hired to work on assignments of limited duration;
 Professionals on leave of absence from their regular employment;

Executives employed for their policy support of the then current administration, and

Those hired because they enjoy the personal confidence of a Presidential appointee.

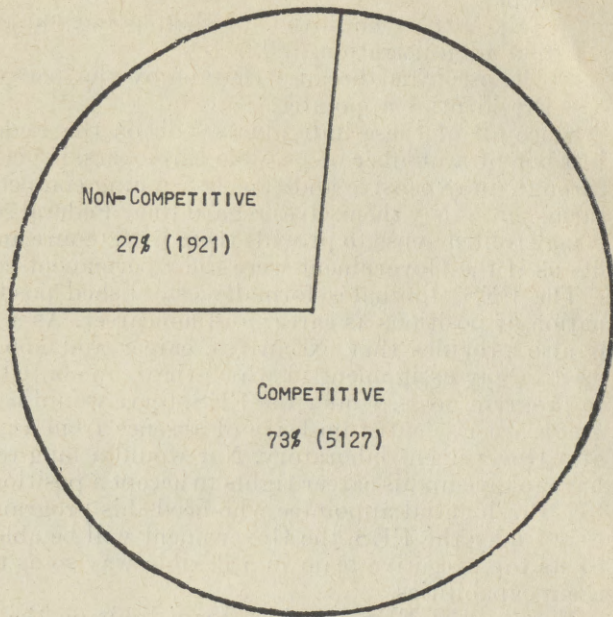
Since all of these individuals look on the Federal Government as just one of a number of possible employers, it makes little sense to go through an expensive and time-consuming competitive process to hire them. Since they themselves regard their Federal service as temporary, it makes little sense to provide them with tenure and other career benefits as if the Government were their permanent employer.

The FES eliminates formally established positions and the designation of positions as career and noncareer. As a logical consequence, it also provides that executives, career and noncareer alike, can be used in any assignment in which they can contribute most effectively to program goals. Under the FES, there would be no bar to assigning a noncareer scientist on leave of absence from a university to be head of a Government laboratory. Nor would a long-term career employee have to give up his career rights to accept a position as special assistant to a Presidential appointee who needs his program and agency expertise. Under the FES, the Government will be able to use all members of its top executive team in a flexible way so as to get full benefit of their capabilities.

Finally, the FES provides for a limit on the legal proportion of noncareer executives. We have looked back over a number of years covering several different administrations of both political parties. We have found that, with only minor fluctuations, the proportion of total supergrades who were in the competitive service has remained constant at about 75 percent. The other 25 percent serve without civil service tenure.

The present ratio is shown in the next chart.

Total 7048



Of the total of 1921 non-competitive positions:

	<u>Number</u>	<u>Percent</u>
Congressionally Determined	1031	54
Executive Branch Determined	840	46

It is interesting to note that more than half of the positions now in the noncompetitive service were placed there by the laws establishing the positions, not by the Civil Service Commission under its authorities.

We are proposing that the figure of 75-percent career employees be set as a floor. This would insure that the core of the Federal executive service would always consist of career executives who have agency, professional, or program expertise.

The FES does not, however, set this 75-25 ratio as mandatory for each separate agency. Each agency will request a career-noncareer ratio as part of its annual submission to the Civil Service Commission, along with justification for the ratio requested. Certain agencies, for example, may ask for a 90-10 ratio. Others may request a 70-30 ratio.

The latter would be those whose programs are heavily involved in controversial policy issues, or who have a large volume of short-term project work.

The Civil Service Commission will consider each request on its merits and will set ratios for each agency. It will insure at the same time that, Government-wide, the overall proportion of career executives does not fall below the 75-percent floor. All the approved ratios and justifications will be included in our annual stewardship report to the Congress.

In summary, the FES proposal contains provisions designed to recognize the true nature of executive assignments. It will make it possible for top agency managers to use their total executive team for maximum program accomplishment. At the same time, the proposal makes a clear distinction between executives who have a career commitment to the Federal service and those who serve only temporarily. It insures that career executives will constitute no less than 75 percent of the total executive manpower force. And, for the first time, it gives the Congress an opportunity to review annually the use agencies are making of their career and noncareer executives.

I would like to turn now to the fourth major feature of the FES: appointing and assigning executives.

UNDER THE PRESENT SYSTEM

Under the present system, there is very little comparative consideration of persons moving up the career ladder into executive positions. It is true that we have merit promotion programs and automated inventories of potential executives. The hard fact is, however, that these mechanisms are much more effective for filling jobs on lower levels, where qualifications requirements are less specific to individual positions, than at the executive level.

In actual practice, the person moving into a supergrade vacancy quite often is selected principally because he happens to be in the agency in the specific program at the right time. Rarely are his qualifications compared with those of other individuals from outside the organization. It is difficult to see to it that persons throughout the service are given serious consideration for a specific vacancy. I am, of course, talking not of absolutes but a matter of degree. We must face up to the fact that normally there is a very narrow area of consideration in the filling of executive positions.

Another aspect of the same problem is the fact that today the Civil Service Commission's responsibility under title 5 of the United States Code is limited. We are charged with reviewing the qualifications of an individual selected for an executive position to determine if he has the basic qualifications to do the job. The Commission's review does not now concern itself with a comparison of possible candidates for the vacancy to be sure that the best qualified is selected. Under the present law, the emphasis is on approval by the Commission of individuals already selected. No provision is made for insuring that these individuals actually represent the best talent available.

Another factor that deserves mention is that the executive today tends to identify his role in the agency as that of carrying out the

duties of a specific position. He does not perceive himself as a member of a top management team to serve in the agency wherever the need for his talents is greatest as program priorities change.

This narrow view has been reinforced by the various laws, rules, and regulations which base tenure and appeal rights on the position itself, rather than on a broad base of Federal executive service. Agencies have often been reluctant to use existing authorities to assign individuals flexibly, because changes in assignment under the present system have unjustifiably come to be regarded as adverse actions. In fact, many times such moves merely reflect the need for agencies to deploy their executives in response to changing program demands.

UNDER THE FES

The FES specifically addresses each of these areas. As I have already described, we propose making a distinction between the career and the noncareer executive in terms of tenure expectations. Under the FES, the agency head could appoint and terminate the noncareer executive on his own motion.

For appointment of the career person, too, we propose a new approach. We say that entry into the career executive ranks should be based on a thorough assessment of an individual's qualifications. This evaluation would be not so much for a specific position, but more in terms of his standing and potential in his field of expertise. We require that his qualifications be compared with those of others who normally might be available for appointment. This broadened area of consideration is in the interest of both Federal employees and the public.

Under the FES, this review would be made by high-level persons, including members of his own occupation and representation from outside the Government. This inevitably will make entry into the Federal career executive service much more prestigious and professionally rewarding. In order to bring this about we are proposing the establishment of qualifications boards.

These boards—about 15 to 20 in number—will be composed of eminent individuals representing a broad occupational field and selected from both inside and outside the Government. They will be appointed by the Civil Service Commission; they will function as official arms of the Civil Service Commission; and they will operate within the Civil Service Commission structure.

The agency will send to the qualifications board:

- Information about the candidate being proposed for appointment to the Federal executive service;

- Information about other individuals considered for the appointment;

- The qualifications being looked for; and

- Complete details on the nature and extent of the search which resulted in the nomination.

The qualifications board must grant approval for the entry of the proposed appointee to the Federal executive service before the agency may appoint and pay him at that level.

Under this process, the agency is responsible for determining whether the individual can carry out the responsibilities of a member

of its executive group. The qualifications board is responsible for insuring:

That merit standards were followed in making the selection; and

That the nominee has the personal characteristics and level of attainment in his own field which promise continuing achievement and contribution to the Government generally.

Qualifications boards provide an open forum for continuing public review of the stewardship that top agency managers are giving to the carrying out of public programs. The quality of their management can be directly gaged by the quality of the persons they choose to exercise leadership over these programs.

We are convinced, Mr. Chairman, that the most effective way to guarantee a good merit system—which in the final analysis means high quality—is the openness of the system, so that an informed public knows what is taking place. The fact that eminent individuals in and out of Government are fully knowledgeable of what executive appointment actions are being taken in their areas of expertise insures that the quality of appointees will be high.

Once a career executive becomes a member of the FES, he may transfer to any position in the same or a different agency without again being submitted for qualifications board review.

It is our judgment that there exists today an undesirable degree of position-orientation at the executive levels. Therefore, we have abolished central position classification in the FES. Instead we have provided that an individual may be assigned within the agency to any appropriate executive duties where his services are needed. We expect this provision to result in less attachment of individuals to specific positions.

On the other hand, we are also sure that this will not result in a large-scale musical chairs exercise. Most executives are not “generalists.” Most have high competence primarily in their professional discipline or their program. This is where they are being used, and would continue to be used. Furthermore, a career member of the FES who believes that he has been reassigned to a set of duties below the executive level or that some other condition of his employment agreement has been violated, may appeal to the Civil Service Commission. He may also appeal a geographic reassignment that results in unreasonable hardship.

We believe that the assignment provisions of the FES permit a vitally needed flexibility in the utilization of executive resources, while preserving the essential right of a career employee to meaningful work assignments.

The next feature to be discussed is: maintaining the quality of executives.

High standards will be applied in selecting and appointing individuals to the Federal executive service. In addition, certain features of the proposal will maintain this high quality over time.

UNDER THE PRESENT SYSTEM

Under the present system, once an individual becomes a career executive, he may remain a supergrade until he chooses to quit. Very few are basically incompetent to the degree that discharge action is warranted.

Our data indicate that the typical supergrade remains at that level for some 10 to 15 years. Clearly over such a period the needs of the Government are going to change—programs become less important, new and urgent priorities emerge, advanced technologies develop, new administrations bring with them new viewpoints. It is essential for Federal executives to march with the times.

UNDER THE FES

Accordingly, we are proposing under the FES a periodic review of each career executive's continuing contribution. We will do this by means of an employment agreement. We recognize that this is a sensitive area. Therefore, we have framed the provisions of the employment agreement with great care. Our concern has been to balance fairly the rights of career employees to employment security against the right of the public to the best and most effective leadership of public programs.

The provisions of the employment agreement are simple:

On initial appointment into the executive ranks, the career executive receives a 3-year agreement. This can be renewed for additional 3-year periods until the executive reaches mandatory retirement age.

Under the agreement the agency must assign the executive to duties of an appropriate level, provide him with training and development opportunities, maintain his rate of compensation, and not remove him except for cause.

The individual, for his part, is obligated to serve where needed and to participate in development activities as required.

The executive is in no way restrained from transferring to another agency, leaving the Federal service, or retiring at any time.

When an employment agreement expires, the employing agency has several options:

It may offer to renew the agreement—and our experience in managing executive manpower leads us to estimate that the vast majority of expiring agreements will be renewed; or

It may offer the executive a bona fide continuing GS-15 position in the career service with 2 years of saved pay; when this is done, no incumbent GS-15 may be displaced; or

It may retire the executive, if he has 30 or more years of service.

The agency must notify the executive of its intentions several months before the expiration of an agreement, including informing him specifically what GS-15 position is being offered if this is the action to be taken. The executive, then, will have ample time to make a decision. His options are several:

He can transfer, leave Government, or retire, just as he can during the life of an agreement.

He can accept a renewal agreement, if offered.

He can decline an offered renewal agreement, in which case the agency must either offer him a career GS-15 position, or if he has 30 or more years of service, retire him.

If he is not offered a renewal, but a GS-15 position, he may accept it, or decline it; in the latter case he becomes eligible for a discontinued service annuity or severance pay under the provisions of existing law.

Finally, he may decline both an offered renewal and an offered GS-15 position; in this case he is not entitled to involuntary separation benefits.

Because of its unprecedented nature, we have considered and reconsidered the proposed employment agreement provision. We are convinced that such a provision is needed and that, as drafted, it is consistent with career service concepts. You will note that an individual whose agreement is not renewed, does not lose his employment. Nor does he suffer a severe or immediate loss of income.

We are certain that nonrenewal of agreement will be the exception rather than the rule. In the first place, with few exceptions, executives are contributing effectively to the carrying out of public programs. Most of them are highly talented individuals whose expertise cannot be dispensed with. However, each of these executives carries major responsibilities technical or administrative, for an important public program. Therefore, anyone who is not functioning at maximum effectiveness poses a major problem. We need the means of dealing with such problems in the public interest.

In summary, we believe that the Government needs some means to insure the continuing high quality of its executive manpower. At the same time we feel the obligation to provide career employees with meaningful employment at senior levels of responsibility, even if they should not be continued in the executive ranks.

It is important to note that there are many guarantees given to the career executive under the employment agreement. He is guaranteed his salary level; he is guaranteed employment even if his agency must undergo a reduction in force; he is guaranteed fall-back to a position of senior responsibilities if he loses his ability to contribute in an executive capacity. We think it is important that an individual who has made a career of Government service be given economic security and that he be treated humanely by the Government as an employer.

On the other hand, in those few instances where an individual has not kept up with a developing field, or where changing priorities make it necessary to reassess executive needs, the interest of effective Government requires that the agency not be bound to retain him as a key executive.

The Civil Service Commission and the Congress, in considering a proposal for more effective use of executive manpower, must give due weight to the needs of a variety of groups. We must be sure that Federal career executives are not subjected to arbitrary or capricious treatment. But also, we have to consider the public's right to the best possible delivery system of Government programs. If the public's needs demand a change in executive leadership, there must be some systematic way to bring this about. We cannot look on the public service as the private preserve of the employees working in it.

The employment agreement provision of the Federal Executive Service is an attempt to strike a fair balance between these considerations. As employers in the public sector, we cannot properly discharge our responsibilities to career employees at the expense of the general public. This is especially true at the executive leadership level, where a single individual may make the difference between success and failure of a program crucial to the very quality of life of the Nation.

COVERAGE

Now that we have reviewed the nature of the Federal Executive Service, I would like to show who it is we actually intend the FES to cover.

You will recall under feature 1, I mentioned a total population of about 11,000 people at these upper levels. They generally fell into the general schedule, public law-types, and other salary systems. Excluding executive levels I-V and the Foreign Service, on the following chart we show for each of these groups which would be covered under the FES and which would not.

Most of the general schedule and all of the public law-types within the executive branch would be included. We propose excluding the FBI because of the unique nature of that agency. We also exclude hearing examiners, who are covered by the Administrative Procedures Act.

From the other salary systems in the executive branch we have excluded groups having special personnel systems encompassing all levels from top to bottom, which we would not want to disturb. In a few instances there are other special circumstances that justify exclusion. The U.S. attorneys are an example of the latter, as is the Office of the Currency. The executive branch agencies which have excluded employees are urged to adopt as many features of the FES as they can use.

I want to point out that the "other salary systems" which we have not included are not now under the purview of the Civil Service Commission, and in most cases not under this committee's purview.

FES COVERAGE:

SALARY SYSTEM 1/	WITHIN EXECUTIVE BRANCH		OUTSIDE EXECUTIVE BRANCH		TOTALS	
	EXCLUSIONS AGENCY/GROUP	No. 2/	INCLUSIONS AGENCY/GROUP	No. 2/	EXCLUDED No. 2/	INCLUDED No. 2/
GENERAL SCHEDULE	FBI HEARING EXAMINERS	140 249	ALL GENERAL SCHEDULE (EXCEPT FBI & HEARING EXAM)	5,205	90 82 7	
	SUBTOTAL	389	SUBTOTAL	5,205	4 258	5,205
PUBLIC LAW				1,238		1,238
OTHER SALARY SYSTEMS	ATOMIC ENERGY COMMISSION CIA COUNCIL OF ECONOMIC ADVISORS COMPTROLLER OF CURRENCY (TREASURY) DEPT. MEDICINE & SURGERY--VA FDIC FEDERAL RESERVE BOARD NATIONAL SCIENCE FOUNDATION TVA U.S. ATTORNEYS (JUSTICE) U.S. POSTAL SERVICE	421 * 7 21 210 54 * 107 37 51 219	COMMERCE NAVY HEW TRANSPORTATION TREASURY ACTION CIVIL AERONAUTICS BOARD FARM CREDIT ADMINISTRATION NASA NATIONAL GALLERY OF ART NATIONAL SECURITY AGENCY OVERSEAS PRIVATE INVEST. CORP. SMITHSONIAN INSTITUTION WATER RESOURCES COUNCIL SUBTOTAL	15 8 48 6 39 64 5 3 4 3 120 20 7 4 346	* * 20 7	
	SUBTOTAL	1,127	SUBTOTAL	1,154		346
TOTALS		1,516		6,789	285	6,789

* INFORMATION NOT AVAILABLE.
 1/ THIS CHART DOES NOT INCLUDE EXECUTIVE LEVELS I-V POSITIONS, AND 1969 FOREIGN SERVICE.
 2/ AS OF 12/31/71

For those agencies outside the executive branch which have positions at these levels, we propose that they establish systems similar to the FES, but not be included in it. It would be inappropriate for the executive branch to oversee so fundamental a resource as executive manpower, for agencies not under its management authority in respect to program development and direction. The Congress has already recognized this by granting special authorities to most of these agencies.

These agencies—principally the General Accounting Office, the Library of Congress, the Government Printing Office, and the District of Columbia government—would deal directly with the Congress. They would submit an annual report of stewardship and undergo the same legislative oversight as the executive branch will under the FES.

We believe, by requiring or encouraging excluded agencies to adopt features of the FES, that we can take a step toward system uniformity. Yet, we will not be unduly constraining agencies for which total conversion to the FES is not feasible.

There has been some question as to the proper definition of "executive," for the purpose of coverage in the FES. We have analyzed the structure and functions of the upper levels of Government in detail. As a result of our analyses, we have settled on a general definition. An executive, as we define the term, is an individual who is being paid within the range covered by the present top three grades of the general schedule, and who performs duties not properly classifiable at the GS-15 level or below.

These upper levels contain a substantial representation of professional people, as is shown below.

Percentage distribution :

Professionals :

Engineers	15
Physical scientists	16
Math and statistics	4
Medical professionals	4
Biologists	3
Social scientists	4
Lawyers	13
Educators	1

Total	60
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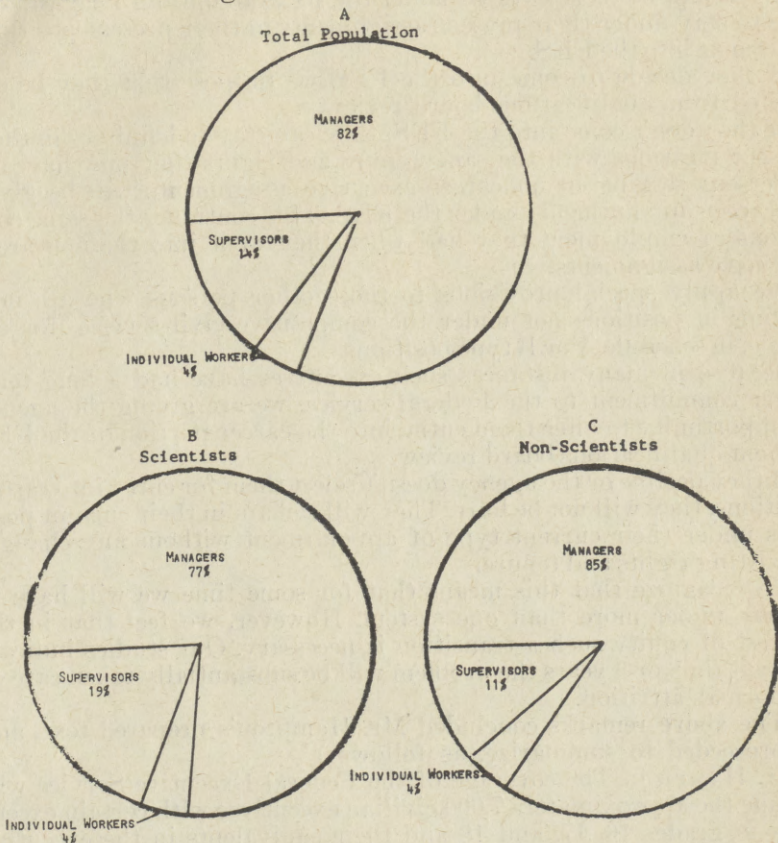
Others :

Personnel managers	2
Fiscal managers	4
Administration	25
General administrators	(14)
Program managers	(8)
Administration officers	(1)
Management and program analysts	(1)
Other administration	(1)
Other (supply, transportation, information, etc.)	9

Total	40
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Scientists and allied professionals make up about 42 percent of the group and another 18 percent are in other professions, such as law. Only just under a third are occupied mainly in administrative work, including personnel, budget, management analysis and general administration.

It would be a mistake to conclude from this, however, that any large number of upper level employees are not managers. As can be seen below, the vast majority of these manage programs—directly or indirectly—or are heavily involved in establishing the policies and priorities for their organizations.



Only a very small proportion, 4 percent, are individual performers such as bench scientists. And, interestingly enough, this proportion is the same for scientists and nonscientists.

The FES avoids making distinctions which would tend to compartmentalize the upper levels, fragment the personnel system, and interfere with effective use of individual abilities. It preserves the dual career paths of individual contributor and manager, at the same time recognizing that many individuals can move back and forth between the two roles.

TRANSITION TO FES

Let me now turn to the provisions for moving from the present system to the Federal Executive Service. The design of the FES is such that problems of transition from a procedural point of view are minimal. The transition provisions were designed with one major objective: to insure that no present executive will be forced to give

up his existing rights, lose pay, or unwillingly suffer loss of status. The transition provisions are of the nature of what are generally referred to as "saving" or "grandfather" clauses.

We give persons serving in the competitive service whose jobs normally would be those covered under the FES an option. They can decide to stay under their present assignments in their present positions or to come into the FES.

If they decide to come into the FES we propose that they be exempted from qualifications board review.

If they don't come into the FES, they can stay indefinitely in their present positions with the same tenure and rights they now have.

Persons serving in noncareer executive assignments will be given noncareer appointments under the FES. This continues the same conditions of employment they had when they went into the noncareer executive assignments.

We apply special provisions to those other persons who are now serving in positions not under the competitive civil service, for example, in schedule A or B type positions.

Because in many instances such executives have had a long term career commitment to the Federal service, we are giving the agency an opportunity to offer them entry into the career portion of the FES without qualifications board review.

If they decline or the agency doesn't select them for entry into career positions, they will not be hurt. They will remain in their current positions under their current type of appointment without any changes in existing rights and tenure.

We recognize that this means that for some time we will have to operate under more than one system. However, we feel that in the interest of equity such a transition is necessary. Our studies indicate that within 8 or 9 years the problem will be substantially taken care of by normal attrition.

(The above remarks concluded Mr. Hampton's prepared text, and he proceeded to summarize, as follows:)

MR. HAMPTON. The coverage of the Federal Executive Service will include the approximately 7,000 civilian executives with certain exceptions in grades 16, 17, and 18 and their equivalents in the executive branch.

Centralized personnel classification by the Civil Service Commission will be eliminated and each agency will apply a position management approach best suited to its own agency needs.

Agencies will annually review their executive manpower needs and request a specific number of executives.

The Civil Service Commission will review agency requests in collaboration with the Office of Management and Budget and authorize the number of executives for each agency. The authorizations will be reported annually to Congress and will become effective in 90 days unless other action is taken.

CAREER AND NONCAREER CATEGORIES OF EXECUTIVES

Appointment to the Federal Executive Service will be in two categories; that is, career and noncareer. A noncareer appointment will be for executives whose employment will likely be of a temporary

nature. Career appointments will be for executives whose general employment outlook and expectations will be oriented toward Federal service.

Each category will have a different type of appointment with different conditions of employment. Noncareer executives will be appointed and removed at the pleasure of the head of the agency. Career appointments must have prior approval of a qualifications board.

These qualifications boards, Mr. Chairman, will be made up of people within the executive branch of Government and some public members who have a recognized expertise in the particular type of individual they are considering. That is, for an engineer we would have engineering people.

We feel the public members will lend an element of openness to the examination process, and will certainly open to the public for its review what is done in selecting career executives.

ESTABLISHING AND CONTROLLING CAREER AND NONCAREER RELATIONSHIPS

The Civil Service Commission, after collaboration with the Office of Management and Budget, will authorize a career-noncareer ratio for each agency, based on individual agency requirements.

The aggregate Government-wide number of noncareer executives will be limited to no more than 25 percent of the total Executive Service. This ratio is the ratio which now exists in the system. It is provided in the bill that the limitation is on the number of noncareer executives and not on the number of career executives.

You could not exceed 25 percent noncareer, but you could exceed 75 percent career. We have found in going back over a period of years that the percentage of noncareer jobs held by career men will run anywhere from, say, 30—some percent up to 60 percent.

It depends on what time frame you take your statistics from. But roughly speaking, I would say it would average out over an extended period of time to roughly half the noncareer positions being occupied by career people.

So we feel the flexibility should be in the career positions, and that, in order to provide a disincentive for people to remove executives at the expiration of the agreement, the limitation be placed on the non-career.

COMPENSATION ARRANGEMENTS

Agency heads will have authority to set and adjust salaries of career and noncareer appointments within a range corresponding generally to that encompassed by GS-16 through GS-18 positions. Salaries may be raised, but not reduced.

The Civil Service Commission will establish a Government-wide executive salary dollar figure which may not be exceeded by the average executive salaries of an individual agency.

When you move to a broadband of setting salaries for executives, the tendency might be to pay everyone at the top of the band. We feel that we need the flexibility of setting salary, but that there should be some limitations placed in this so that everyone does not just gravitate

to the top of the band. By arriving at an average, we will have people paid both below and above, and this is the figure that will govern the salaries of executives.

Also, these salaries will be adjusted in proportion to those that are in the general schedule now, when Congress grants general pay increases.

ASSIGNMENT

Each agency may assign and reassign executives to any duties within the scope of the service. There will be no externally administered position classification system.

Career and noncareer executives may be used interchangeably. I think this is one of the key features of the FES proposal, the ability to assign people to where they are needed without having the system so oriented toward a particular position.

QUALIFICATIONS BOARDS

Qualifications boards operate as agents of the Civil Service Commission, and they must approve the qualifications of all career executives prior to their initial appointment. No one is going to come to a Qualifications board with the idea that all that this is going to be is a rubberstamp operation.

Members of the board will be appointed, as I mentioned earlier, from within, and also from outside the Federal service. They will be experts in their fields.

EMPLOYMENT AGREEMENTS FOR CAREER EXECUTIVES

Employment of career executives will be governed by employment agreements. Initial agreements will be for a period of 3 years, and agreements will be renewable for 3-year periods.

When an employment agreement expires and an agency does not offer an executive a renewal, or makes such an offer and it is declined by the executive, the agency may involuntarily separate the executive from the service if he has completed 30 years of service and is otherwise eligible for an annuity.

If an agreement is not renewed, and the executive is not separated under the 30 years of service provision described above, the executive must be offered a bona fide GS-15 position in the competitive service with salary saving for 2 years.

Thereafter he will receive an appropriate GS-15 salary with time and grade credit for his service at GS-15 and above.

In addition, if the agency does not offer an agreement renewal and if the executive will not accept the offered GS-15, the executive will be eligible for discontinued service retirement if he meets the criteria, or for severance pay.

During the period of an employment agreement, the agency agrees to assign the executive to appropriate duties, to provide training and developmental opportunities, not to reduce his salary, and not to retire or remove him except for offenses calling for adverse action procedures.

The executive agrees to serve where needed, and to participate in training and developmental activities. He may resign at any time.

He may appeal assignment to inappropriate duties or to locations which entail undue hardship. I would like to reemphasize that, because, of course, this agreement has been the lightning rod of all discontent in this area, it seems that most people don't realize that an individual may appeal assignment duties not properly executive and to locations which cause him hardship.

If a geographical move would result in undue hardship, the executive may decline it and has the following options: Accepting GS-15 employment in the original location, with 2-year salary savings; discontinued service retirement; or severance pay. The executive may transfer to another agency to complete the period of an existing employment agreement.

APPEALS

As I said, career executives may appeal inappropriate assignments, violations of conditions of employment, and removal on charges to the Civil Service Commission, which has authority to direct corrective action.

REPORTS

The Civil Service Commission will submit an annual stewardship report to the Congress, with current executive authorizations and projections for the coming year. As a minimum, the report will contain, for each agency and Government-wide, the number of executives authorized for the Federal Executive Service and a career-noncareer ratio.

THE EFFECTIVE DATE

The Service will become operative at the beginning of the first fiscal year, 270 days after enactment of the legislation. During this period, operating procedures and regulations will be developed.

TRANSITIONAL ARRANGEMENTS

Present executives with career appointments will be offered initial employment agreements without the requirement of qualifications board approval.

Career executives who do not accept employment agreements may continue in their current appointments. Some executives now serve under noncareer executive assignment appointments. They will be given noncareer appointments in the Federal Executive Service.

Other executives now serve in positions which are excepted from the competitive service for a variety of reasons. Examples are attorneys in schedule A positions and scientists and administrators in positions excepted by law.

At their option, agencies may offer employment agreements to these executives without qualifications board approval.

If the individual accepts an employment agreement, he will receive a career appointment in the Federal Executive Service. If an individual is not offered an agreement or if the executive does not accept

the agreement, he may remain in his current appointment, retaining his rights and privileges.

Incidentally, looking at the question of excepted positions, we find more have been excepted by statute than by administrative action, even though the Civil Service Commission has great flexibility in this area.

EXCLUDED GROUPS OF EXECUTIVES

Agencies within the executive branch which have excluded groups will be encouraged to review and adopt appropriate features of the Federal Executive Service. Agencies outside the executive branch are excluded, and will be required to establish their own executive services.

Mr. Chairman, would you like me at this point to indicate what those exceptions are?

Mr. HENDERSON. I think it would be helpful, Mr. Chairman.

Mr. HAMPTON. Exclusions within the executive branch: There are 17 groups of executives within the executive branch which have been excluded from the Federal Executive Service, because they have unique problems or needs which make their inclusion infeasible.

These are executive levels I through V, the Foreign Service of the United States, Peace Corps, Postal Field Service, U.S. attorneys, and the FBI, hearing examiners, the Atomic Energy Commission, the CIA, the TVA, the National Science Foundation, the Council of Economic Advisers, the Department of Medicine and Surgery of the VA, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Panama Canal Company, and the Canal Zone Government. These presently have their own particular unique systems of operations and special personnel systems covering employees at all grades.

The agencies outside the executive branch which are excluded from this legislation are the General Accounting Office, the Library of Congress, the Government Printing Office, the Architect of the Capitol, the Botanical Gardens, the Tax Court of the United States, the Administrative Office of the U.S. Courts, and the District of Columbia government.

Mr. Chairman, that is a rather quick summary of a very complex proposal. As I mentioned earlier, it is a total system and most of its parts are related. We would be glad, all of us, myself, Commissioner Andolsek, and Mr. Berlin, to answer whatever questions you may have.

Mr. HENDERSON. Thank you very much, Mr. Chairman.

First, let me say that if, then, at any time during the hearings there is additional evidence that you want to submit, feel free to do so. If we feel that ye have questions that we don't pose this morning and we would like to submit to you later we can arrange that.

Before we get into talking about the specific legislation before us this morning, I think that it would be well to touch on one related problem that is closely interwoven in this, and which needs major attention. This is the present status of the supergrade pool, or needs for supergrades because of legislation that has been enacted, and so on.

It seems to me that at the best we are talking about the possibility of a year after this bill is enacted that you get the Federal Executive Service implemented.

You obviously could expect it to take some time from this point in time for our final proposals to become law, and with the experience

that we have had, especially in the last session and already this session, it would be well for us to give a little brief attention this morning and to hear from you as to what you think is the present need for supergrades to carry on the functions, even if we were proceeding on the assumption that we were going to enact within a general framework the Federal Executive System.

Mr. HAMPTON. Mr. Chairman, at the present time the status of the pool is that every position that is not now occupied is either in process or is committed, and we have exhausted for all intents and purposes the resources that we presently have.

You were so right in making the observation that we do have a year's transition even if the Congress were to act tomorrow.

We have developed what we call our critical quota supergrade needs by function as of this moment. Our total need is 164 spaces. I have these broken down by function if you would like them. I can present this to the committee orally here, and I could summarize it very quickly, and then present to you more detailed justifications of what is involved.

Mr. HENDERSON. Why don't you summarize it very briefly for us and submit it for the record?

(The document referred to follows:)

Critical quota supergrade needs—April 1972

Welfare reform planning	40
Quality of life	21
Environment	16
Arts and humanities	5
Emergency readiness	7
Economy	49
Stabilization	20
Manpower and work force	11
International policy	8
Productivity	4
Minority enterprise	2
Small business	2
Land redevelopment	2
Education	14
Day care	2
Emergency school aid	6
Higher education	6
Drug abuse and alcoholism	13
Social insurance	14
Health services	6
Total	164

WELFARE REFORM PLANNING

40 quota positions

The conversion of myriad of state welfare programs into a uniform Federal system is a massive, complex, and highly sensitive process which can only be successful if well planned. This process is underway but must be accelerated as passage and implementation of H.R. 1 draws nearer.

The Department of Labor, Social Security Administration, and planning functions at HEW must all be enlarged to cope with this impending drastic change in the structure of our welfare system. In addition, a new agency, the Family Benefits Administration, will be established to pull together the programs currently operated by the individual states.

QUALITY OF LIFE

21 quota positions

As our concern increases about the quality of life, so does our need to meet the executive needs created by the programs established by Congress in response to these concerns. The greater responsibilities assigned to EPA require additional top flight managerial talent to effectively administer these responsibilities. In the National Foundation on the Arts and Humanities, the greatly increased appropriations require knowledgeable specialists to see that these appropriations are placed at those points where the greatest benefits will accrue.

EMERGENCY READINESS

7 quota positions

These seven positions are needed to complete the upgrading of the regional structure of the Office of Emergency Preparedness to improve OEP's ability to attract and retain the quality leadership needed to assure a prompt response to natural disasters as well as preparing the nation for possible enemy attack.

ECONOMY

49 quota positions

The Administration is mounting a multi-faceted attack on this nation's economic problems. Supergrade positions are urgently needed to provide top-level talent to guide this attack. Stabilizing the economy; assuring full participation by small business and minority firms; improving productivity; assuring an adequate and well-trained workforce; and improving our balance of payments posture are among the problems to be addressed by the incumbents of the positions established following the provisions of these 49 quota spaces.

EDUCATION

14 quota positions

Recently enacted legislation has caused dramatic increases in the educational programs in the Office of Education. A National Institute of Education is being established to perform the basic research required to develop new approaches to the educational process. A National Foundation for Post Secondary Education is also being established which will require top level managerial talent. The Emergency School Aid program and new approaches to problems of pre-school children also present urgent demands for the best professional talent.

DRUG ABUSE AND ALCOHOLISM

13 quota positions

These positions will attack the problems of drug abuse and alcoholism from two standpoints: (1) enforcement and (2) medical research and information. The enforcement positions will be located in Justice in the Drug Abuse Law Enforcement Agency. The medical positions will be in the Institute on Alcoholism and Drug Abuse in the Health Services and Mental Health Administration.

SOCIAL INSURANCE

14 quota positions

All of the Social Insurance Programs of the Social Security Administration are included in this request—Medicare, Old Age and Survivors Insurance, and the Disability Insurance Programs—all require new supergrade positions to handle increased workloads and to improve the management of existing programs, especially data systems.

HEALTH SERVICES

6 quota positions

These positions would be used to staff the National Health Service Corps, the Division of Allied Health Manpower in NIH, and the HSMHA organizations developing the new approaches to medical services through health maintenance organizations.

Mr. HAMPTON. The critical needs based upon requests that have come to us are welfare reform planning, 40; the quality of life, which is the environment, arts and humanities, 21; emergency readiness, seven spaces; the economy, stabilization, manpower, and work force,

international policy, productivity, minority enterprises, small business, land development, that totals 49; under education, day care, emergency school aid and higher education, the total is 14; drug abuse and alcoholism, 13; social insurance, 14; and health services, six; for a total of 164.

That is by function, and I have this broken down in much more detail which I will be glad to submit for the record and the examination of the committee.

Mr. HENDERSON. Thank you very much for providing this information. It seems to me that the subcommittee and the full committee ought to attend to this need even though we are proceeding with the Federal Executive Service. It may be that if the members agree, Mr. Hampton, that we would want to ask you to come back one day and on which we could give specific attention to that problem.

I recognize in that general listing that you made there, at least in one instance where we have acted, and that is in the drug abuse.

I believe the figure was 13, and we had previously taken hearings on this.

Mr. HAMPTON. Yes, 13.

Mr. HENDERSON. By way of a commitment, the chairman and I had made on the floor, as we have the authority to remove from the legislation. It seems to me as you pointed out we are in the situation where the other committees are either authorizing or attempting to authorize specifics, and we continue to lose control over that.

Now, with regard to the Federal Executive Service, I want to ask some questions and make some observations. I think our biggest problem is trying to get a clear understanding of what you do propose to do and how it is to work, and that is the purpose of the hearings.

The thing that has given me the greatest concern throughout this year as we have looked forward to getting the hearings was the problem of getting the members of the committee to give their attention to the very complex subject.

I feel that I would be very inadequate to take that over, unless we had a much broader understanding then I think we could ever really get from even the subcommittee hearing if we had all the subcommittee members here, Mr. Chappell.

We are also busy with other complex problems, and it is very difficult. So, I think that it has to be determined to sell the understanding of the system.

We want to get, I think, a number of questions answered as they relate to the exception of coverage, which you very wisely touched on here. We already see there are others beginning to ask for exceptions. We also see statements from time to time that this is a great system for everybody except me.

That does not do a very good job of selling it and I know that in each and every case where you determine that there should be exceptions there were historic reasons or current reasons in your opinion for making the exceptions.

I would want us to be sure that we provide reasonable exceptions where they should be, and not except anyone where they should not be. The very complex situation that we are faced with at the present time illustrates that if we are going to do a good job we should have as broad coverage of the systems as we could possibly get, and that the

exceptions should have sufficient merit to be obvious to everyone who understands the functions of the excepted agencies, as to why they are excepted from the system.

Let me first say that I think from my own view that your statement of the problem is far better than I could do it. I have an understanding of that side. My understanding of the system as it will solve those problems is not as clear, and I cannot articulate it as well as you can, the problem itself, because we have lived with these problems, as you pointed out, for a number of years.

Specifically, there is an increase in nonquotas which has concerned us for quite some time, and I really don't see that the new proposal is in any way going to reduce the number of positions that we have found there, but rather what you are saying is that we are going to bring them into a new system that will enable us to better manage them.

Perhaps that is sufficient reason for justifying the service. There has been a great deal said about the contract provisions. Without getting into the great details of that, I think the concern expressed in the committee is what happens at the end of the contract period.

You pointed out the various appeals that they might have on non-assignment but there is really no hearing or appeal from the decision not to renew the contract, as I understand it.

Mr. HAMPTON. That is correct.

Mr. HENDERSON. The system would provide as the only relief the possibility of retirement if they qualify, or the right to go back to a GS-15 level with saved pay for 2 years; is that correct?

Mr. HAMPTON. That is right.

Mr. HENDERSON. I am sure there will be other questions. I don't want to take all the time on this point and I will come back to the questions I do have.

Let me yield to Mr. Mills, a member of the committee from the great State of Maryland.

Mr. MILLS. Thank you, Mr. Chairman.

I am very sorry I missed your statement, Chairman Hampton. I intend to take it and read it. I was unavoidably delayed this morning.

I want to ask do you think the treatment of the person with the contract is fair, or would you suggest that it be liberalized more than called for in the bill, or what is your general feeling about it?

Mr. HAMPTON. Well, when we were developing the concept of the 3-year agreement, it was on the assumption that it would be administered in good faith, that a well-qualified and well-trained executive is a very precious resource to any agency, and that a person would not be denied a renewal of his contract for factors that were unrelated to his job, such as political reasons, which seem to come up in the discussions, or for personality reasons. We feel that nonrenewal would be mainly based upon a lack of contribution to the mission of the agency perhaps by a mediocre individual who has not availed himself of opportunities to keep his skills up to date, or perhaps because of a lack of need on the part of the agency in a particular program area.

I don't know how to write into a law the question of good faith. I think that the danger that this could be abused by administrators who were not conscientious is very much apparent, and it is a point of great concern.

We discussed very thoroughly the question of whether or not an individual should have the right to appeal a nonrenewal. Looking at the appellate process as it now exists and the types of reasons on which charges are based, it is quite apparent to us that those people who are not performing at this level generally cannot and should not be faulted on the usual grounds. To reduce, say, a general failure to provide dynamic leadership to "you didn't show up on time on such and such a date" and that type of thing is absurd. Providing an appeal for nonrenewal we felt would really negate its value.

We look at the agreement as a motivator in a sense. It may be a negative motivator, but nevertheless a person who recognizes that his performance and his contribution to the Government is going to be evaluated and that his status is in question is going to be a good producer.

I feel that there should be some sort of a motivator here of executives. I hear many complaints on the part of top management that although this man is in a supergrade position, he is semiretired on the job. He does the minimum necessary to stay there, but he really does not reach out and does not extend himself to be the best performer that you really need in this kind of a job.

So it is a ticklish question. If the committee in its deliberations and discussions could come up with a suggestion of how we might afford more protections against arbitrary or capricious nonrenewal, we would welcome that.

We did not find one in our discussions, but that does not mean a better answer does not exist. We are open on that, and hopefully the committee in debating this issue will perhaps develop something that would have more public acceptance.

The other thing I must point out is that we devised the FES as a totally new personnel system. We had to divorce ourselves and our thinking from what existed today and turn to consideration of how best we could meet contemporary needs. The totality of the system we felt was the important thing, and we felt that equities were balanced in the matter of the agreement. We have also found that there is no real inclination to get rid of good people.

I have seen this in State systems where people have total authority over their executive resources and find that they value them very much.

Mr. MILLS. Do you think, though, on the other side of the coin, that a system like this will hamper an administration in putting across the policies of that particular administration?

For example, I know that the President has had a difficult time with some of the existing agencies in having them carry out policies that he has tried to establish. Are we making it more difficult for future executives, chief executives, to get their policies into the various agencies by locking in top-level people?

Mr. HAMPTON. I would answer this this way. I think the Federal executive service proposal is designed to make the whole system much more responsive to carrying out the wishes of whatever administration is in power.

These people are not locked in as they are in the present system. They are locked in the present system by position, not on the basis of their individual personal merit.

Under this system, the Cabinet officer will have complete authority over the ability to assign individuals at this level, which I think he should have.

I think that you must have the right man going to the right job at any given time. This question is by no means always political, nor is the normal reason for reassignment that a person is not in sympathy with administration goals.

We are not asking to establish a corps of yes men, but it is important to be able to say no properly and to explain why. What we are saying here is that we have established a mix between career and non-career, but within that mix of people you can assign them where they are most needed. They will go then to the programs which are of the highest degree of priority, as determined by the Congress by passage of new legislation and by the executive branch in giving emphasis to existing laws and how they would be administered.

There is no simple freezing in. In a sense, though people have tenure in the present system, even then they are not frozen in. However, I think in many cases, agencies in desperation may be forced to take actions which are more detrimental to the individual than being able to assign him to a different program with greater priority.

In addition, career men have been in the system generally for a number of years. I forget the average age but they have been in the system for about 20 years and they are experienced people. But at the present time under the present system they are essentially cut off at grade 16. Because if you look at the picture of the 17 and 18 positions, the majority are designated noncareer. The career man under the present system must give up any status and tenure he has to accept a non-career position, so he must choose between higher responsibility and his Federal career.

Under the FES, if a Cabinet officer wants a careerman to be his assistant, he can assign him to the job without loss of status. It will open up, I think, new opportunities for the use of these able career individuals without jeopardizing their continued careers in Government.

So, I think the FES has more flexibility. But here again, we get to the question of good faith. You can take any system regardless of how well it is structured in law and manipulate it to the disadvantage of the individual or to the detriment of the public interest.

I think people who are charged with the responsibility of administering a program are going to exercise this function judicially. I think that the fact that there will be annual reviews and that these will be open to the Congress, in a way that it has never been open before, is also an incentive to do this.

So, I try in presenting this to accentuate the positive side, because the negative stands out like a sore thumb, more so, I believe, than is justified by administrative realities. I am sorry to have taken so long.

Mr. MILLS. Thank you, Mr. Chairman. I have no other questions.

Mr. HENDERSON. Before I yield to Mr. Chappell, Mr. Chairman, I would like to ask unanimous consent that the letter of April 13, from the Comptroller General of the United States be authorized to be placed in the record in total.

I understand there will be questions revolving around it.
(The letter referred to follows:)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., April 13, 1972.

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

DEAR MR. CHAIRMAN: Your letter of March 23, 1972, requested our views on H.R. 3807, a bill to establish and govern a Federal Executive Service.

The primary purpose of H.R. 3807 is to amend chapter 31 of title 5, United States Code, to establish and provide for the administration of the Federal Executive Service. The stated purpose of section 1 of the bill would be to ensure executive leadership of the highest quality responsive to the needs, policies, and goals of the Nation. To accomplish these objectives the bill would abolish grades GS-16, 17, and 18 in the current General Schedule and authorize all civilian executives presently occupying such grades (and certain other employees falling within the same salary range) to be placed in the newly established Federal Executive Service.

The Federal Executive Service would consist of both career and noncareer executives. However, on a Government-wide basis the number of noncareer executives would be limited to not to exceed 25 percent of the total Federal Executive Service. The career executives would serve under 3-year employment agreements provided for by a proposed new section 3137 of title 5, United States Code, renewable at the agency's option. The noncareer executives would not have a fixed tenure but would serve at the pleasure of the appointing authority. Career executives, in accordance with their employment agreements, could, generally, be assigned any duties falling within the scope of the Federal Executive Service. Subject to an executive pay average to be authorized for each agency by the Civil Service Commission, in collaboration with the Office of Management and Budget, the compensation of career and noncareer executives could be fixed by employing agencies at any rate falling within the salary range established under the proposed section 3139(a) at not less than the sixth rate of GS-15 nor more than the rate for level V of the Executive Schedule.

The General Accounting Office would be specifically excluded, by subsection 3132(1) of the proposed amendment to title 5, from agencies subject to the legislation. However, the proposed subsection 3143(a) would require each agency in the judicial or legislative branch that has positions falling within the salary range of the Federal Executive Service to establish by regulation an executive management program as nearly like the Federal Executive Service as conditions of good administration warrant. That provision would appear to apply to the General Accounting Office. Subsection 3143(d) which does not require but encourages agencies excluded by section 3132(1) to adopt such features of the program as conditions of good administration warrant likewise appears to be applicable to the General Accounting Office. In summary, our interpretation of the above-cited language is that the General Accounting Office is excluded from the program but is encouraged to adopt a plan of its own.

While the Federal Executive Service and similar agency programs might offer flexibility and other advantages from a management viewpoint, there are several aspects of the system which could generate dissatisfaction among the affected employees. For example, as noted above the career appointees would serve under 3-year employment agreements which would be renewable at the agency's option. There is no provision in the bill which would prevent an agency from arbitrarily refusing to renew an employment agreement. The employee's only protection in that situation is the right to be offered a grade GS-15 position with saved pay for 2 years, if necessary. If an employee has completed 30 years of service, his agency could separate him provided he were eligible for an annuity under 5 U.S.C. 8336.

Also, while the authority to assign executives to whatever duties are required and to pay them at any salary rates deemed appropriate (within the authorized range) may be advantageous to management, such flexibility could be the sub-

ject of abuse resulting in meaningless distinctions in pay and duties among executives. It may be that many of the employees currently serving in grade GS-18 in the competitive service would not elect to come under the new system since the net advantage of so doing as compared to the disadvantage is not perceptible. Possibly many others in grades GS-16 and 17 in the competitive service likewise would elect to remain in a *status quo*. Therefore, it might be that many years would elapse before the system becomes fully operative.

In general, we believe the authorities provided by subchapter II of chapter 53, title 5, United States Code, for establishment of Executive Level positions, together with that provided by subchapter I of chapter 33, title 5, *supra*, for excepting positions from the competitive service (Schedule C) provide a flexibility in the selection and appointment of high level employees that dilutes the need for the proposed Federal Executive Service.

Moreover, it is possible that establishment of the Federal Executive Service might tend to diminish rather than enhance the Government's attraction as an employer of high level personnel. The relatively secure tenure of Government employment which allows talented employees to achieve high levels of responsibility is, we believe, a major factor in inducing such persons to accept Government employment and remain in it in preference to work in private industry where earnings may be much higher. The Federal Executive Service concept could lessen this attraction to Government employment and defeat its purpose of attracting and retaining the best qualified employees. With the above in mind, it would seem to us that consideration should be given to limiting application of the bill to a trial period and to the grade 18 level.

We believe the concept of a Federal Executive Service should be given very careful consideration before favorable action is taken by the Congress on H.R. 3807 and like proposals.

Sincerely yours,

ELMER B. STAATS,

Comptroller General of the United States.

Mr. HAMPTON. Mr. Chairman, may I ask what letter you are referring to?

Mr. HENDERSON. Yes. This is a letter to Chairman Dulski in response to the request of March 23 on the views on H.R. 3807, the bill. Are you familiar with his response, sir?

Mr. HAMPTON. No, sir; I have not seen it.

Mr. HENDERSON. I have a copy here.

It is so long, I am sure you want to give it greater care than you can now, if you have not had a chance to see it before.

Mr. CHAPPELL. I have a couple of questions to ask so I may thoroughly understand the proposal. We are talking about so-called white-collar groups, exclusively?

Mr. HAMPTON. Yes, sir.

Mr. CHAPPELL. We are talking about only those positions involved in the executive branch of Government, and are not talking about the legislative branch of Government or the judicial branch.

Mr. HAMPTON. That is correct.

Mr. CHAPPELL. You have enumerated those in the executive branch which would be excluded under this proposal, have you not?

Mr. HAMPTON. Yes.

Mr. CHAPPELL. I notice on page 20 of your report you say a small number of these top level positions are unmistakably career or non-career.

Have we reached that point in our Federal personnel system where some form of political endorsement is required to be placed in a top-level civil service job?

Mr. HAMPTON. No, sir. The only political considerations go into filling the top level noncareer jobs—

Mr. CHAPPELL. On the noncareer levels, 16's, 17's, and 18's, then?

Mr. HAMPTON. Yes, sir.

Mr. CHAPPELL. I would like to refer to the Comptroller General's letter. I am only going to point out the questions he raises there, because I know you have not had a chance to read it in depth, and frankly, I have not had a chance to study it in too much depth, either.

But, he says the stated purpose of section 1, of the bill, would be to insure executive leadership of the highest quality responsive to the needs, policies, and goals of the Nation. He says that to accomplish these objectives, the bill would abolish GS-16, 17, and 18 in the current general schedule, and authorize all civilian executives in such grades, and so forth, be placed in the new Federal Executive Service. That establishes what you have already explained; doesn't it?

Mr. HAMPTON. Yes.

Mr. CHAPPELL. He says that the GAO would be specifically excluded.

It has a responsibility to the legislative branch. Would that be one of the reasons?

Mr. HAMPTON. Yes, sir.

Mr. CHAPPELL. In page 2 of the letter, the possibility of arbitrarily refusing to renew an employment agreement is mentioned. Let me ask you a series of questions which I think are pertinent on this particular point.

What we are all trying to do, I assume, is to try to get the very best people we can at the proper salary, and in comparing them to industry, I suppose we are trying to pay them about the same thing as private industry would be paying these people; is that correct?

Mr. HAMPTON. No, sir; for the grade 16's and 17's and 18's we are not comparable.

Mr. CHAPPELL. The reason you are not comparable and the reason you expect to get people is the fact that there is a great deal of security offered in the Federal service as compared to certain aspects of the private industry; is that a fair statement?

Mr. HAMPTON. No, sir; I don't think that we are really competing, necessarily, with private industry, for people in our supergrades. The reason I say that is that the vast majority of supergrades are filled from people already in the Federal service. Their average age and their length of tenure when they first become supergrades indicates that. Also, the small number of positions that are presently filled from outside are mainly what we call inners and outers, people who come in for specific projects or programs, stay for a short period of time, and then leave.

So, I don't think we are in direct competition at that point.

Mr. CHAPPELL. Isn't security a very important consideration in being able to obtain qualified people in the top levels?

Mr. HAMPTON. In attitude surveys we made that was pretty far down on the scale.

Mr. CHAPPELL. Is that right? Then what you are saying is that you don't have to worry as much about the job with the contract renewal as you might be concerned in other levels of governmental employee schemes; is that right?

Mr. HAMPTON. I would have to answer here personally on that. I don't have any definitive information on what the 7,000 executives covered themselves may think, but contract renewal is not something

that is going to hang in the mind of the type of people that you want in these top jobs, in my opinion.

Mr. CHAPPELL. In other words, you think the man who comes to the Government for this position has enough ability—and confidence in his own ability—that he is going to be satisfied he can perform and thereby be retained in the program because of his abilities?

Mr. HAMPTON. Yes, sir.

Mr. CHAPPELL. This is commendable.

Mr. HAMPTON. Let me elaborate on that point because I don't want to give the impression that all is peaches and cream on that. The one fear that the executive has is that his contract would not be renewed for a reason other than his ability. I think he feels confident in his ability, but the questions that seem to be raised to me are "well, is that going to be the only factor that is considered when the renewal of my contract comes up?"

Mr. CHAPPELL. It seems to me there would be a good deal of questions arising in this area. What administrative procedures are now available for removing an executive whose performance is unsatisfactory?

Mr. HAMPTON. The only way would be to go to a full dismissal procedure.

Mr. CHAPPELL. You would have to prove that he cannot perform the job requirements, is that right?

Mr. HAMPTON. We would have to prefer charges.

Mr. CHAPPELL. Under this system, though, you would have him on a 3-year contract, and as long as he performed under the contract, you could not fire him; is that correct?

Mr. HAMPTON. Whether or not he continued in the Federal executive service. When an agreement expired, he would have reassignment rights, still in the Federal service, back to a grade 15, with salary savings for 2 years. If he were eligible for retirement, he could be involuntarily retired.

Mr. CHAPPELL. If it is a contractual relationship, who would determine whether there is a violation of the contract? Would the courts do it?

Mr. HAMPTON. If there were a violation of the agreement—which is what it is, an agreement: the Government agrees to do certain things and abide by certain rules and regulations—if the executive feels that his agreement has been violated and the Government has not lived up to its part of the agreement, he has the right to appeal to the Civil Service Commission.

Since this would be in statute, if he were not satisfied with the decision of the Civil Service Commission, he would be entitled to court review.

Mr. CHAPPELL. I see. Now, with reference to the qualifications board under the Federal executive service, can such boards be limited to reviewing the qualifications of only those individuals the agency has selected for appointment?

Mr. HAMPTON. This review is on a prior appointment basis. This board will not be in a position of rubber-stamping the selections.

Competition must be demonstrated to have taken place, and the recommended appointment must be funded on principles of merit selection.

Mr. CHAPPELL. What do you mean by "competition must be demonstrated"?

Mr. HAMPTON. To get into the Federal executive service.

Mr. GROSS. Would the gentleman from Florida yield?

Mr. CHAPPELL. Yes, I yield.

Mr. GROSS. Who makes the final determination as to whether this man serves out his contract, or at the termination of the 3-year period, that he be fired?

Who makes these determinations?

Mr. HAMPTON. The determination would be made by the head of the agency, sir.

Mr. CHAPPELL. Would the employee have the right of appeal in that instance?

Mr. HAMPTON. He has no right of appeal if his contract is not renewed.

Mr. CHAPPELL. Under the proposed Federal executive service, could an executive be assigned to a different agency, without his consent?

Mr. HAMPTON. No.

Mr. CHAPPELL. If there is no GS-15 position available in the agency and he is not eligible for retirement, is the agency then bound to offer the employee a renewal contract?

Mr. HAMPTON. If the agency is unable to meet its commitment in the agreement, they would have to renew his contract.

Mr. CHAPPELL. If the agency should decline a renewal agreement and there is no GS-15 position available for him, would he be eligible for retirement?

Mr. HAMPTON. He must be offered a GS-15 position. If he declines it, he would not be eligible for discontinued service retirement, but if he is eligible for regular or disability retirement, he could, of course, retire. An executive not offered renewal who declines the offered GS-15 would be entitled to discontinued service retirement, or if not eligible for an immediate annuity, to severance pay.

Mr. CHAPPELL. What would that severance pay be based upon?

Mr. HAMPTON. It would be based upon his number of years of service plus his salary.

Mr. CHAPPELL. If I understood you correctly, wouldn't it be a bit inconsistent with the purposes of severance pay with respect to a person who had declined to accept a GS-15 position?

Mr. HAMPTON. You mean if the individual is not offered a renewal agreement? In that case I think it is consistent. If the individual declines to accept only in order to take another job, I don't think he would meet the terms for severance pay.

Mr. CHAPPELL. What would be the normal terms he would have to meet for severance pay?

Mr. HAMPTON. As required under the present law. In other words, he is leaving the service and it is really not of his own volition. I think that is it. Mr. Berlin is anxious to comment.

Mr. BERLIN. May I help you on that, sir?

I think the confusing part of the question is his refusal to accept the GS-15. If that were to take place, under the provisions of the bill, he is given the opportunity, of course, to decline it.

If he does, he then has one of two options. Either he is eligible for discontinued service annuity, which generally means he has had 25

years of service, or if he has not had enough service he becomes eligible for severance pay.

He cannot get both, of course. If he is not eligible for discontinued annuity and is eligible for severance pay, he gets severance pay under existing severance pay legislation, which is based on a formula of so much pay for each year's service, and while I don't have that specific formula, we can supply it. But he does not have the option to accept severance pay if he is eligible for discontinued service annuity. Since on the average, executives have 26 years' service, he probably would be eligible for discontinued service.

Mr. HENDERSON. Would the gentleman yield?

Mr. CHAPPELL. Yes.

Mr. HENDERSON. Isn't it a bit inconsistent with the purposes of the severance pay to allow an individual who has declined to accept a GS-15 position to receive severance pay?

Mr. BERLIN. Sir, he has that right, right now, even under the present system. If his job were to be abolished and if the agency offered him a lower grade, he does not have to accept the lower grade. He may leave and accept severance pay even today. The key is that he is not required to accept a position at a lower grade. So this is carrying through with consistency what exists.

Mr. HAMPTON. I think the severance pay law, and I am not absolutely sure, mentions that a like position, like pay and so forth. So it would be under that provision.

Mr. CHAPPELL. I notice you listed the FBI as an example of an agency being excluded.

Mr. HAMPTON. Well, the FBI appointments are all excepted appointments. They have their own personnel system set up by the Congress.

Mr. CHAPPELL. How about the TVA?

Mr. HAMPTON. It is the same. It is a sort of a corporate arrangement there. They have their own personnel system.

Mr. CHAPPELL. I see.

Mr. HAMPTON. We went into this coverage quite deeply. Mr. Berlin handled many of the conversations that we had with the agencies in developing this proposal, and he perhaps can expand on this point for you if you would like.

Mr. CHAPPELL. I am most curious.

Mr. BERLIN. May I suggest, if the Congressman would look at page 38 of the Chairman's statement, there is a ready chart of coverage and exclusions. I might address myself very briefly, Mr. Chairman, to the reasons for these. If you will note, there are two groups of exclusions, those within the executive branch and those outside the executive branch.

As Chairman Hampton indicated, those outside the executive branch, such as the GAO which already has some of its authority separately given to it by this committee—

Mr. CHAPPELL. That is a legislative function. I am talking about the executive.

Mr. BERLIN. Within the executive branch, the list of exclusions, if you will look at the first column—with two exceptions, and I will come back to those—consists of those agencies which have total personnel systems from bottom to top that are separate at present from the

general civil service system, and are not generally under the purview of this committee in terms of personnel matters. These include such groups as TVA, AEC, CIA, Department of Medicine and Surgery in VA. These total—

Mr. CHAPPELL. And the U.S. Postal Service.

Mr. BERLIN. The U.S. Postal Service is clearly separate from the civil service and operating as a corporation. The hearing examiners are excluded because they are under the Administrative Procedures Act and have special requirements, and the FBI because it has its own personnel system.

In just about every instance, it would be difficult to put the top jobs of these special systems under the FES without looking at the total personnel structure, since they are not related to the rest of the civil service as the general 7,000 are.

Mr. CHAPPELL. Going back to the Comptroller General's letter for a moment. He mentioned it may be that many of the employees serving in GS-18 in the competitive service would not elect to come under the new service since the net advantage of so doing as compared to the disadvantages is not perceptible. I know you touched that briefly, but would you make a comment on that?

Mr. HAMPTON. Let me look at this. In other words, what the Comptroller General is saying is that some of the present GS-18's would not want to come under the FES, that there was little inducement to them?

Mr. CHAPPELL. That is essentially what he is saying. It is on page 2 of the letter, in the middle of the paragraph. He says that many others in grades 16 and 17 in the competitive service likewise would elect to remain in a status quo. Therefore, it might be that many years would elapse before the system becomes fully operative.

Mr. HAMPTON. Well, the way I would answer that is that, one, there are very few GS-18's presently serving in the competitive service; and second, we did not particularly design the system to induce people, or persuade them, to come in against their will. We recognize that we will be running two parallel systems for a period of time.

I don't think that this will be a lengthy period of time.

Mr. CHAPPELL. What period of time are you thinking about?

Mr. HAMPTON. Eight to nine years.

Mr. CHAPPELL. Before you become fully operative under the new system?

Mr. HAMPTON. That is correct.

Mr. CHAPPELL. He seems to disagree with you on the question of security. He says that it is possible that the establishment of the FES might diminish the Government's attraction as an employer and so on. He says he believes it is a major factor in inducing such persons to encourage Government employment.

It goes on, as you see. What would be your comment on all that?

Mr. HAMPTON. I would have to disagree with the conclusions.

Mr. CHAPPELL. You disagree that tenure has that much importance, and then what would be your comment on the trial period?

Mr. HAMPTON. A trial period for GS-18's would not show any significant experience, in my opinion.

Mr. CHAPPELL. Why would this be?

Mr. HAMPTON. We are talking about career GS-18's. I would say, how many of those are in the Federal service? We are talking about a very, very few. This is one of the disadvantages now. There are very few career people at that level.

Mr. CHAPPELL. First of all, then, the GS-18 would not be the right grade to make the trial run on if you made one; and, second, are you saying that the trial run would be of no significance?

Mr. HAMPTON. I don't really see how it would on so small a group. Furthermore, only a few provisions of the total FES could be tested if it were applied to only part of the population. The Comptroller General seems to have in mind mainly the agreement provision rather than looking at the FES as a total comprehensive system for executive manpower management.

Mr. CHAPPELL. What you are saying, also, is that it would take the 8 years to get a fully operative situation anyway, and a trial run would not show you very much regardless of what grade you put it in. Is that correct?

Mr. HAMPTON. That would be my opinion, Mr. Chappell. Using the 8-year figure, too, that is the outside figure. I mean, looking at the demography of the executives in the Federal service today, you take the youngest individuals with the least amount of service and assume that they would not opt to come into the Federal Executive Service.

I don't think it will be that way, because I think that seeing what opportunities are available under FES for advancement, the chance to move into the most challenging assignments, the young and able executives will be eager to join. I think it may be useful, Mr. Chairman, to get an understanding of the nature of the population we are dealing with. It might be helpful to discuss the characteristics of the executives who are presently in our system. Mr. Berlin has developed this through various surveys during our total look at this system, and if it is in order, perhaps the committee would like to hear something about the characteristics of the group we are dealing with.

Mr. HENDERSON. Excuse me just a moment. Mr. Gross, I must apologize that I did not afford Mr. Andolsek and Mr. Berlin an opportunity to talk on this subject.

If you would bear with us a minute or two, I would like to get back to the way we should. Commissioner Andolsek, I recognize that you have been working on and have been interested in this type of executive service for many years, along with Chairman Hampton, and I would like to afford you an opportunity at this time to speak on this subject. I don't want to lose the effect of your positive testimony.

Commissioner ANDOLSEK. I am pleased to be invited, Mr. Chairman, and I am pleased to have this opportunity to endorse wholeheartedly and without reservation the proposed Federal Executive Service.

I have been in the Government for more than 35 years and I have seen it from many different perspectives. I started my career in the executive branch with the NYA in the early depression days.

I served as an officer in the Armed Forces during World War II and in that capacity supervised many civilians. I served as a personnel officer in the Veterans' Administration, and I had the privilege of serving on the hill for 12 years as an administrative assistant to Hon.

John A. Blatnik and for a short period of time as chief clerk of the House Committee on Public Works.

Finally, I served for 6 years as vice chairman of the Civil Service Commission and now I have been serving during this administration as the minority Commissioner.

I wish to state unequivocally that the various types and levels of Government experience that I have had convince me that we must change the system that governs our top career and noncareer leadership in the executive branch.

All these years of service have left me convinced that the Government has good people at the top. I think they are better by and large than their counterparts outside Government. But these high quality executives are caught up in a rigid, inflexible system which keeps them from serving the public to their best ability.

And this condition has been true regardless of the political party or administration in power. Political appointees as well as career executives serving under all administrations want to do the best job they can.

We have to let them do so by loosening up the system.

In my opinion that is what the proposed Federal Executive Service does.

One of the first things I did when I joined the Commission was to ask for a complete study of the system that governs our upper civil service. I joined my colleagues on the Commission in 1966 in recommending to the President a new approach in executive manpower.

I furthermore requested, along with my colleagues, at that time, that a total study be made and that a new approach be suggested for executive manpower management.

The proposal, then, which you have before you is certainly non-partisan—nonpartisan in that it is not meant to favor either party. It makes sense from every perspective.

It should be possible to change an executive's job assignment easily when the organization needs change. It should be possible to ease a weak performer out of the executive ranks. Members of Congress have to have their continuing capability checked every so often. I think executive branch leaders should also be subject to periodic review.

The way things work now, an appointment to a supergrade position is really for life and that just doesn't make sense when the needs of the Government change daily.

You will notice we are not talking about firing people—we are talking about giving them important jobs at GS-15 and letting them keep their executive salaries for 2 years.

In fact, except for people at the very top of the supergrade salary bracket, moving back to GS-15 would not result in any substantial salary loss at any time because of the automatic step increases in the GS-15 salary scale.

What we are talking about is getting people out of the top positions if they are not pulling their weight. Not having this ability now is one reason the number of supergrades keeps climbing. The work has got to be done, so new positions are set up to fill in behind weak executives.

Another thing that has to be shaped up is the business of allocating positions to agencies. As Chairman Hampton said, one way or another more than half of the supergrade level positions now are not under full Civil Service Commission control and they are not under the effective control of this committee, either.

You start off with one little exception here and another little exception there and pretty soon you end up where we are today—with a complete jumble of varying authorities. It's not a fair system—some programs are rich in executives and some are poor—and it is not an efficient system.

The FES proposal on this point seems to me just about ideal. It has flexibility to meet changing needs and even emergency needs. It gives every agency's priorities equal consideration. It keeps executive manpower strength in balance with current program needs.

It gets rid of the ridiculous hodgepodge of authorities we now have to work with. And it gives the Civil Service Commission and this committee a real handle on controlling overall numbers.

Some people may say the Federal Executive Service takes liberties with the merit system. I think they are dead wrong. As I look at it, the merit system is intended to see that the best people available are in charge of the public's business. A number of the provisions of the FES are focused on doing just that:

Appointment procedures which will insure that newly appointed executives are really first rate.

Assignment procedures that let executives be placed in jobs where they can function best to meet agency needs.

Tenure provisions which reserve executive positions for those who are operating at top effectiveness.

This legislation is a real reform measure. It is nonpartisan because it is not designed to reform abuses of one party or the other. Instead, it is a serious attempt to establish a realistic executive manpower management system to replace the systemless confusion we are now struggling to manage. I support it without reserve.

Mr. Chairman, I would like to compare the selection of the top notch people, and we are talking about the people in the supergrades to people that are heading up our outstanding universities, our outstanding corporations and our outstanding professional football and basketball teams.

These people stay in the positions on the basis of how well they do their job. George Allen was able to get a 7-year contract because he had a good record.

We are looking for the Lombardi's, the Allen's, the people with ability and with the guts to make a program work in the best way to accomplish the public business. Thank you so much.

Mr. HENDERSON. I thank you very much for your statement. The record should reveal, and your statement does, your very fine and sincere dedication to this legislation. I can't help but have some apprehensions in this particular year that some of our difficulty in this legislation, even if we shape it to remove some of the apprehensions of the members of this committee.

We will have a very difficult time of convincing the Congress that that system was begun to be studied and developed now in the last

administration and it is really not the proposal of the present administration and we won't get politics involved in it, but I guess that is true in everything of our system of democracy.

But your statement certainly is very helpful on this point.

Commissioner ANDOLSEK. Mr. Chairman, in the 62 years that I have been privileged to be on this earth, I have found the Congress very fair if they have the facts, and actually, even though the proposal is made this year, we have been studying this from way back in 1963. In 1966 we took our first action steps by starting the executive assignment system under executive authority.

So it is not that new, and I think Seymour Berlin and his staff have done a commendable job in coming up with a system that will put the handle on managing the executive manpower of this man's government to eliminate the present chaos and confusion and everything else that goes with it.

I am convinced that a system such as this will help in the orderly businesslike administration of the Government regardless of which party is in power. It is badly needed.

Mr. HENDERSON. I am going to yield to Mr. Gross, because I do want for him to have the remaining time if he will use it, and I feel like that perhaps we need a subsequent session, because we all recognize Mr. Berlin, that you have worked on this with a great deal of attention and dedication, and we will come back.

Mr. GROSS. Thank you, Mr. Chairman. I assume Mr. Andolsek will be back. I wanted to ask him a question about his statement. But since he has left, I will address a question or two to you, Mr. Hampton, and question him when he returns.

My most serious doubt about this proposal is along the lines that you have stated, Mr. Hampton.

My most serious doubt goes to the good faith administration of this proposed law, and I am far from convinced, on the basis of past records, that we can rely upon good faith on the part of those who would administer it.

I can't help but recall the case of Otto Otepka. He would have been out of Government under this law before he could have opened his mouth in his own defense. I believe you recognize that. But under this law, he would have been gone, and those, had they been a step or two higher in the scheme of things who testified in his behalf under oath and under subpoena before the Senate committee would likewise be gone.

I personally went over and saw those two men who testified in behalf of Otto Otepka, officed in a mice and vermin ridden building near the State Department. It was an abandoned building, but for two offices in which they were exiled. That is my concern with this legislation, the administration of it and I mean good faith administration.

That doubt is far from resolved by any testimony that I have heard thus far, and perhaps it cannot be resolved until and unless there is some kind of experimentation with it.

I have seen others in my time here, not only Otto Otepka, but others, punished for telling the truth, for revealing to the public information that the public was entitled to have.

That is the reason why, one of the reasons why I have serious doubt about this legislation.

In the statement accompanying the introduction of this legislation, it is stated that agency heads may assign and reassign career and non-career executives to any duties anywhere, organizationally, or geographically, which properly fall within the scope of the service, and duties higher than those classified at GS-15 or the equivalent.

Then this explanation of the bill goes on to say that executives may appeal to the Civil Service Commission reassignments to duties or locations which the executives believe were made for reasons other than the program efficiency of the service.

What happens to this individual unless he is sustained in this appeal?

Mr. HAMPTON. If an individual say—

Mr. Gross. Let me interrupt you, and pardon me for doing so, but in this case the individual is opposed to assignment or reassignment, and then he appeals what happens to him?

Mr. HAMPTON. Well, if the grounds he alleges in his appeal are correct, he would be sustained and the agency would be enjoined from making him move.

Mr. Gross. But if his appeal is not sustained, does the bill provide, or does it not provide, that he drop down to a 15, out of the supergrade and is for all practical purposes out of the service?

He has the alternative of resigning, of course.

Mr. HAMPTON. If he is not sustained and he cannot make the case to accept an assignment, then he would go to a GS-15 position. But these are important jobs, of course.

Mr. Gross. He goes to a GS-15.

Mr. HAMPTON. With a 2-year salary saving. He remains a GS-15, but, say, he was making a salary of \$30,000 a year under the FES, and he was reassigned to a GS-15 job, the salary of \$30,000 would be saved for 2 years.

At the end of that 2 years—

Mr. Gross. He might be assigned to a job for which he has no fitness at all, is that correct?

Mr. HAMPTON. No, sir. He would have to be assigned to a job where he would be productive, the duties of which were properly classified at GS-15.

Mr. Gross. He might be said to be productive swinging a broom or a mop; that might be called productive.

I realize that is an exaggeration, but it would be productive, sir.

Mr. HAMPTON. It has to be productive in the position to which he is assigned. If he is assigned to a GS-15 job, he must be productive in the duties of that job. What I meant really was that a GS-15 position must be bona fide not in terms of productiveness, but in terms of whether it is a proper part of the operating responsibilities of the Government.

In other words, it must be a valid job.

Mr. Gross. On pages 6 and 7 of the bill, the exemptions are set forth, and among those is the CIA. Yet the National Security Agency is not exempt. If my understanding is correct, they are in contact, communication, and consultation with the Central Intelligence Agency at all times.

Is that not correct?

If that is the case, why is the National Security Agency omitted from the exemption list?

Mr. HAMPTON. Well, the National Security Agency does not have its own personnel system as the CIA does. Mr. Berlin again wants to comment further on that.

Mr. BERLIN. The National Security Agency, Mr. Gross, is under the Department of Defense, and even today its personnel and supergrades are controlled by the Secretary of Defense.

In preparing this legislation, we discussed with the Office of the Secretary of Defense whether the NSA should be excluded or not. The agreement was, or the feeling expressed by the Department of Defense with which the Commission concurred, was that the application of the total FES with regard to allocating certain numbers to the Secretary of Defense could then be applied to the National Security Agency without having the agency specifically excluded, especially since we were trying to keep down the number of exclusions.

Mr. GROSS. Why is the Peace Corps exempt?

Mr. BERLIN. It has legislation, sir, which provides for the present that no persons can serve for more than 5 years in management positions. Their tenure is so curtailed that we thought we could not include them in the FES.

Mr. GROSS. Despite the fact that, if I remember correctly, administrative costs eat up 27 to 30 percent of the entire annual appropriation for the Peace Corps.

I am surprised it is included.

Mr. HENDERSON. Would the gentleman yield?

Mr. GROSS. Yes.

Mr. HENDERSON. I would like to follow up your question with regard to NSA, because as I understand section 3-A of the bill, it would repeal NSA's appointment and fix authority for some supergrade positions, and in addition, the bill would abolish grades 16, 17, and 18 of the general schedule.

So, if the bill does not exempt NSA, then even a presidential exemption of NSA, under section 3132(h) of the bill, (h), H.R. 3807, would not be effective, since the bill abolishes the appointment and pay fixing authorities for NSA supergrades.

Mr. BERLIN. The intent, Mr. Henderson, was that in the allocation of the number of spaces by the Commission and reported to the Congress, the Department of Defense would receive a certain number for the NSA as part of its total number for its various component parts, and that the pay fixing would be handled by the Secretary of Defense just as it is today.

The National Security Agency, as you know, sir, has a history in which for many years the Civil Service Commission handled the grades, but the feeling was that it would be better to have it under the Department of Defense. The FES proposal would continue what exists today.

Mr. HENDERSON. If the gentleman would yield further, without going into this at any great depth on the record, let me just express my concern and join the gentleman from Iowa, and say I feel sure we could resolve this with informal conferences with you and the NSA, either by way of amendment or whatever seems to be necessary. But, I

think because of the experience we have had on this subcommittee. Mr. Gross, in that we have taken their requirement needs in executive sessions where we could get full information as to the sensitive areas in which they work in and so on, and we would want to be sure we have protected their ability to accomplish their work, their programs, and to the fullest possible extent. Management officials of NSA have assured me that, where they could, that they would adopt the provision of the Federal Executive Service to the fullest extent within the agency, and I think with that understanding on your part and the assurance on their part, we ought to be able to resolve this problem without taking great time in the hearings on it.

I thank the gentleman for yielding.

Mr. GROSS. Mr. Andolsek, in your statement you referred, I believe, to the 2-year tenure of Members of Congress and the check on the part of the public.

Commissioner ANDOLSEK. Your constituency looks you over every 2 years.

Mr. GROSS. Would you suggest a 2-year term for the members of the Civil Service Commission?

Commissioner ANDOLSEK. It would be all right. I would not agree with the Comptroller General for a 15-year term.

Mr. GROSS. I don't believe he is in this bill, is he?

Commissioner ANDOLSEK. No. He belongs to the Congress, Mr. Gross. He is exempt.

Mr. GROSS. Perhaps we ought to put the Civil Service Commission in this bill on a 2-year basis.

Mr. HENDERSON. Wouldn't we give them 3 years under the contract, Mr. Gross?

Mr. GROSS. That leads me to the question of how was 3 years arrived at?

What was magic about 3 years?

Mr. HAMPTON. I don't believe there is anything magic about 3 years. It was the product of a number of discussions. We started out with 5, and we felt that might be too long a period of time without evaluating a person when there are so many changes within an agency. Mr. Berlin had a lot of discussions on this point with the agencies. Do you want to comment?

Mr. GROSS. Could it have just as well been 2 years?

Mr. BERLIN. Mr. Gross, it could have been anything that met the broad objectives that we were trying to accomplish.

One, to make sure that there was a sufficient period of time for an individual to make an impact and not be threatened with insecurity, and yet a reasonable period of time that he would be periodically reviewed for retention.

Therefore, it could have been two, three, four, or five. The feeling was that five was too long, and two was too short. After an executive had had his credentials reviewed and approved by the qualifications board it seemed to us that after 3 years he ought to be looked at again.

This was a highly subjective assessment based on the objectives we have in mind.

Mr. HENDERSON. Would the gentleman yield again on that point? I hate to keep taking his time.

Mr. GROSS. That is all right.

Mr. HENDERSON. On the 3 years I had some argument from the scientist type that the time is too short, that they are on projects that run longer than that, and at this point, I would say that that does not impress me very much.

I have great questions about some of these projects that do run on and on with the scientists.

Somebody ought to be looking at what they are doing within a 3-year period. This is one of the features that I sort of like about this, especially as we get into some other areas here on the ability of the Civil Service Commission to insure themselves and the Congress together, with their joint efforts with the Office of Management and Budget, that you are really looking at the essentiality of what is being done by that person, how does it relate to the program.

Of course, there is a basic law, I guess for everything, but it seems to go on and on and on, and it seems to me there are many places in the Government that if you and I could find the niche and get into the right office and have a bureaucratic expertise that some people have, that we could perpetuate our job forever.

If we could find some way to dig into those corners and root them out, that is what I would like to see come out of this.

Mr. GROSS. Such as the research project on tricycles, why do they tip over, and how they can be made safer.

Again, we get back to the proposition of who is going to do the checking.

Mr. HAMPTON. That would be the head of the agency.

Mr. GROSS. And if he did not like the way the individual cut his hair or let it grow or something of that kind, he would have difficulty from the way some people in Government have been treated, Mr. Hampton.

Mr. HAMPTON. Let me say on that point, Mr. Gross, one of the things that I mentioned in my statement was that every year these allocations will be looked at. They are not something made forever. These requirements will be looked at closely in terms of the need for them and the priority of the program.

So I think we have a pretty good handle on that. There was a point that crossed my mind about the 3 years. We have found that sometimes under the present system you establish a supergrade job, because this is a new job in a new program. At that particular point in time, that job requires a top level executive. Once this man has come in, has met on a first time basis many of the problems in setting up an organization and getting it running, then the nature of the job changes, and it no longer requires that type or level of talent.

It requires someone to maintain it, and that can be done at a lesser grade. Under this system, we would be able to move people around to meet new and changing needs and not have people in supergrade jobs which are not needed.

Mr. CHAPPELL. Would the gentleman yield?

Mr. GROSS. I have got to be on the House floor for the private calendar at 2 or 3 minutes after 12. I am sorry.

Mr. CHAPPELL. That is all right. I understand.

Mr. GROSS. You say on page 20 of your statement that as the Government becomes more and more involved in social programs the old distinction between policy and administration becomes increasingly blurred.

Would this legislation make that distinction sharper, or make it more blurred?

Mr. HAMPTON. No, I don't think this legislation is going to change this aspect of what is occurring there. I think this point was made in the testimony, and that is that the present system of designating career and noncareer is not the most realistic system, because there are a lot more positions that could be designated noncareer than are actually so designated.

We are pointing out in the FES system we are going to have a definite mix set by law, we are going to control the numbers of noncareer executives and we will be able to use people in the career service for doing many of these jobs without them giving up any sort of career rights that they might have. Career people often fill these jobs today but they lose their career rights when they do.

Mr. GROSS. How many qualification review boards do you propose to establish under this legislation and on that subject, I wish you would comment on the effectiveness of the Postal Service appointment boards for postmasters and whether this has resulted in any improvement in filling postmasterships.

Mr. HAMPTON. I have that number. We anticipate that there will be 17 qualifications boards covering these areas: The physical sciences and engineering, research and development; other engineering; mathematics, statistics, and operations research; biological sciences and veterinary; and medicine, health and medical; law; patents and copyrights; education; transportation; contract and procurement; economics; other social sciences; personnel; budget and accounting; information and public relations; general administration; and miscellaneous types of boards for positions not properly falling into any of the above categories.

These are the qualifications boards. We would have 17 of them.

Mr. GROSS. Have you any comment on how well the selection boards have done in appointing postmasters in the new Postal Service?

Mr. HAMPTON, No, sir; I have no idea. We are not in the postal business anymore.

Mr. GROSS. Thank you very much, Mr. Chairman.

Mr. HENDERSON. I want to be sure that I understand the exemptions here, and let me relate it to the General Accounting Office now. The exemptions we have referred to in the bill on page 6, where it says, "but does not include the General Accounting Office, the Peace Corps," and so on.

Mr. HAMPTON. Right.

Mr. HENDERSON. Then below the Federal Bureau of Investigation and the Department of Justice. Now, I note that on page 32 under line 10, subsection (b), that you have on the effective date of this, the Director of the Federal Bureau of Investigations without regard to any provision of this act can fix the pay of not to exceed 140 positions in the Federal Bureau of Investigations at any rate of annual pay determined to be appropriate which is not less than GS-15 or more than the rate of level 5 of the executive schedule.

I seems to me there you would consider the FBI to have 140 super-grade positions.

Mr. BERLIN. Which they have now; yes, sir.

Mr. HENDERSON. But as you exempt the General Accounting Office, and let me refer to that, they do not continue to have specific super-grades authority.

Am I right to conclude that they would then—I believe they have 90 now.

Mr. HAMPTON. Approximately; yes, sir.

Mr. HENDERSON. They would then have to formulate their budget and justify their number of positions just as everyone else covered by the Federal executive system would?

Mr. BERLIN. Not to the executive branch. The bill specifically states that the General Accounting Office would do annually for itself in relationship to Congress, this committee, what the Civil Service Commission would do for the executive branch. It would determine the number of spaces it needed. It would set carrer/noncareer ratios for itself within the 75-25 percent. It would set an average salary and by April it would report to this committee what number it was going to have. This would become operating on July 1 unless the Congress took other action.

Mr. HENDERSON. I think you have answered the next question I wanted to raise, and that is that they would be by your interpretation of the bill required to adopt a Federal executive service for their operations?

Mr. BERLIN. That is right. But not in relation to the executive branch, sir.

Mr. HENDERSON. I have a letter in which it is said—this is on page 2 of the Comptroller's letter:

In summary, our interpretation of the above language is that the General Accounting Office is excluded from the program but is encouraged to adopt a plan of its own.

Wouldn't that wording be "required" rather than "encouraged"?

Mr. BERLIN. It was our interpretation, sir, that they would be required. Otherwise, there would be no way for them to establish and continue their present positions in terms of legislation. Since the FBI would not be covered and since they are in the executive branch it was necessary to put the specific paragraph in about the FBI. Insofar as the GAO is concerned they would have to establish an executive manpower management system and relate themselves directly to the Congress.

Mr. HENDERSON. I am not sure that since we have got some apparent language problems here, or interpretation problems, that we could be fully sure of what their position is as it relates to their whole operations.

The letter was sent to us, Mr. Hampton, but we will do our best to get an understanding with them on that.

I think the thing for us to do in the light of our colloquy this morning is to ask our staff to get in touch with the General Accounting Office and fully explore their position of what the effect of the legislation would be on their own office, and then explore with them questions that arise from their letter as it relates to the overall value, in their

opinion, the overall value of the Federal executive service for the Government.

I think this would answer questions we all have in our minds, and I am sure all of you have those in your minds, too.

After you have had a chance to carefully consider the Comptroller General's letter, you may want to discuss that with us or pose questions that you might have.

Going back to a point we touched on earlier, but I think this question clarifies the situation. Concerning the transition to the Federal executive service, you stated that the executive in the competitive service could choose to remain in his present position and retain all rights and benefits.

But would that executive really have further opportunities for advancement to a higher grade?

Mr. HAMPTON. I would doubt very very seriously that he could be promoted, because if he is not in the system, he could not be flexibly used. He would be status quo. All positions to which he could be promoted would be under the FES; the only way he could take one of them would be to join the FES.

Mr. HENDERSON. It is for that reason, and pressures that I think would be there, that the 8-year period we are talking about would not be very realistic. I think it would come about a lot faster because once they realize that they have to get into the system or they are going to be stymied, this would be a good bit of pressure to get in, don't you think?

Mr. HAMPTON. I think so.

Mr. HENDERSON. Under the reorganization of the Bureau of the Budget to the present Office of Management and Budget, what is the current role of OMB as far as the supergrades and top-level positions are concerned under the present system?

How do you view their role, Chairman Hampton?

Mr. HAMPTON. Well, presently they are not involved in the allocation of spaces or the approval of qualifications. They are involved in executive development programs, that is, the training programs where you develop executives for these jobs, and in assisting us in promulgating the purposes of developing executives.

As far as the internal administration of the supergrades program is concerned, they are not involved. Then in this case, under the FES, where OMB will be of most help, is in helping to determine the number of supergrades that are needed. To do this it is important to look at the budget of the agency, how that budget is being spent, what the program projections are for the next year, what legislation is in the hopper, and what are the short- and long-range plans.

This input is essential, I think, to determining the magnitude of the resources necessary to carry out those goals.

Mr. HENDERSON. So we would see, as we envision the system, working in the future as OMB would be involved in say, the new program, that there their primary objective would be to get the budget, get the money, and they would not have to be concerned about writing super-grade authority in the legislation or going presently to the commission to get it, so that they would have that role.

Now this brings me to the question that, assuming that we had a new function, we had a sufficient amount of money in the budget, do

you have any apprehensions about the Office of Management and Budget in their operations of the FES, do you feel that the Civil Service Commission would have the authority under the legislation—it is primarily an agency responsibility, but the overall supervision and the responsibility rests with the Commission to review how they do place their executives in the system of contracting and so on.

Mr. HAMPTON. What would happen is that, say, an agency comes to us and says, "We now have 100 executives. Because of new programs and goals, we want 115."

We would go then to the Office of Management and Budget where we would look jointly with them, to see that the budget has been increased so much, to make sure the agency does have the responsibility for this new program.

Also, they might tell us based upon their policy review responsibilities "we have under consideration certain other actions and we feel that this agency request meets the budget programs and priority needs." Then this information comes back to the Commission and we make up our report that comes to Congress, which says, "Yes, this agency does need 115 executives. It is an increase of 15 and the 15 additional are required because they will be implementing this new law or this new program or because an increased priority for an existing program is consistent with the objectives of the administration."

Mr. HENDERSON. I would like to be sure that the bill and the legislative intent are clear as to who makes the final decision as to the number of executives that are needed.

Mr. HAMPTON. That is in the law, I think, and it is the Commission that does this.

Mr. HENDERSON. I want to be sure it is, Mr. Berlin.

I don't have to remind you, but I would put it in the record. What we saw with regard to the reorganization of the Department of Transportation, and that is a better illustration and the more recent drug abuse, whereas if it had not been for the Commission and the system we had, they certainly sold the Bureau of the Budget on, I think the number was 75, and they eventually got about 40, through the action of the Commission and through our committee.

I can see that some program comes along that has a wide popularity among people, such as the drug abuse legislation recently did, and in the process of getting the legislative authority they could have over-sold the OMB.

It could happen to any of us, I think, if we were in the process. But I see the great good that has come from the Civil Service Commission having the clear authority to look at the staffing, the organization, the responsibility, and granting or having the ultimate authority—I have no objection to your conferring with or trying to get an understanding of what the President's real program is, what his objectives are, and whoever he selects to carry it on, and that kind of thing, but ultimately if it is going to be controlled, it must rest in the Civil Service Commission.

It has been my understanding that you say it does, because it seems inherent that under this system Congress has now got to look at your annual report and look right at you, the Commissioners, for the stewardship of what is being done with the Federal executive service.

Mr. BERLIN. Mr. Chairman, this was the specific and definite intent and understanding in the executive branch. As an example, if you look on page 8 of the bill, it specifically says that the FES consists of the executives the Civil Service Commission authorizes agencies.

If you then look at page 10 of the bill, it says:

The Commission after collaboration with the Office of Management and Budget, et cetera, shall authorize.

It is the Commission which shall authorize. Then under 3135 on that same page, it says:

Within the ratio established by the Civil Service Commission for his agency.

And so forth.

All the way through, the intent was clearly stated that it is the Commission that has the fundamental responsibility to establish career and noncareer, to establish the average salary, to make the stewardship report of those decisions on April 1 to the Congress, and to be responsible to the Congress, and obviously this committee, for that stewardship report and for the Commission's decisions.

Mr. HENDERSON. Mr. Chappell?

Mr. CHAPPELL. Doesn't, in effect, this legislation make your commission a kind of superagency for the operation of the personnel within these various agencies?

Mr. HAMPTON. Right now, Mr. Chappell, we are the central personnel agency of the Government, and we regulate and issue policies affecting all Federal employees.

Mr. CHAPPELL. As the positions are, they are now created by the Congress, aren't they?

Mr. HAMPTON. The positions of supergrades are created by the Congress, yes, sir, the number of spaces.

Mr. CHAPPELL. Under this pending legislation, if it becomes law, then what would happen is that you would accept those positions and unless Congress acted within 90 days after the report was filed, you would have made the appointment, isn't that correct?

Mr. HAMPTON. That is right.

Mr. CHAPPELL. That is one thing I object to in the bill. I think that is a negative approach. I think the Congress ought to do it positively. That is to say, the Congress ought to have the recommendations come to it, and then the positions should be justified as you would in the regular appropriations bill, by numbers.

That is positive legislation. I think it is too easy for the thing to completely get out of hand by delegation of authority to any agency, board, or commission, and simply say they can do anything unless the Congress stops them within 90 days.

We have done this in other areas, and it has gotten us into difficulties. I heard an agency head the other day say to a committee, that his agency had instigated such and such a program because the law didn't prohibit that agency from doing it. That is assuming broad powers. It is awfully hard, it seems to me, to get the Congress on any given proposition, unless they are really stirred up about it, to take an action within 6 or 90 days, particularly on something so complicated as this might be.

What I am saying is that the authority to create by legislation belongs to the Congress, not to an agency, and that it is an improper

delegation of power to authorize the agency to legislate subject only to the veto of Congress. Legislating should be a positive, not a negative function.

I notice you answered negatively in answer to my last question. But on page 29, it says that the Commission shall submit its findings and recommendations to the employing agency or the government of the District of Columbia, and so forth.

It says that the agency or the Government shall take corrective action that the Commission finds necessary. That has to do with personnel.

Mr. HAMPTON. That is on the appeal.

Mr. CHAPPELL. Yes. That is to say that you come right back to regulate the position and to decide whether or not a particular person now is entitled to hold that position. Am I not correct on that?

Mr. BERLIN. It is an appeal. If an executive believes his employer has violated the employment agreement, the Civil Service Commission hears his appeal.

Mr. HAMPTON. If the agency, in the section you were speaking to there, has violated the employment agreement, the Commission has authority to take corrective action.

Mr. CHAPPELL. I understand that it relates only to the appeal proposition, but you then set the rules and regulations which are necessary to make certain that the agency head, when this comes back, obeys exactly what the Commission has to say about who the man is to fill the position or how it is to be filled.

Is that not correct?

Mr. HAMPTON. I don't quite understand your question.

Mr. CHAPPELL. My point is, you still have the regulatory power over the agency with reference to that person who has now had a determination made by the Commission.

Mr. HAMPTON. He has certain rights; yes.

Mr. CHAPPELL. I notice on page 8 you state, in section 3133, that the executives of the Commission authorize the agencies, or members of the FES, and then you go on to specify that authorization of executive appointments and ratios.

You required under this legislation that the agencies take into account the determination of the numbers of positions that they are requesting, pending legislation.

Pending legislation. Now, this means that the agency, therefore, pursuant to the question that the chairman asked a minute ago, the agency could put a substantial number of employees into the request and the Commission would have those in the framework of things before the legislation was ever passed, and could form the basis of the number of employees.

Is that not correct?

Mr. HAMPTON. We would certainly take into consideration pending legislation, but positions would not be allocated if there was no legislation. The number could be made contingent on the enactment of the legislation.

Mr. CHAPPELL. You are saying, then, that although they would be created you would not allocate those, but there is nothing in the law that would prohibit you from doing it, is there?

Mr. HAMPTON. We have one provision in the law that under an emergency situation we would be authorized to grant during the period of a year an aggregate Government-wide increase of 1 percent. That would meet an emergency need, such as a bill passing during the interim period of time.

Mr. CHAPPELL. How about the reduction?

There is no limit on the numbers you could reduce during that year's time?

Mr. HAMPTON. If a program is abolished or something like that, certainly there is no need to continue its existence.

Mr. CHAPPELL. What would an emergency be?

Mr. HAMPTON. I would say a piece of legislation that passed between July 1 and the next session of the Congress which it created a need to have people in executive positions. That would be a good example.

Mr. CHAPPELL. I see.

Thank you, Mr. Chairman.

Mr. HAMPTON. One point, Mr. Chappell, that you brought up I had addressed earlier in my statement, and that was on the question of submitting these reports and having Congress take negative action.

I discussed the deficiencies in the present system where actually the committee itself as well as the executive branch of Government has lost any type of rational control, with substantive committees allocating supergrades, sometimes by position, sometimes by specific grade, and sometimes even classifying numbers of jobs.

I think that is a pretty chaotic way to run matters, even though it is a positive action.

Mr. CHAPPELL. I agree with that. But that is not the point I was speaking to. I suggested that the procedure be reversed, that the Congress take positive action on the recommendations which you made.

You would not put that chaotic situation in your report, would you?

Mr. HAMPTON. Hopefully we would avoid it by having these annual reviews and having the ability to address ourselves specifically to the current need.

Mr. CHAPPELL. I am not suggesting a change in that at all. I am talking about putting the horse back in front of the cart, rather than the reverse.

Mr. HENDERSON. Would the gentleman yield?

Mr. CHAPPELL. I yield.

Mr. HENDERSON. As I see the problem there, and philosophically I would like to agree with the gentleman, because we would like to see the Congress be so involved that we would really, by the committee or the full Congress, digging into and being knowledgeable enough then so that we could make knowledgeable decisions.

But I think what would happen if we do it in any other way and the report and the disapproval is that what we find now is that the particular interest of legislative committees or Members of Congress will tend to, if we were legislating, tend to inflate this, or inflate that where we have particular interests, and at the same time afford a great opportunity for Members to pick out certain functions that they don't like that are not proper and cut them down, and for the good service. I think that what the Commission is trying to say is that we really have seen this work, and the results have not gone too well.

But, if it is a law that they have to function and we have the responsibility it has been one of the toughest things I had as the chairman of the subcommittee, to try to be responsive to approve your requests for supergrades when at the same time I see Education and Labor subcommittees, for example, coming out with an education program and nobody is as important by way of numbers or salaries as educators seem to be.

They ought to be paid as much as the President if they have a doctorate in front of the title in the field of education.

You have all kind of frustrations—one thing that makes me want to look at this proposal and see if we can't get real professionalism in the management system.

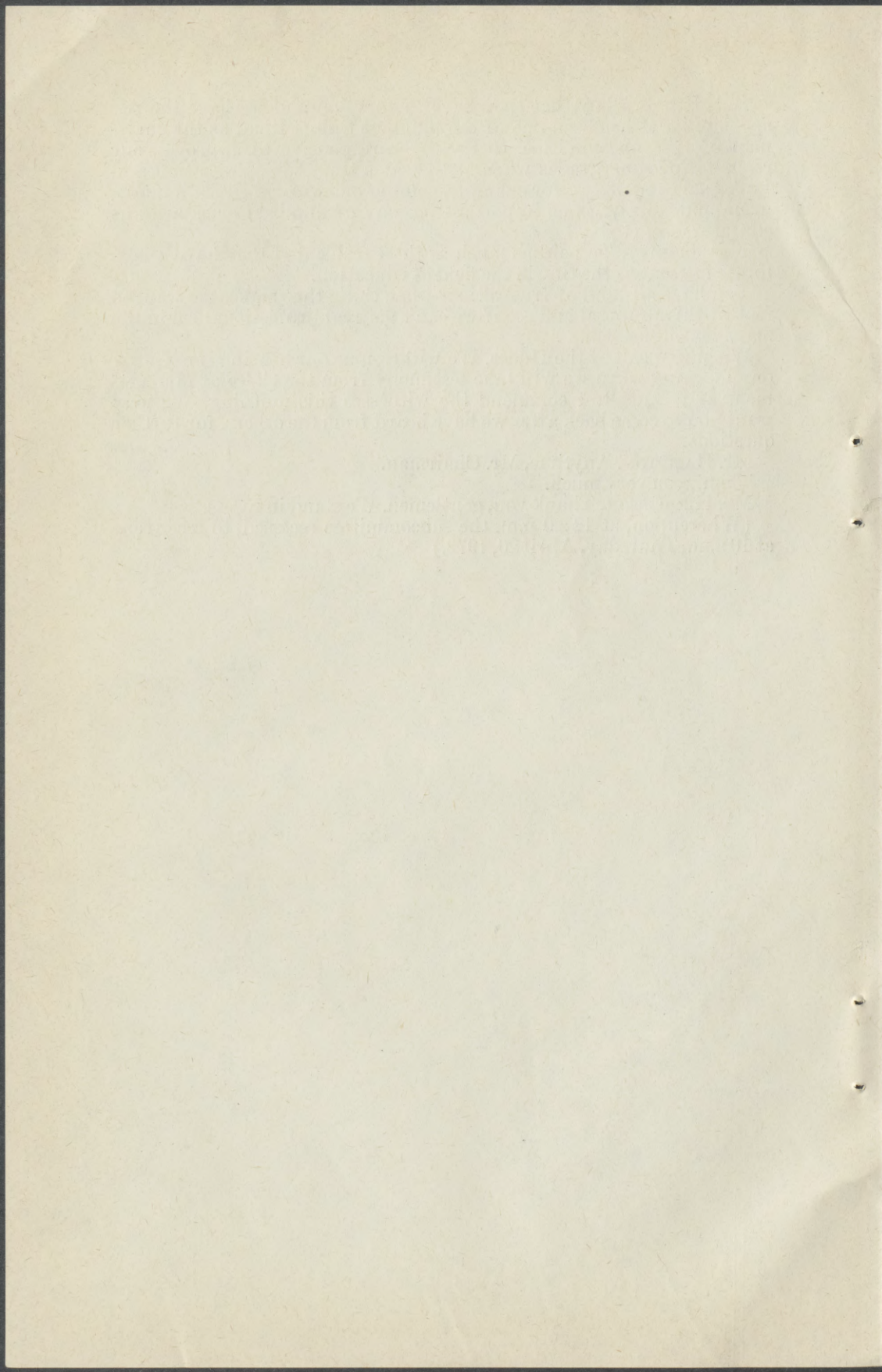
We have a call of the House. We will resume our hearings on Thursday morning when we will take testimony from the Office of Management and Budget. I commend the witnesses this morning. We may want you to come back after we have heard from the others, for further questions.

Mr. HAMPTON. Anytime, Mr. Chairman.

Thank you very much.

Mr. HENDERSON. Thank you, gentlemen. We stand in recess.

(Whereupon, at 12:20 p.m. the subcommittee recessed, to reconvene at 10 a.m., Thursday, April 20, 1972.)



THE FEDERAL EXECUTIVE SERVICE

FRIDAY, APRIL 21, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF 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 210, Cannon House Office Building, Hon. David N. Henderson (chairman) presiding.

Mr. HENDERSON. The subcommittee will come to order. This morning we are continuing our hearings on H.R. 3807 and H.R. 6772, identical bills proposed to establish a Federal Executive Service. On last Tuesday we heard from Chairman Hampton and Commissioner Andolsek of the U.S. Civil Service Commission. At that time, those officials indicated reasons why the present handling of top level positions in the Federal Government should be changed.

Today we are privileged to hear from Frank Carlucci, Associate Director of the Office of Management and Budget; and Mr. Vincent Jay, legislative director for the Federal Professional Association.

Mr. Carlucci, I think this is the first time you have appeared before our subcommittee, and it is my pleasure to welcome you.

STATEMENT OF FRANK CARLUCCI, ASSOCIATE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET; ACCOMPANIED BY DAVID P. TAYLOR, ASSISTANT DIRECTOR, OMB; WILLIAM A. MEDINA, CHIEF, EXECUTIVE DEVELOPMENT AND TRAINING BRANCH, OMB; JAMES D. CURRIE, CHIEF, PROCUREMENT AND PROPERTY MANAGEMENT BRANCH, OMB; AND PROFESSIONAL STAFF MEMBERS

Mr. CARLUCCI. Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you to discuss H.R. 3807 which would establish the Federal Executive Service. This new personnel system would provide significant opportunities for increasing the effective leadership of Federal programs.

The current fragmented executive personnel system is inadequate to meet the Federal Government's present and future executive needs. Concern over this situation has been voiced by credible observers for many years. The Federal Executive Service addresses itself to the shortcomings in this present system and provides a creative new approach to executive manpower management within the framework of the merit system.

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We, at the Office of Management and Budget, view H.R. 3807 as essential to the improvement of the management and responsiveness of Federal agencies. We urge its enactment.

Since Chairman Hampton has discussed the technical provisions of H.R. 3807, I will confine my remarks to a few of the major attributes of this legislation. However, I would like to begin with a few personal observations.

Let me speak for a moment as a career civil servant who started at the entry level of the Foreign Service and is still a Foreign Service officer. I have personally benefitted from the type of career mobility that would be facilitated by the Federal Executive Service.

While still a middle-grade officer, I was assigned to OEO at the then Director Rumsfeld's request. Although Foreign Service officers pride themselves on their generalized knowledge, this experience opened up whole new vistas and challenges for me.

I had never thought about such things as community action, manpower, child development, and legal services.

That this was a broadening experience is fairly obvious. When I became Director of OEO, one of my greatest frustrations was my inability to get my executives to understand and support each other's programs.

We would find, for example, that one executive would be planning to fund a grantee being closed out by another executive.

Few worried about how their actions would affect the rest of the agency. How I wished that more of them had started out totally ignorant as I had rather than bringing to the table a viewpoint conditioned by years in a narrow segment of the agency's activities.

In my present job, I experience the same frustrations on a larger scale. Program after program is created with a narrow purpose and led by capable executives in their own area, but who are incapable of appreciating the impact their program has on other programs.

They think in terms of narrow goals instead of overall strategy simply because their lifetime careers have been focused on narrow goals. The defensive reaction has sprung up in the bureaucracies to the President's departmental reorganization program, to decentralization, and to the Federal regional council mechanism are cases in point.

I submit that the dramatic change in our society these past few years has made the technically qualified but parochial executive obsolete. What we need are men of broad vision, men who have had a variety of experiences and can really relate each of them to the overall goals of our society.

Technicians, no matter how good, should not become executives until they have developed such breadth. We don't need mechanics, we need planners and managers. The FES would help us develop the managers we need; in so doing, it would decrease the need for Presidents to bring in managers from outside.

The Federal Executive Service would not only upgrade the caliber of our managers and give them greater career satisfaction, but it would also help the central management agencies—OMB and CSC—and the Congress in carrying out their responsibilities. Let me elaborate on each.

Under the Federal Executive Service, opportunities and incentives for an individual executive to grow, develop, and utilize his abilities are greatly enhanced. Entrance qualifications will be judged by quali-

fications boards composed of distinguished representatives of broad professional and occupational areas acting as an arm of the Civil Service Commission.

Without the oftentime arbitrary distinction between policy-making and policy-implementing positions, individuals with outstanding abilities can see service in a variety of capacities.

Additionally, the individual will be able to see a direct relationship between his performance and his compensation. Executive leadership is a very individualized quality. Compensation for such leadership should also be individualized. The individual receives the benefits from this legislation without sacrificing his financial security, his career, or his dignity.

And those currently occupying supergrade positions will have every opportunity to maintain their present status if they so wish.

The advantages of the Federal Executive Service to both the central management agencies—OMB and CSC—and to the Congress are obvious.

By reducing the variety of personnel management systems governing executive manpower, the Federal Executive Service will assure more careful planning of executive requirements. At the present, the Civil Service Commission apportions only 2,754 of the approximately 7,000 positions at GS-16 through GS-18 or equivalent.

The remainder are granted in special congressional authorization to individual agencies, programs, or occupational categories. There has been no general periodic review of each agency's need for the positions it is authorized at these levels.

Under FES, the annual agency request for authority to appoint a specific number of executives will permit adjustment of the authorization to correspond more closely with the agency's current or anticipated program and budget. This adjustment provision will meet the changing programs and priorities throughout the executive branch.

From our standpoint, another attractive feature of the FES is the flexibility that will be available to increase the number of supergrade positions to meet new and urgent demands.

We believe that the provision permitting a 1-percent emergency increase in the size of the Federal Executive Service in a given fiscal year will be adequate to meet unforeseen contingencies. The annual stewardship report will provide for Congress a periodic overview of the entire Federal Executive Service. This overview will be far more comprehensive than is possible under the present multiple system.

FES, in my opinion, will have its most significant impact in the management of agency programs. Agency leadership will have to devote much more of its attention to planning for their program needs, evaluating the performance of their executives, providing for their continued professional growth, and deploying their best talent to their urgent programs.

Such planning, evaluation, and deployment does occur today, but frequently in a random, ineffective manner. I am confident that agency heads will welcome the responsibility to improve these processes, because the FES will provide them with the tools necessary to do the job. Having the right people in the right job at the right time will significantly improve here the delivery of Government services to our many publics.

The President strongly supports H.R. 3807, which would establish the Federal Executive Service. Its enactment will insure that executive leadership in the Federal Government is of the highest quality and is responsive to the needs, policies, and goals of the Nation. I urge prompt favorable action on the proposal by the committee and by the Congress.

That concludes my prepared statement, Mr. Chairman. I will be glad to respond to questions.

Mr. HENDERSON. Thank you, Mr. Carlucci. Your statement seemed to be a very fine one with regard to the objective, and I think all of us could agree we would like to see executive management in the Federal Government; but, I think our great concern is going to be to the mechanics of the Federal Executive Service and whether or not it will be effective to accomplish the very outstanding goals that you point out.

I guess the significant thing I saw in the statements by Chairman Hampton and Commissioner Andolsek the other day was that the present system is pretty well shot through with holes. I will come back to that with more specific questions, because for some time I have felt that the Bureau of the Budget and the Office of Management and Budget have been greatly responsible for some of the problems that we in this subcommittee, the full committee, and the Congress have experienced in the supergrade area.

Before I do, I think it is well, for the record to be clear as to what role the Office of Management and Budget or your predecessor, the Bureau of the Budget, had in developing the proposal of the Federal Executive Service.

It is my understanding that basically this FES proposal was developed in the Civil Service Commission. Could you advise us as to what input the Office of Management and Budget had into the details of the legislative process, the proposal before us?

Mr. CARLUCCI. Mr. Chairman, I joined the Office of Management and Budget on September 1, 1971; so, I was not present when this proposal was developed. It is my understanding that it was developed by the Civil Service Commission in collaboration with the Office of Management and Budget and in particular my predecessor, Mr. Arnold Weber.

As you are aware, the Office of Management and Budget has a responsibility for trying to coordinate legislative proposals Government-wide, and we work with a variety of agencies in the development of these proposals to insure that they are consistent with the President's overall program. I assume that is the role that Mr. Weber played.

However, I can submit something for the record on this if you would like.

Mr. HENDERSON. Well, I think your response is as good as it could be under the circumstances of your personal knowledge and perhaps if the committee feels we should pursue this, then we would take the opportunity to call Mr. Weber.

I think the point I would like to have clarified in the record is to what extent there was input into the decisions on how the system would work, or whether the Office of Management and Budget was following the development of the system by the Civil Service Commission and concurring or consulting and advising, because I think that it could

be helpful to us, as we move along with the development of the legislation, to really know where this came from.

I want to take just another moment or two before I get to specific questions. For some time, I have been very much concerned with the way we attempt to keep controls over manpower—and I am speaking very generally and very broadly—throughout the Federal Government.

It has been my position that the Office of Management and Budget, the President—and this is not just President Nixon, but President Johnson and President Kennedy—in my experience, have from time to time as we attempt to bring economies, and in one very specific instance I remember the Congress attempted to bring economies about by manpower ceilings without controlling the budget and the dollars.

No later than this week, a Member of Congress came to me and reported that in his district, over the weekend, he had talked to Defense Department officials as it related to some rifling and they flatly told him, "Sure, we are cutting out a few hundred slots, but we have all the money to spend, and so we are going to have to contract this work out and it is going to be more costly." This is what the American taxpayers are interested in, is how much money we are spending.

I don't think they really care how many GS-16's, 17's, and 18's we have. They probably don't know what all that means. I certainly did not before I came to the Congress and served on this committee. I expect that there is some lack of detailed information even among Members of Congress.

Yet, we will vote for money and legislation that will let them have all kinds of consulting arrangements and contracting arrangements. Let me ask you this: Do you know whether or not the Office of Management and Budget has set specific ceilings throughout the Federal Government for July 1, 1972?

Mr. CARLUCCI. Yes, sir; we have. These ceilings are contained in special analysis pages of the budget.

Mr. HENDERSON. Were they proposed by Congress, or by the Office of Management and Budget?

Mr. CARLUCCI. Those are ceilings imposed by the Office of Management and Budget. If I may respond in a little more detail to your question, I think your concern that we must relate the ceiling controls to the dollar expenditures is a legitimate one. In allocating ceiling controls to the agencies, we try to even identify the dollar expenditures that will be required to meet those ceiling controls, or, indeed, when the ceilings are lowered, the dollar savings that would be achieved.

I think one of our principal problems, quite frankly, Mr. Chairman, is that our accounting systems in the Government are such that we cannot tie the money as closely to personnel expenditures as we would like.

I have found since I have been in this job that the Government financial management systems leave a great deal to be desired, and that is an area to which we are going to devote time.

Mr. HENDERSON. I hate to break in on your trend of thought, but you are very responsive, and you are very right. I don't know of any office in the Government that could do more about this than could the Office of Management and Budget. I said this to the Director of the Bureau of the Budget. I feel that you are absolutely right. I realize that there are some complications by our congressional organization and legislating and appropriating process, but I think that if the executive branch would give greater attention to the accounting problems and to the

budget problems and then relate those to the Congress, you can expect better congressional action than you have seen.

Mr. CARLUCCI. If I may cite a personal example. When I became Director of OEO, I found that I couldn't match the agency's actual expenditures against appropriations by Congress, and there was no way of telling whether the agency had lived within the earmarks.

We created a comptroller's office for the purpose of improving that system. I think this is the case in a great many agencies: The data that managers need are not provided.

In the case of the Defense Department, where the expenditures are considerable, we are making an intensive effort to try and control personnel through controlling dollar expenditures. I was rather surprised at the example you cite because it is my understanding that the Defense Department is suffering more from a lack of funds than it is from personnel ceilings.

Mr. HENDERSON. At this point—I don't want to belabor it too much—but in a recent trip to the Dayton area with the Defense Department, I was given a briefing on an experiment that they had run in one of the laboratories at the Defense Department.

The project was called Reflex, so it will be more identified for you. They have attempted what I have been trying to get someone to do for some time. They were given great flexibility with regards to their manpower management and were told just to look at the dollars.

Briefly put, the story as they gave it to me is that they increased their workload 25 percent without increasing expenditures of dollars, and the most significant thing was that the grade level of the employees had been reduced.

I was mindful of President Nixon's action to order grade level reductions. They said this was easy. It was automatic, and fell into place when they were given greater manpower flexibility.

The first question I asked was, "How did you do this without exceptions from the Civil Service Commission rules and regulations?"

I was told, "It was not necessary. All we had to do was to be told we could take our dollars and manage our dollars and get away from the rigid personnel and manpower controls."

This is an amazing breakthrough, and I think it is so inevitable that we are going to see greater use of this in the Defense Department. It seems to come so slowly and with a lot of pulling, and just recently I have written NASA for a report on the sources of their funds and how they are using them. It might be that the OMB would want to get in on this because a very quick look at some of the NASA operations convinces us that if the story were laid out as they have said to us, "We are doing it by the more expensive method because we can get money from the Congress for that method. We can't get it to do with civil service employees."

Officials at NASA have responded that the basic authorization for the Agency was restricted. So I asked them to spell this out and show us in law where they had that restriction, because this sort of puts the responsibility right on Congress, and I think that, if it is there, it should be pointed out to the chairmen of the Space Committees and perhaps we could get amendments to the law. This is what I would hope that the executive branch will do.

Let me ask one question as relates to your statement and the Federal Executive Service, and then I want to yield to Mr. Gross.

You don't say anything or indicate, as I understand your statement, that the mechanics of the 3-year contract are an essential part of this Federal Executive Service. It seems to me that your statement goes to the broader picture as I understand it, of the ability of the agency head to move people from job to job, from assignment to assignment, to fit them to where they can best do the job. Could that not be accomplished without the devices spelled out in the legislation of the 3-year contract?

Mr. CARLUCCI. Well, first of all, I have indicated in my statement that I was not going to try to cover all the technical aspects of the bill, since that had been amply covered by Chairman Hampton.

Yes, it is possible, even under the existing system, to move executives. It is rather cumbersome, and there are a number of obstacles to do it.

Mr. HENDERSON. If we had the Federal Executive Service created, which in time all the managers that are presently in the supergrades, as we refer to them, were in the service, do you feel it is absolutely essential that they all be on contracts, or that we have the contracting?

Mr. CARLUCCI. I think the contract aspect provides one of the very important features in the bill. I would not even envisage that a great number of Federal executives would fail to have their contracts picked up at the end of the 3-year period.

However, I think we all recognize that there are some executives who may be improperly placed, or may not have the skills essential for a particular job or, indeed, may be primarily interested in security rather than the challenge of position.

In those few cases, I think that management ought to have the freedom at the end of the 3-year period to reevaluate that executive, see if a better spot can be found for him, or, indeed, if it cannot, that the executive with the 2-year salary savings, resume his career at the GS-15 level.

Mr. HENDERSON. I was impressed by Chairman Hampton's argument that you need about a 3-year period to prove both the system and the demand. Assuming that the 3-year period is a proper one—and I think there might be some question about that—I see no reason that after that first 3-year period that an annual review would not be good. Why lock in on a 3-year review?

If we are really looking for the greatest management tool, it seems to me that annual reviews would be about as often as you could do it, but that we could then return the manager from the Federal Executive Service back to the GS-15 even more promptly. If we really want flexibility, I think that the top managers in the system ought to meet the test every year and if they can't hack it, or have not done it in the year, and can't be reassigned, then they could be sent back to the GS-15 level. I think the responsibility of management people ought to be used before you send them back to GS-15 levels with 2 years' saved pay, but I think one of the big problems we find is with regard to the whole contract idea. We certainly would be glad to have your views this morning at a later time as to how essential you feel the 3-year contracting is.

Mr. CARLUCCI. Let me be sure that I understand what you are proposing, Mr. Chairman. You would be proposing that there be initially a 3-year contract, at the end of which the agency head could reassess the qualifications of an individual executive, either move him or, if he

found him not qualified for the executive ranks, have him go back to the GS-15 level with the 2-year savings.

Mr. HENDERSON. I think what I am really trying to find is what we could do if we felt, as some do, that the contract idea is not the best way to do this. We would create the Federal Executive Service, and, of course, we have problems of the implementation but once it gets operating, in that area of the 75 percent that come from the career service or the 25 percent that come from outside, we just appoint them in, I hope, with some qualifications system that we have, so that we don't completely disrupt the merit system, but just do away with the 3-year contract a stated period for which, once they have reported, they would be in the Federal Executive Service and locked in until they could be given a sufficient opportunity to perform.

After that, I personally would feel that an annual review of the executive in his job would determine whether or not he stayed there if he had not performed in that position. You would look in the agency to see if there is another position he could be placed in and given an opportunity there, and if the record shows that he just does not hack it at the Federal executive level, then use the device of returning him to the GS-15 level with saved-pay. That, of course, assumes that there is a job that can be matched to the individual's ability.

But I think one of the things that hangs up some of the Members is that the 3-year contracting is maybe not the best way to do it. It tends to lock in the inefficient manager when the whole purpose of this is to be the most efficient.

Mr. CARLUCCI. Well, as you described it, it would seem to be consistent with the management criteria we are trying to develop. I would like to have a chance to study it in more detail and respond to you on this, particularly after consulting with the Civil Service Commission.

Mr. HENDERSON. Thank you very much, Mr. Carlucci.

Mr. GROSS?

Mr. GROSS. Thank you, Mr. Chairman.

On page 2 of your statement, Mr. Carlucci, you indicate that you still have status as a Foreign Service officer.

Mr. CARLUCCI. Yes.

Mr. GROSS. Why is the Foreign Service exempt from the provisions of this bill?

Mr. CARLUCCI. The Foreign Service operates under a different system; the ranking man concept. It does give it the flexibility to make assignments with considerably more latitude than is allowed under the civil service regulations.

In other words, a Foreign Service officer can be assigned to any location anywhere in the world at any time at the discretion of the Secretary of State. There is no position classification as such in the Foreign Service, although positions are generally described. There is a position description, but there is not a position classification, and a formal process for deciding whether an individual Foreign Service officer is qualified.

Mr. GROSS. As a member of the House Foreign Affairs Committee, it has been my observation that Foreign Service officers have a pretty closely knit organization. They cannot be eliminated at the end of 3 years, or can they, for what might be light and capricious reasons?

Mr. CARLUCCI. They can be transferred out of the job they are in at any time. They can be selected out for low performance, and they can be selected out for time in grade.

Mr. GROSS. Do you have any information with respect to the records of selection out, how many of them go for those reasons each year?

Mr. CARLUCCI. I would have to get you the actual figures, but I think the general range is between 3 and 5 percent of the class, individual Foreign Service officers.

Mr. GROSS. That go out each year for reasons other than age or attrition of that nature?

Mr. CARLUCCI. Yes, sir.

Mr. GROSS. Voluntary retirement and so on and so forth?

Mr. CARLUCCI. Yes, sir. I would think those that go out for time in grade and for marginal performance would amount to, as I say, between 3 and 5 percent.

If I may emphasize a point, Mr. Gross, the analogy with the Federal Executive Service would be closer to removing an individual Foreign Service officer from a position of particular responsibility. Let's say that a Foreign Service officer is a deputy chief of mission in Paris and he is not performing to the satisfaction of the Ambassador.

The Ambassador can then request his removal and he would be sent to another post.

Mr. GROSS. That would happen automatically if the Ambassador requested it, is that right?

Mr. CARLUCCI. It would be reviewed by the State Department personnel office, but I would be very surprised if they would overrule the Ambassador.

Mr. GROSS. But you do have status, don't you?

Mr. CARLUCCI. We do have status, that is correct, sir, but it is a competitive system in which promotions and selection-out are done on the basis of rank order by an evaluation by our peers every year.

Mr. GROSS. You speak of your own personal experiences in the Government on page 2 of your statement. Without casting any reflections on your own capabilities, do you think you would have had as long and distinguished a career in the Government if you had been required to serve under a series of 3-year contracts, which any one of your bosses could have refused to renew?

Mr. CARLUCCI. That is a hypothetical question.

Mr. GROSS. It is, but this is the kind of question we are confronted with in the consideration of this legislation.

Mr. CARLUCCI. My personal reaction is that I think I would have had an equally productive career; yes, sir. I have had, like anybody in the Government, ups and downs. I have been transferred when I didn't want to be transferred. I served periods of exile and I have had good posts in the Foreign Service and I have had jobs I liked and jobs I didn't like, and the higher I get, the more I came to expect that I might be vulnerable if my superiors decided that I should be moved from a given job.

I would like to stress that at least really from my perspective, and speaking for the vast majority of civil servants and Foreign Service officers I know, the main thing is the challenge of the job and the opportunity to serve and the opportunity to move upward, and security, I think, is a secondary consideration.

Mr. GROSS. You have all those elements under the present system, do you not?

Mr. CARLUCCI. I think the FES would enhance the capability of Federal executives to broaden themselves.

Let's take one example—

Mr. GROSS. By holding a threat over them?

Mr. CARLUCCI. No, sir; I don't think there is any threat, today, it is a considerable risk for a supergrade employee to accept a long-term training assignment, because when he goes back, he has to shop for a job.

Under the FES there would be more mobility between assignments. He would be expected to broaden himself, to have the knowledge of a variety of program areas, and would be able to fit back into an agency structure more readily.

The point I was trying to make in my testimony is that the present system with its job classification has a narrow focus on a particular program goal, and there is very little incentive for the executive to try and broaden himself, either through training assignments or through assignments in other program areas, and I think that this kind of narrow perspective weakens program effectiveness.

Mr. GROSS. Well, on the subject of executive mobility, would you think that—let's say, for example—Mr. Werner Von Braun, the rocket expert could be sent over to the Peace Corps?

Mr. CARLUCCI. I don't know the man personally, but if he has a management qualification I think he might do very well in the Peace Corps. I myself had no knowledge of OEO and managed to deal with some of the program aspects of OEO.

Mr. GROSS. I thought from what I heard you say a little while ago, you had a little difficulty in the OEO and this is one of the reasons why you think that situation could be cured by the FES, this new-found movement in the Federal Government and in the Congress, to provide instant salvation for everything.

But go ahead and tell me if you could have cured it so quickly with this bill in OEO.

Mr. CARLUCCI. What I was trying to say, Mr. GROSS, was that I found a certain amount of parochialism among the managers in OEO and I had come in without any particular background in OEO. Consequently, I had the advantage of being able to look at a variety of different programs and make new assessments. It was very difficult for me to get some of the executives in OEO to accept these assessments, because they had been in a particular segment of the agency for a number of years, and they were looking straight downward at what that segment was doing, and not relating it to the other segments of the agency, so that when we tried to make changes in OEO programs, we found that there was considerable resistance.

A classic case and I am familiar with some of your views on OEO, but a classic case was when we attempted to tell our employees that community action agencies throughout the country should relate more to State and local government, that they should have a dialog, that State and local government was not the enemy, that they were not doing their own thing, but relating to the rest of society.

There was a considerable amount of resistance to this, because people had been conditioned by their programs goals, and had not looked at the broader capacities.

Mr. HENDERSON. Would the gentleman yield?

Would it be fair to say that we still have community action programs that are at odds with local government?

Mr. CARLUCCI. It is fair to say that.

Mr. HENDERSON. I think I could take you to one in my district, and the thing that has disturbed me recently is that this, being a political year, there is very clear evidence that has come to me that the director and the staff of the community action program in one county have been openly saying that the county commissioners presently in office should not be reelected. You can't expect Members of Congress to support that kind of program.

Mr. CARLUCCI. We like to think we have made considerable progress in developing greater rapport between local officials and community action agencies. This does not mean there are isolated cases where there is still a great deal of hostility but I think we have begun to turn attitudes around on this, you and I can cite a number of cases where there is very good rapport between local officials and community action agencies.

But the point I am trying to make is that we could have turned that around a lot quicker had the executives in OEO been willing to look at the broader picture, and have been willing to readjust their own program goals in the interests of that broader picture.

Mr. HENDERSON. Are you saying that what we found at the CAP locally was the involvement of themselves in noncooperation or antagonism toward the local government officials, and that that was supported at the top management level of OEO in Washington, the executive level?

Mr. CARLUCCI. Well, I would not like to get into the business of identifying individuals, but let me say that when Don Rumsfeld and I first came into OEO, we did find a number of people at what I would call the executive level who had the philosophy that OEO was created to do its own thing, and that State and local government were people that you just could not work with, and we had a good deal of difficulty in turning these people around.

Mr. HENDERSON. Let me be specific and to the point. Did you find that they had the philosophy that the local OEO community action programs ought to be political activists?

Mr. CARLUCCI. Some of them did.

Mr. HENDERSON. I thought so.

Mr. CARLUCCI. I would like to think we have weeded most of those people out. Had we had something like the Federal Executive Service, we could have moved a lot more efficiently on it. I can assure you.

Mr. HENDERSON. Thank you for yielding, Mr. Gross.

Mr. GROSS. Mr. Carlucci, it is hard for me to understand how you or anyone else in top-level positions in this Government can advocate this sort of a bill, when all we have heard from most of you in the past has been "get trained people," or "get people and train them" and we have spent all kinds of money training people for specific jobs in this Government as experts in their field.

Now you come along with a bill that provides that if some agency head did not like the way an employee cut his hair or the kind of necktie he wore, he could send them to some other job for which they were not qualified.

We have all kinds of complicated and complex problems in the field of retirement. I just gave you the case of Werner Von Braun, and you seemed to think it was all right if he was transferred out of the NASA program, being the expert in rocketry that he is, and sent

to the Peace Corps or some other "do good" organization of the Government.

I don't quite understand this. We have spent millions upon millions of dollars training people to become experts in their fields. This would put them into a situation where they could, for transient reasons, be stuck into some agency and job for which they were not at all qualified.

I simply don't understand your line of reasoning in this respect.

Mr. CARLUCCI. With regard to training, certainly we do encourage training in professional areas. At the same time a man that is up the scale, we think that training ought to be broadened to give him the management expertise that he needs, and to give him a broader program and expertise so that he can relate what he's doing to what other managers are doing.

So we do encourage broad training, particularly at the executive level. If I may just take a specific case that most of the people in the country are familiar with, without casting aspersions on any particular group of civil servants, but if we look at highways in our country, we find that many of the people who are building highways are concerned only with the aspects of laying concrete; so many millions of miles of road.

As we have moved along here through the 1960's, we have begun to realize that community development considerations must impact highways, that highways are the shapers of communities, rather than a mere transportation belt.

Therefore, it is necessary to build in the concerns of the community, to have some community planning before you proceed with a highway, and the highway people have to be responsive to the community planning aspects.

Mr. GROSS. What is wrong with the head of the agencies making some decisions? What is their role, to merely hold jobs?

Mr. CARLUCCI. In an organization as large as the Federal Government, agency heads cannot make every decision, and many decisions are made at the supergrade level. Those people at the supergrade level must be able to relate, say, highways to housing, to manpower, to overall community development, and this requires a certain breed, and it is very helpful if, sometime in his career, this particular individual has served in a mobility assignment.

Mr. GROSS. That could mean something or mean nothing, couldn't it?

Mr. CARLUCCI. Well, with all due respect sir, I think it means something. I think it is significant and important to have people who understand each other's programs.

Mr. GROSS. Mr. Chairman, do we have another witness this morning?

Mr. HENDERSON. Yes.

Mr. GROSS. I yield to the chairman.

Mr. HENDERSON. Mr. Carlucci, if the Federal Executive Service, as proposed by the bill, would become law, what do you envision would be the role of the Office of Management and Budget as to setting the requirements for positions annually?

Mr. CARLUCCI. We would see the agencies requesting their positions of the Civil Service Commission about the same time they submit their budget requests to OMB, which would be about September of each year.

While DMB would be going through the process of program analysis and budget review, the Civil Service Commission would be doing the detailed work they need to do on the position requests.

When we came to certain program conclusions with regard to working with an agency, we would then get together with the Civil Service Commission to insure that what they were planning in the allocation of the Federal Executive Service positions was consistent with the programmatic goals that the Office of Management and Budget was setting.

Then this whole thing, the report of the Civil Service Commission, of course, would come up on April 1 to the Congress, shortly after the President has sent up his budget message, so that the Congress would have a chance itself to look at the budget and then relate the allocation of the executive service positions to the programs laid down in the budget.

Mr. HENDERSON. Would you be able to assure the congressional committees that the budget breakdowns would clearly identify the costs of those executives within a particular department or agency, both by numbers and dollar amounts?

Mr. CARLUCCI. I believe this could be done in the budget. I would have to ask our technical people whether they have the system necessary to do that.

Mr. HENDERSON. It could be done if the appropriations committees wanted to know how much of the budget went into top management.

Mr. CARLUCCI. Yes.

Mr. HENDERSON. And how many people would be occupying those positions within the agency and what it was costing the agency?

Mr. CARLUCCI. Yes, sir; we could do that.

Mr. HENDERSON. What role do you envision with respect to the non-career versus the career positions?

Mr. CARLUCCI. It would be a program goal again. We would consult with the Civil Service Commission on the program goals, how we say that agency's operations, and the Civil Service Commission would make judgments on what percentage of career or noncareer would be appropriate for the achievement of those programmatic goals.

Mr. HENDERSON. Who do you envision would have the final authority in that process if there were differences of opinion between the OMB and the Civil Service Commission?

Mr. CARLUCCI. I frankly don't think that kind of a situation would arise. Our role is one of being presently primarily concerned on behalf of the President with programs, and the Civil Service Commission's role is one of being concerned with the allocation of personnel and executive positions.

We have always in the past been able to resolve satisfactorily any differences we have had with the Civil Service Commission.

Mr. HENDERSON. Do you envision that the ratio 75 to 25, that is, 75-percent career positions and 25-percent noncareer positions, would be an overall goal, or would that be a goal in which you would attempt to work out within each agency?

I can even envision that you could have programs like the Peace Corps or the OEO, all career or noncareer, and you would have to still maintain your 75-percent ratio, Governmentwide.

What would be your thinking on that?

Mr. CARLUCCI. I think that the 75 to 25-percent ratio should be a ratio Government-wide, and there should be exceptions called for program reasons.

Mr. HENDERSON. Any dramatic deviation from that in the agencies would require justification before OMB and the Civil Service Commission?

Mr. CARLUCCI. Oh, certainly. In addition, the Congress would have a chance to review this.

Mr. HENDERSON. Do you think that professional scientists and engineers, lawyers, or educational experts, medical doctors, should be excluded from the Federal Executive Service?

Mr. CARLUCCI. Should be excluded?

Mr. HENDERSON. Yes. They are not, as I understand it.

Mr. CARLUCCI. No. I think it is perfectly appropriate to include them.

Mr. HENDERSON. Suppose you would take a GS-16 mathematician working in, say, naval research, or a GS-17, expert in aerodynamics in the FAA, or in NASA. Do you think that that kind of highly technical person could fit into the Federal Executive Service as well as the broader management type? I think what I am following up here is what Mr. Gross said in the point he was making with regard to Dr. Von Braun.

Mr. CARLUCCI. Many technical people have the capacity to develop into very good managers. Once you get to the upper levels, technical people are, for the most part, managers in their own organization. Many of them find it rewarding to step out of their purely technical jobs into technical management positions.

Mr. HENDERSON. I think I understood your point earlier in response to Mr. Gross. The point I was trying to make here is, if you have an expert in aerodynamics who has had years of training in that very scientific field, why would you want to take him out of there and make a manager out of him if that responsibility and function has to continue and he has been performing satisfactorily?

Where are you going to get your aerodynamic expert to succeed him?

Mr. CARLUCCI. The answer to that question is, it seems to me, how can that individual be used most productively. He may be very productive in the aerodynamics area. On the other hand, he may also have certain management qualifications that would enable him to make a greater contribution as a manager. Most of the Government's technical people perform as project or program managers rather than as pure specialists.

In addition, as you know, with fluctuations in our economy, with changing priorities, there are some areas where the demand for specialists decreases, and others where it increases, and where it is decreasing perhaps it might be better from a cost benefit standpoint to have that individual utilize his management talents, assuming he has them, in a different area.

Mr. HENDERSON. I guess what I am saying is, do you feel the legislation ought to have authority placed at some level for exceptions to be made administratively because I feel if we don't have that, we are going to find pressures, Mr. Gross, on Congress to exempt scientists and mathematicians or aeronautical scientists and that we will begin after we start out with the so-called perfected system of service here,

to find pressures coming to make exceptions and there will be a hodge-podge again.

Mr. CARLUCCI. That is precisely my concern. If you start making exceptions, we may end up with a fragmented system similar to the one we have today.

Mr. HENDERSON. So it was my thinking that we ought to give thought as we consider the legislation here that we build in some kind of legislative authority that could meet those needs if they were arising, and I can certainly anticipate that they might.

Mr. CARLUCCI. Mr. Chairman, there is nothing in the proposal for FES that would prevent the aerodynamic specialist from remaining in his field of expertise.

Mr. HENDERSON. That is true, but reading on page 15, beginning at line 19 of the bill—perhaps you should start on line 17—it says that an initial or renewal employment agreement shall require the executive to agree to accept any assignment or duties and responsibilities at any geographical location which is properly within the scope and consistent with the purposes of the Federal Executive Service.

With that broad authority, I could certainly see, without the good faith management that Chairman Hampton talked about the other day, you could pick up an aeronautical scientist from NASA at Langley Field in Virginia and put him in charge of a supply depot on the west coast, and by his agreement he would have to go. I guess this is part of what we are talking about in the Foreign Service, that you have had some of those hinterland assignments.

Mr. CARLUCCI. I guess there is no system that is foolproof against abuse by management that lacks good faith. I don't know why we always assume that management in the Federal Government is not going to have good faith. For the most part in my experience in our Government, I find that Federal managers are acting in good faith. They try to do their best by employees. They are sincerely interested in achieving their program goals, and I think the number of abuses and under this system would be very small.

Abuses are possible under the existing system.

Mr. GROSS. Would the gentleman yield?

Mr. HENDERSON. Yes, of course.

Mr. GROSS. Are you saying that the onus is all on the employee's side of the ledger?

Mr. CARLUCCI. No, sir; I am not. I am saying that I have found that management in general recognizes its responsibility to its employees, and that we should not always assume that management is going to do the worst.

Management ought to have the benefit of the doubt in some cases.

Mr. GROSS. Evidently you are saying that contrarywise, the employee does not always recognize his responsibility to management.

Mr. CARLUCCI. No; I am not saying that either.

Mr. GROSS. Then where is the fly in the ointment?

Mr. CARLUCCI. I am saying both have a responsibility to work with each other and to strive for program effectiveness, and that what we have tried to do in the Federal Executive Service is to strike a balance between the necessary security for employees and the necessary flexibility that management needs to get the job done.

Mr. GROSS. How many supergrades do you think are going to enter into this 3-year contract business?

Mr. CARLUCCI. Oh, I would hesitate to make an estimate at this point.

Mr. GROSS. Placing themselves in jeopardy. How many do you think will enter into this?

Mr. CARLUCCI. Even if very few of them choose to enter, and this is an evolutionary process, I still think it would be a desirable piece of legislation. I have no idea how many would choose to enter.

Mr. GROSS. You don't think there would be any GS-18's presently on the rolls that would volunteer to go into this; do you?

Mr. CARLUCCI. There may well be, sir.

Mr. GROSS. I can't conceive of any reason why a GS-18 would go into this program voluntarily.

Mr. CARLUCCI. There may be those interested in broader assignments and for the most part, as Chairman Hampton has testified, many of our GS-18's are no longer in the career service. The GS-18 jobs tend to be preempted these days by noncareer employees, and this is one of the defects that we would hope that the Federal Executive Service would correct.

Mr. HENDERSON. Would the gentleman yield on that point?

Mr. GROSS. Yes.

Mr. HENDERSON. Mr. Carlucci, are you familiar with the letter of recommendation of the General Accounting Office that the Federal Executive Service be tried at the GS-18 level?

Mr. CARLUCCI. I am familiar with that letter.

Mr. HENDERSON. My reaction to that suggestion was just on the point Mr. Gross made, if we try it at the GS-18 level, why would the GS-18's go into it? How would we get a real trial, and of course, that question we will pose to others.

Mr. CARLUCCI. I would agree with that. I don't think it is a valid test. But I would further point out that under the present system the GS-18 level is gradually being closed off to the career executives, because an agency head is unwilling to take a chance on putting a career executive into that kind of position and being locked in. Consequently, he says, "well, I will go for a schedule C," or he puts pressure on a career executive to convert to schedule C. That is a real loss of job security.

So we think the Federal Executive Service would open up greater opportunities for a career executive to serve at higher level positions.

Mr. GROSS. I have one further question, Mr. Chairman, if I may.

Mr. HENDERSON. Certainly.

Mr. GROSS. Then I will be through, I hope.

On page 2 of your statement, Mr. Carlucci, you indicate that when you became Director of OEO you were frustrated by the inability of your executives to understand and support each other's programs.

As the new head of that agency, isn't it possible that your inclination would have been, and I am referring to this legislation, not to renew their contracts if they were then serving under the FES? In other words, if you were frustrated enough, wouldn't it have been a human response not to renew their contracts rather than reeducate the executives who were giving you frustrations?

Mr. CARLUCCI. I guess that is a fair statement. I would insist that my subordinates at the executive level be responsive to my directions, and if they were not responsive to my directions, then I guess that I would not renew their contracts.

The point I am making is that only by being responsive to my directions could we have been able to turn the agency programs around in a direction that the President and I as an agency head thought was desirable.

As the system now stands, many of these executives if they choose, can frustrate the policies of the President or of agency heads.

Mr. GROSS. I know it is easy to say what I would have done in occupying someone else's shoes. This is the easiest thing in the world. But I think if I had been in the position, as you have stated it here, going through that kind of frustration, I think the first thing I would have done would have been to grab the files to find out how soon I could terminate the contracts of those people who would not cooperate, or who for some other reason were not doing what I thought they should be doing.

Mr. CARLUCCI. I think with the Federal Executive Service we would have reason to expect those people to be more responsive to general directions anyway.

Mr. HENDERSON. Mr. Carlucci, what would be your reaction to amending the bill to provide that the Post Office and Civil Service Committees of both House and Senate would have to take positive action each year on the number of top level executives proposed in the FES?

The bill as presently drafted would have the action taken and Congress would just review it. If it didn't approve it in the 90 days, it would become effective. What I am suggesting is another possible approach, rather than to have 90 days in which Congress would act, that you would have positive action on approving the total number in the authorization of the Federal Executive Service, not by the full Congress, but by the two committees.

Mr. CARLUCCI. Well, we are certainly most interested in something that has the support of the committees and having full review by the committees. What we have proposed in the legislation for the Federal Executive Service is analogous to the Reorganization Act, whereby reorganization proposals can be sent up by the President, and if the Congress does not act on them in 90 days, they move ahead.

We think this gives the Congress an adequate opportunity for review, and they can go and flag any issues for us at the time.

If positive action were required on the part of the Congress, I think it would make it a little bit more difficult in the planning process, because we would be unable to participate in anticipating specifically what the Congress might do.

So I would think that it would be best from our perspective to use the 90-day approval mechanism.

Mr. HENDERSON. Finally, and I hate to take much time on this, but I think that it is very important to try to have an understanding with regard to this, because I think we could all agree that the FES legislation is going to take some time at the best to be enacted into law, and certainly to become implemented.

So we are still faced with the problems of supergrades, and Chairman Hampton mentioned the other day that at the present time the supergrades pool certainly ought to have authorization for about 150 slots.

I want to ask a specific question. What has been the role of OMB in the recent months in the several pieces of proposed legislation provid-

ing for additional supergrades and often with provisions to disregard the civil service laws and regulations?

Mr. CARLUCCI. We have identified some 17 recent legislative proposals which contain authorities permitting appointment outside the Civil Service Commission administered quota to supergrades or comparable salaries. Eleven of these authorities were proposed not by the administration, but by the Congress.

These are EEOC, Emergency Medical Services Administration, Marine Mammal Protection Act, the Consumer Protection Act, the National Rural Development Center bill, Office of Technological Assessment bill, Adult Public Assistance Act, and U.S. Passport Service bill.

Three of the authorities by passing the Civil Service route were proposed by the administration, but all were for temporary agencies. The American Revolution Bicentennial Commission, the Special Action Office for Drug Abuse Prevention, and the Economic Stabilization Act agencies.

Two other legislative proposals first proposed by the administration in 1970 did contain authorities of this nature. The Higher Education Act contained authority for the appointment of technical and professional personnel without regard to the civil service laws and Classification Act.

The congressional action on this measure, the provision was deleted, but specific authority for supergrade provisions was added.

The Omnibus Crime Control Act contained 25 supergrade positions. It was enacted with a provision for 20 supergrades.

Mr. HENDERSON. Let me conclude on this point by saying that I would express the hope that you would get tighter controls over this proposed legislation in the future, and I realize that you are not responsible for the action the legislative committees might take.

But as the administrative proposals come up, if you find any reasons for exceptions, I hope this would be closely coordinated with the chairman of the Civil Service Subcommittee, and even before the proposals are submitted to Congress, if you would afford our counsel or the full committee an opportunity to discuss the provisions, we think that we could work out much better legislative proposals and it will make our job a lot easier to provide the necessary supergrade authority.

Something has to be done in this area, even assuming the enactment of the FES.

Mr. CARLUCCI. This is one of the purposes of the Federal Executive Service—to strengthen the central control of the Civil Service Commission, the OMB, and this committee.

Mr. HENDERSON. As far as I am concerned, if we could work out some of the features that seem to be a problem to us, it would be helpful. Have you had any personal experience in trying to move supergrades from one assignment to another that you could relate to us that might give some light on the great difficulty in doing this?

Mr. CARLUCCI. I have, but if I were to relate it on the record, I am afraid that the particular individuals could be identified rather readily, and I think that would be damaging to their careers.

Mr. HENDERSON. It would be fair to say that you have had experience and found it difficult or not impossible?

Mr. CARLUCCI. I have had to jury rig job descriptions, so to speak, and make all kinds of extracurricular efforts to move executives; yes, sir.

This is when I feel the move was desirable. I can remember one case where I spent an inordinate amount of my personal time just trying to move one executive, and after I finally persuaded that executive that the job was desirable, then had to write a job description and get the Civil Service Commission to accept it, and it was all for the purpose of moving an executive out of an assignment that he could not handle; yes, sir. I have had that experience. In fact, I have had it several times.

Mr. HENDERSON. I presume you were successful. How did he perform in the assignment that he was sent to, do you know?

Mr. CARLUCCI. Well, frankly, I reached a point where I was not terribly interested in his performance and the kind of assignment and job description he created was one that would not have much impact on the agency's operations.

Mr. HENDERSON. You are telling me what I have heard before, and that is:

About the only way we can do it now is get a job for him and push him over in a corner and not worry about the performance.

Mr. Gross?

Mr. GROSS. You are an executive appointee now, are you not?

Mr. CARLUCCI. Yes, I am.

Mr. HENDERSON. I think you have been very responsive, Mr. Carlucci, and I appreciate your appearing this morning.

Mr. CARLUCCI. Thank you very much.

Mr. HENDERSON. I understand Mr. Vincent E. Jay will testify next. It is our pleasure to welcome you to this subcommittee. I understand that our staff director has a very warm friendship with you. It is a pleasure to hear from you.

STATEMENT OF VINCENT E. JAY, ON BEHALF OF THE FEDERAL PROFESSIONAL ASSOCIATION; ACCOMPANIED BY DR. ZAKA I. SLAWSKY

Mr. JAY. It is a pleasure indeed to be here this morning, Mr. Chairman, and I am greatly appreciative of the opportunity to appear before this subcommittee. I doubt that there are many professionals in the Federal service that have not heard of this committee and your exemplary work.

We are all familiar with the committee report that you publish indicating the management improvements that have been accomplished throughout the Government. I recommend it as important reading for those who are not familiar with the work of this committee in encouraging and pinpointing improvements in the Government that save the taxpayers large sums of money.

Mr. HENDERSON. I am very appreciative of your saying that, because sometimes we wonder if the report is worth the effort and expense. We usually do have favorable responses.

Mr. JAY. I am sure it is worth the effort, sir.

My name is Vincent E. Jay and I am a management analyst employed by the Environmental Protection Agency. I am here on annual leave to represent an organization I founded some years ago and now serve as legislative director, the Federal Professional Association.

I am privileged to have accompanying me the immediate past president, Dr. Zaka I. Slawsky, who is associate technical director and

heads the Department of Physics at the Naval Ordnance Laboratory. I bring the regrets of our national president, Dr. Jerry A. O'Callaghan, who is unable to be with us today.

Mr. HENDERSON. Doctor, it is a pleasure to welcome you here this morning.

Dr. SLAWSKY. Thank you.

Mr. JAY. I have the pleasure of bringing and presenting my 16-year-old sprout, Bonnie Lee Jay, with me. She is sitting in the audience. I am hoping that this experience will give her a better understanding of the working of congressional committees.

Mr. HENDERSON. I welcome her. I hope she won't get the idea that the Federal service is so frustrating that she shouldn't want to follow in the lines of her father.

Mr. JAY. Thank you.

Mr. Chairman and Mr. Gross, we have spent a great deal of time in analyzing the proposed legislation and its effect on our membership. A great many of our members—approximately 15 to 20 percent—are in the supergrades.

Mr. HENDERSON. I am glad you made that point because I understand from this there are going to be subsequent witnesses that I anticipate will be against this legislation and we will have a few who are actually supergrades.

Mr. JAY. We would like to emphasize that the advice and experience of some very distinguished Federal professionals have gone into the development of this statement.

Most of them are members of the association and are still in active service. A few are retired.

We tried to seek the best advice available. The professionals include Dr. Allen Astin, retired former Director of the National Bureau of Standards; Dr. G. Burroughs Mider, Deputy Director of the National Medical Library; Dr. Gregory Hartman, technical director of the Naval Ordnance Laboratory; Dr. Slawsky who is accompanying me, and also his brother, who is in the audience, Dr. Milton Slawsky, director of physical sciences in the Air Force, Office of Science and Research; and me.

This statement is a product of professionals. The final drafting was done by the task force mentioned above and FPA officers working nights and weekends, and was circulated among our chapters. Everyone involved in the final statement will be directly or immediately affected by the enactment of H.R. 3807 in some manner.

As Federal professionals, we welcome the opportunity to use our talents in this analysis of H.R. 3807. As citizens, we also have a stake in the Federal Executive Service.

We therefore wish to thank the committee for the opportunity to appear, and we would like to note, also, that our affiliate, the National Association of Naval Technical Supervisors, joins us in this statement.

Now the statement itself, sir, deals with our analysis of the bill. I will proceed into that, with your permission, and then make ourselves available for any questions that Dr. Slawsky or I may respond to.

Mr. HENDERSON. Very fine.

Mr. JAY. We support the stated purpose of H.R. 3807, which, as you pointed out earlier, almost everyone would support. Our studies, discussions, and deliberations have recognized the following beneficial features.

FLEXIBLE SALARY STRUCTURE

Within certain limits, salaries for Federal executives would be adjustable. At least, the language removes any technical barriers to such adjustments. The actual salaries which result will, we believe, be responsive to the judgment of top leadership as to the degree of value of the executive to the agency, the duties and responsibilities, and the performance of the executive.

EXECUTIVE MOBILITY

Well proven executive ability is always a scarce commodity which needs to be deployed to the best advantage of the public. The intended facilitation which the Federal Executive Service would give to such mobility is desirable.

REMOVAL FROM THE FES

Given all that rides upon alert, aggressive, innovative executive leadership, management of public institutions cannot support unquestioned and unlimited tenure of a person in any position, however exemplary the performance of the person may once have been and however necessary the position may once have been.

If the selecting officers and the qualifications boards really do their jobs as described in H.R. 3807, that is, "to attract, recruit, provide for the best executive talent available, to train, develop, and motivate members to maintain the high degree of qualification essential for executive leadership," we assume that as the need for and nature of positions change, the incumbents will be capable of taking on other assignments. If one loses "his touch," so to speak, or the job itself loses its "relevance" and the executive is not capable of transition to other executive assignments, the provisions of H.R. 3807 for return to GS-15 or retirement are reasonable. We shall comment on the means by which job relevance and performance should be assessed.

To accrue the benefits of these three features of the bill, it will be necessary to modify some of the proposed implementation. Here we get down to the nitty gritty.

INCLUDE EXECUTIVES ONLY

The membership of the FES as defined in the proposed 5 U.S.C. 3132(2) found on page 6 of H.R. 3807, is inconsistent with the stated purpose. It is difficult to get an easy to agree on definition of an "executive" for the purposes of H.R. 3807, but definitions should revolve around the concept of policy formulation, planning, direction, and control at the highest levels of an organization, with authority to secure responsiveness.

In contrast, the FES, as proposed in H.R. 3807, would include all persons in grades GS-16, GS-17, and GS-18, or equivalent, as members of the FES.

Many professionals in the Federal Government who are at grades GS-16, GS-17, and GS-18, or equivalent, are not involved in such executive activity. These are points which I think you as chairman and Mr. Gross as the ranking member have indicated previously.

These professionals include scientists, engineers, lawyers, administrative specialists, and others whose grade is derived from high-level

personal competence in science, engineering or other technology, and administration. Their contribution is in terms of knowledge, special expertise, objective analysis, and advice.

The various arrangements proposed for dealing with executives, such as involving them in term contracts including the right of re-assignment, would serve only to dilute the effectiveness of many such specialists and thus reduce the value of their contribution to the needs, policies and goals of the Nation, as set forth in H.R. 3807.

The remedy is easy and self-evident—excluding the specialists described above.

Mr. HENDERSON. I have a question, Mr. Jay, relating to this. Would you prefer to finish the statement and come back for questioning?

Mr. JAY. It does not matter, sir.

Mr. HENDERSON. Would an alternative to your suggestion of excluding these specialists be to amend legislation to provide that the scientist, engineer, lawyer, the group that you would exclude, the professionals, let's say, would be within the FES but the assignment authority would be limited to assignments that are compatible with their expertise and education and qualifications and so on?

Mr. JAY. Yes, sir. I think that would solve the problem.

REMOVING CAREER PEOPLE

The selections process is well institutionalized by the provisions of H.R. 3807. The process, briefly summarized, is selection confirmed by a qualification board.

This might be called "selection in." Its converse might therefore be called "selection out" and H.R. 3807 provides no institutional safeguards in "selection out." Under H.R. 3807, "selection out" as proposed here is the failure—studied or unstudied—to renew an employment agreement.

The FPA has, therefore, reservations about this proposed manner of removing career people from the FES.

At the executive level of Government, challenges to personal competence are much less frequent than incompatibility of judgment, differences on policy, or clashes in personal relationships.

Federal executives often have to tell people up the line repugnant things they may not suppose or suspect about a situation. Without some kind of institutional protection in "selection out," a Federal executive will find it difficult to express judgments which he feels will run counter to those of an individual with the sole authority to set his salary or close out his career.

Such judgments may involve interpretations of the laws of nature, as in science and engineering, or basic statutory authority for an agency to conduct its business. They may involve Government-wide directives or the recital of a previous experience.

Such information is crucial to national leaders if they are to make wise judgments in the national interest. We must take care that employment conditions do not warp the communication.

We are fully aware that the overwhelming percentage of people called to the high positions where they will have the authority to renew employment agreements want the best judgments of their executives, irrespective of possible unpalatable facts.

The law, however, must anticipate marginal and negative situations in high positions also. The FPA wants Federal executives in the FES relieved of any artificial pressures that might arise when, as occasionally occurs, a superior who is not large spirited wants to hear only what he thinks he already knows, and resents anyone who may have to tell him differently.

As we shall indicate in our summary of recommendations, the remedy is again self-evident—institutionalizing “selection out,” just as “selection in” has been proposed to be institutionalized.

CAREER VERSUS NONCAREER

A crucial feature of the FES is lumping career and noncareer executives into one service. Although as executives they will be doing the same thing—the same kind of work—their selection is procedurally and substantively different.

Selection of a noncareer executive can be done by the agency head without any reference to his qualifications or consultation with any other person. A noncareer executive's qualifications under H.R. 3807 would consist solely of political agreement, program philosophy, personal confidence, or short term commitment.

The FPA fully appreciates the need for some flexibility in getting new programs started or old ones reoriented without bumping into all kinds of rules and inhibitions. We are also fully aware that injudicious use of this flexible authority to appoint noncareer executives can lead to organizational disruption and program disarrangement.

This, in its own way, is as inimical to the public interest as organizational or personal ossification. No provision of law can totally prevent injudicious use of authorities. We shall recommend a concept which will retain the needed flexibility yet give a small measure of prevention against unwise use of the authority to appoint noncareer executives.

Mr. Chairman, our recommendations are based upon our analysis of the proposed section on purpose and the means of achieving it as set forth in H.R. 3807.

RECOMMENDATIONS

Confining the FES to executives

The FES should be confined to executives who formulate policy, plan, direct and control organizations at the higher levels.

Preserving the existing system for nonexecutive supergrades

The specialist supergrades, GS-16, GS-17, and GS-18 or equivalent, should be left under existing law until the matter of their better use and deployment can be analyzed and statutory changes proposed.

Improving provisions for selection out

H.R. 3807 does not propose to change the law with respect to removal for cause. These provisions should remain and could be used. If continuance in the FES relates to compatibility and similar factors, such as policy differences or personal affinities, the issue should be referred to a board of the Civil Service Commission which would be required to review a full record of the executive's accomplishments, potentials, and any causes for asserted ineffectiveness. The board would be required to recommend, within 3 months, the executive's continu-

ance in his current assignment, transfer to another assignment, or removal from the FES.

If a decision closed out a position and the Civil Service Commission and a qualifications board certified that the incumbent could not be reassigned within the FES, the various options set forth in H.R. 3807 would then be open to him.

Mr. HENDERSON. Let me ask you a question with regards to what type of board you are suggesting here. Would it be a better procedure to have the Civil Service Commission appoint a board or a committee to handle a specific case before them rather than to have an established board that would receive them all?

I am thinking that this would probably not be used too often, but I can see that if you were trying to make a determination, on whether an executive who has had experience in one particular field shall, or has been competent and could be used in other areas, that you could get a better decision if the board were appointed by the Civil Service Commission for that case, rather than to have an established board.

Mr. SLAWSKY. I think so. I think it would have to be sort of an ad hoc arrangement.

Mr. HENDERSON. Right. That way you could get others who had clearly demonstrated their competence in the area making the judgment over his competence.

Mr. JAY. An ad hoc committee of peers, say, in that particular profession.

Training and motivation

This recommendation is closely related to selection-out. In the administration of the FES, we would recommend full use of the training and motivating authority conferred in the proposed 5 U.S.C. 3131 to emphasize executive-management skills useful in many places in the Government.

This would facilitate reassignment where incompatibility might be a factor. More affirmatively, it would build toward a corps of highly trained, motivated, and experienced executives, who have passed beyond the initial technical and professional achievements upon which their early careers were based.

Among other things, it would call for a more intensive and extensive use of the present executive inventory.

We can envision in connection with the FES an expansion of the concept of Federal executive institutes such as the one now operating at Charlottesville, Va. If the FES is to be truly Federal, executive, and a service, a great deal of systematic education is necessary. Among other things, this would mean that there would have to be sufficient appointments to the FES to allow for a certain number to be away from operational positions for education.

One of the biggest problems in government today is that training authority exists and the money apparently is available but you can't spare the manpower. This is usually the excuse for a man not being retreated and reeducated and remotivated to do a better job. I have heard so much about deadwood in government, but so much of this deadwood could be salvage if an effort were made to do so.

Noncareer selection

The FPA is concerned that the statute of the FES will not reach maximum if appointments of the noncareer executives are based solely

on political, program, and personal affinity. We doubt that language could be drafted so tightly as to prevent possible injudicious use.

A good public record on noncareer appointments would have a salutary effect. FPA recommends, therefore, that the stewardship report called for in the proposed 5 U.S.C. 1308(f) include a statement with respect to each noncareer appointment active in the period covered. Such statement would need to include the appointee's technical and professional qualifications and, after his initial year, a summary of his accomplishments.

We have not tried to put these concepts into legislative language and format. If the subcommittee would want such specific language, we would welcome the opportunity to work with members of the staff.

In closing, Mr. Chairman, we wish to point out that we originally opposed any action on FES until action had been taken on the Oliver Task Force on Pay and Evaluation, because we felt then, and we still feel, that the two are so closely related that it would be beneficial to have action taken on both simultaneously.

The way you classify people and pay them is very closely related to how they perform and their motivation. So we want to raise the question of the possibility of this subcommittee working with the Employee Benefits Subcommittee, and perhaps getting some agreement as to how they could advance both proposals for the advantage of the career service generally. All of the problems that we are talking about in FES also affect other professionally and even nonprofessionals who work for the supergrades.

Mr. HENDERSON. I am very appreciative of what you are saying here, but personally I feel if the Federal Executive Service goes anywhere, we have enough work cut out for us.

As you know, the Commission has not reported on the job evaluation study as yet, and from what I have heard, it may be some time before it does.

People have thought the same thing about the Federal Executive Service and have accused some of us on this committee of putting it to rest before we even heard testimony on it, which is not quite fair. It would seem to me that the two are distinct enough to warrant separate consideration. If we can get those features of the Federal Executive Service that do have the support mentioned in your statement we could accomplish this. I think that it is fair to say that the two can pretty well proceed without being so closely related that it would be necessary to have one die because the other dies.

Perhaps Dr. Glawsky, the immediate past president of the association would respond to this. As I understand your testimony here with regard to the noncareer selection, and I can find that I am in agreement with what you are trying to say, but it might be helpful to me to ask this question.

Have you had experience where you feel the noncareer appointments, speaking very broadly, have been of injudicious use?

Would you say that, generally, the noncareer appointments demonstrate competence and executive ability?

Mr. JAY. I will let Dr. Slawsky answer this from his experience, but my experience has been that most of these appointees have been competent. However, it has been confusing to the career man not to know which positions are political and which ones are not. This point has been of concern in the Federal Professional Association since its

founding about 10 years ago. A great deal of benefit would accrue if we could have a positive identification by the Civil Service Commission or the Office of Management and Budget on the uniformity of political positions in Federal agencies.

Mr. HENDERSON. You are really confirming what Mr. Carlucci said with regard to taking a GS-18 position and converting it to schedule C, and this device certainly would be confusing to the supergrades that would be expecting perhaps to go into it.

On the other hand, as I envision the FES, while the ratio would exist as to appointments, I don't see, and I would like to ask if you see, that this system would relieve the basic problem you are talking about.

Mr. JAY. I don't think it would relieve it. I think it might compound it, because you would have a definite number, a definite ratio, 75 to 25. However, there would be no identification of where those 25 could be.

They could be placed almost in any position. You would not be identifying positions by title and saying: "This position is a non-career, and these positions are career."

This is the exercise that I think we have to go through at some time in the near future.

Mr. HENDERSON. One thing that has given me some concern, as I envision the appointment of noncareer, they come in, and assume after their 3-year contract and they don't perform, what would we do with that?

Dr. SLAWSKY. Sir, I don't think they have a 3-year contract. They come in, and you can put them anywhere.

Mr. HENDERSON. What do you do with them when they go out?

Dr. SLAWSKY. I guess they would leave at the pleasure of the agency head. I think the sentiment of the professionals I have talked to with regard to this particular point is that they were concerned that if you have noncareer people, and now with the Federal Executive Service you open up all jobs that are completely indistinguishable, then there seemed to be an incongruity, because three-quarters come in after qualifications. One-quarter comes in without necessary qualifications, although they may be completely competent people, but then all the jobs are the same, and that seemed a little bit incongruous.

In most cases, it would probably not be abused, but there is a possibility that is contradictory there.

Mr. HENDERSON. We have that today, don't we? The Federal Executive Service does not greatly change it.

Dr. SLAWSKY. I guess I have been sheltered in the Navy Department. Heads of our laboratories have been pretty much selected from the civil service registers, with those qualifications. I don't think we have any appointees in that group. So I am not really familiar with it. But I do know of some instances where there have been appointments made to technical positions from schedule C that didn't work out very well.

Mr. HENDERSON. I take it from your testimony that basically, Dr. Slawsky, your Federal scientists and engineers in the Government don't look with great favor on the Federal Executive Service unless they are exempted out, or unless as I suggested, the authority to assign them is kept within competent hands?

Dr. SLAWSKY. I don't think it is completely right. They are not universally opposed to the Federal Executive Service as such. We all

recognize some of the advantages of responsiveness. But I think a good number of us do not simply then bow down to the word "responsiveness" because if you think there are other people just as smart as you are, that takes time.

It is stability, and without inertia, that doesn't exist even in mechanical things, and our feeling is that this business of possible capricious judgment of whether the man is suitable or not is not in the best interests. This is the part that we are really concerned about.

Mr. HENDERSON. Don't we have the selection-out process without getting into the mechanics of it? You feel it would be a much better thing if we had that?

Dr. SLAWSKY. I think it would be more acceptable to people.

Mr. JAY. It would also be more acceptable if you would put in the point you mentioned earlier about eliminating the 3-year contract requirement.

Dr. SLAWSKY. There is a 3-year probation period, I think is the way you were saying it, and then yearly review. I don't think anyone objects to that. It is the way it is taken now: At the end of 3 years, the agency head goes off to Bermuda and forgets to renew the contract and the man is out.

Mr. HENDERSON. What would you think if this Review Board had the authority, assuming that both the employee and the agency head had the right to take the case to the Board, and rather than to have automatically the return to grade GS-15 and with saved-pay, that the Review Board—and it would be ad hoc again—would have the authority to decide whether or not the employee would be retained in the Federal service anywhere, or that he might be returned to a grade GS-15, and he might have saved-pay.

We are assuming that we are going to have the appointment of a competent, fair and impartial ad hoc committee. It seems to me that that would be some improvement.

Dr. SLAWSKY. Mr. Chairman, in listening to the previous testimony, one thing struck me. What do you do with someone who does not seem to be performing the way you want him to perform? I do have some 90 men under me, or 95, and they are scientists, so that we have a good number of prima donnas, and there are cases in which it is frustrating to do it, but then it is up to the manager to do something about it, and just to make the easy thing is also wrong, just to give the authority "go."

So I think there should be improvement in the means we have of removing people. It can be done, but it is an awful lot of work. Some improvement in that might be instituted throughout the civil service, but I then don't think the answer is just to make it completely without pressure on the manager to see whether he really has done all of this he can to utilize this, because in the Government we have to use every talent that we have.

Mr. JAY. On that point, we talked earlier about training and motivation. I would like to underscore this, because Mr. Carlucci referred to the fact that a man in an executive position, grade 16 or 17 or 18, is "expected to broaden himself."

My gripe about the so-called career merit system is that there is no planned training by management. There is no planned program for training, educating, and broadening people. They are expected to do it themselves.

We say we have career development, and there is a sign up in the Civil Service Commission that says, "career development," but you go in there and ask them to develop you, and they will tell you they are not in that business, that you have to develop yourself, that you have to get your own training and plan your own career and so forth.

In contrast, full career development is done in the military, where they do have career training. As a result, when a man retires from the Air Force, the Navy or the Army, he has been well trained and well developed. It has all been planned, he has been sent to this school, that school, and the war college. You look his papers over and his educational preparation is beautiful, he is a desirable employee, and that is why he can move into almost any job in the civil service over many career civil service employees. The career professionals in civil service should be given that kind of career development.

Mr. HENDERSON. What about the possibility of authority in the review board that we are talking about directing that he get training and then reassignment or possible reassignment?

Mr. JAY. That would help greatly.

Mr. HENDERSON. Mr. Gross had to leave before you completed your testimony, but he wanted me to assure you that he had read it and would follow on the questions, and he left one question which he would I think like to have covered in the record.

I think your testimony has been most helpful to us. Let me compliment you on your suggestion with regards to drafting legislation. I have often seen witnesses come in with their own drafting language.

When we get to specific recommendations, we are going to turn them over to our staff. I feel sure our staff is competent to draft the language once we get an understanding of what we are trying to do.

It may be that Mr. Bray might want to talk with you again on your ideas about some of the drafting that we might need. I think your statement has been most helpful to us, and I appreciate the fact that you are taking annual leave today.

Dr. SLAWSKY. So am I, sir.

Mr. HENDERSON. Your testimony is helpful.

Mr. JAY. It has been my personal privilege over the years to know members of this staff. I think this committee is blessed with an exceptionally fine staff. We have always had the best of relationships. They have always been most helpful. They are a credit to this subcommittee and a benefit to all Federal employees.

Mr. HENDERSON. Thank you very much.

Dr. SLAWSKY. One of the things we mentioned—the Oliver Task Force—is the SOES thing seems to border on this possibility of separating out executives from the nonexecutive specialist. As they conceive it now, it stops below the executive level, but we don't see why that is binding, but this is what we are wondering about.

Mr. HENDERSON. Speaking on the mechanics of the possibility, I suggested that within the Federal Executive Service the scientists and professionals be identified and their assignments be in line.

Do you feel that this could best be done by the agency for which they work, or by the Commission, or by a joint responsibility?

Dr. SLAWSKY. I can only make a casual comment on it from talking to some people, and the feeling is that the agency can probably best decide whether that job is an executive one, a policymaking one, or

isn't. That is the general feeling, that it would best be decided within the agency. I think that is the feeling.

Mr. HENDERSON. That would be done as a part of implementation, say, of the legislation if it became law. But in the future, as new programs are developed or new responsibilities within the agency develop, would you feel that the job designation should be made as the program was developed? Or, are you suggesting that the position be identified there before it is filled, as being within the excepted service? I don't like to use the term "excepted service," because it would be within the Executive Service, but would be limited in the assignment possibilities.

Dr. SLAWSKY. Well, I would have to think about that, sir.

Mr. HENDERSON. Would you do that and let us have your thoughts? This is the kind of question that I think would come up with our staff.

Mr. JAY. For instance, the congressional liaison position. All agencies have them, and those positions are usually schedule C. There are some agencies, however, where they are not political positions. It would be advantageous to have flexibility in filling positions of this sort.

Mr. HENDERSON. Again, I could comment here that I could see a tremendous benefit to management if they had some of the career people moving into the congressional liaison working there on a 3-year contract and going back to operational functions.

I think the Congress and the broad Federal Executive Service could both benefit from this. This is comparable to what we see in the military. If we could get the degree of service, I think it would be helpful, don't you?

Mr. JAY. Yes. The flexibility would be helpful in the small growing agencies, such as my own, which came about from the merger of several agencies. I remember when we were the Federal Water Quality Administration. There was only one political appointee in the whole agency.

It is difficult for any new administration to get a grasp on an agency's operations and control it when they have only one political appointee in the whole agency.

Mr. HENDERSON. As we envision that our professionals would operate under restrictive assignment and authority for the agency, would you think that that restriction should be the choice of the employee?

Take the mathematician I used in the Navy. In the Navy, if the agency head offered him a job that would be outside of the assignment and he felt he would like to try it, do you think the restrictions should be such that he could go the full spectrum so that the agency head could not arbitrarily assign him outside? That is what we are talking about, isn't it?

Mr. JAY. The professional ought to have some option—ought to be consulted and have some input—as to the development of his career.

Mr. HENDERSON. I would hope we could spell out in the legislation that, as the agency head under the requirement of the law, he would set aside the positions, or the employees, that would have this protection.

We keep in mind that our objective would be to have as broad a Federal Executive Service as we could.

Dr. SLAWSKY. Mr. Chairman, I think the point is whether it is an option offered to the man or whether he is commanded to do it. I think this is the difference.

Mr. HENDERSON. Under the language I read, now, without the exception you speak of or some limitation on that authority, he has to go, or else.

Dr. SLAWSKY. I think even now we can in the laboratory ask someone to go somewhere—to Alaska or anywhere else.

You do it by presenting a job. You can do it, but you usually do it by persuasion. The option should definitely be there, we feel.

Mr. HENDERSON. Thank you very much. I feel sure that, as we give further consideration to the legislation, members of the staff will be calling you for your advice.

Mr. JAY. Thank you, sir. We greatly appreciate being here.

Mr. HENDERSON. We appreciate your appearance.

We stand adjourned to meet on Tuesday, next, to hear from the Assistant Secretary of the Department of Defense in room B-374, in the Rayburn Building.

(Whereupon, at 12:12 p.m., the subcommittee recessed, to reconvene on Tuesday, April 25, 1972.)

THE FEDERAL EXECUTIVE SERVICE

TUESDAY, APRIL 25, 1972

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 9:40 a.m., in room B-37A-C of the Rayburn House Office Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order.

We are today continuing our hearings on the Federal Executive Service, that is, H.R. 3807 and H.R. 6772.

To date we have heard from Chairman Robert Hampton of the Civil Service Commission and the Associate Director of the Office of Management and Budget, Mr. Frank Carlucci. These administration spokesmen indicated the need for a Federal Executive Service with emphasis on more effective controls and greater mobility of top executives.

We also heard from Mr. Vincent Jay, the legislative liaison officer for the Federal Professional Association. Mr. Jay supported the Federal Executive Service with reservations including strengthening of the selecting-out procedure. He questioned the inclusion of engineers, scientists, and other professional people in the plan.

We have three witnesses scheduled today: the Assistant Secretary of Defense for Manpower, Hon. Roger T. Kelley; Dr. Nate Wolkomir, national president of the National Federation of Federal Employees; and Mr. John McCart, executive director of the Government Employees Council, AFL-CIO.

We had scheduled Secretary Kelley to give his testimony at 10:30 this morning. However, the Chair may decide to cancel Secretary Kelley's appearance until it can get the assurance of the members of the subcommittee that they can be in attendance.

Mr. McCart, it is my pleasure to welcome you before the subcommittee. You have, over the years that I have been here, been very helpful in all your appearances. It is certainly a pleasure for me to welcome you this morning.

STATEMENT OF JOHN MCCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYEES COUNCIL, AFL-CIO

Mr. McCart. Thank you, Mr. Chairman. With your approval, I would like to have the formal statement of the council inserted in the transcript of the record and proceed to summarize our views on the pending legislation.

Mr. HENDERSON. Very good.

Mr. McCART. Mr. Chairman, the council approaches the bills under consideration with considerable reservations. I intend to bring to the attention of the subcommittee four or five considerations which we believe make the bills that are before you generally undesirable.

First, committee print No. 3 outlines in some detail the Civil Service Commission's justification for the proposal. An examination of this document reveals very clearly to us that it will do considerable violation to the merit concept in civil service.

For example, on page 88, of the committee print, the Commission refers to the necessity for heads of agencies, political appointees, to be able to accommodate to the request for appointments in the Executive Service of political party constituents, interest group advocates, academics, and professional group members. We submit, Mr. Chairman, that these concepts directly violate the merit principle that has governed the career Federal service since its inception in 1883.

It is not only the 11,000 individuals who are now found in the executive structure who will be affected, but also in future years it will be virtually impossible for the Congress to withstand requests for applying the same concepts to Federal workers in the other executive grades and the middle grades and even the lowest grades of the Federal service. What is basically involved is a threat to the merit system.

One of the plans proposed by the Commission deals with pay of those occupying executive jobs. It will be fixed by the agency heads or their designees. The agency will no longer be required to conform to the classification standards that now prevail under the Classification Act, and the individuals involved will no longer be entitled to step increase advancements on the demonstration of satisfactory performance.

Base pay increases within the 16, 17, and 18 range may be denied by agency heads without any recourse by the career executives involved.

Furthermore, the plan will segregate career executives from the general pay system which now prevails, and will fragment it to a point where the Federal executives will no longer be in the mainstream of the pay program. It will be difficult for Congress to make judgments on pay matters when one portion of the career service is separated from the rest.

As you are aware, Mr. Chairman, with your great experience and knowledge of the pay problem in the full committee and the subcommittee, it has been traditional for the Congress to approach the pay problems of the Federal service particularly with respect to the general schedule as a unity. Separating the career executives and non-career executives for pay purposes will do violence to this concept.

One of the justifications given for the Commission's plan, to which you alluded in your opening remarks, Mr. Chairman, is the matter of mobility. In our view, this is a spurious issue. It is inconceivable to us that agency heads find difficulty in assigning career executives to locations or to duties within their grade levels that they feel are necessary to carry out the political policies and commitments of the agency. It is rather naive for us to think that the career executives cannot be moved about so as to meet the desires of the agency head for a better contribution to the agency's program.

The least desirable element in the entire plan, of course, is the 3-year contract. It has many disadvantages. It obviously will remove job

security from the career executives. It will eliminate continuity that we believe is necessary, because administrations change and within administrations cabinet officials change. If career executives are to be subject to dismissal or removal from their jobs within a period of 1 year, 2 years, 3 years, whenever their contract happens to expire, then that is going to present a real problem with respect to the continuity required to carry out the program of the agency.

Moreover, even though individuals may face the loss of their jobs, or the acceptance of a lower grade or retirement, there is no adequate appeal mechanism provided in the bill for them to secure an impartial review and decision on the equity of their cases.

In our view, the bill amounts to a tacit admission by the Civil Service Commission, the Office of Management and Budget, and the agency heads that they are unable to manage executive manpower. We submit, Mr. Chairman, that that is a matter of internal management. It should not be necessary for the Congress to enact a law that creates a special civil service.

Really, the problem in our view involves the exercise of sound managerial judgment by agency heads to assure that the commitment of the nonpolitical career executives conforms to the policies of whichever administration happens to be in office. We find no sense in establishing a separate civil service program to accomplish this.

It should be accomplished internally within the administration. Mr. Chairman, up to this point, the attitude of our council on the pending legislation has been entirely negative, but there is one positive view that we take on the bill.

As you know, there are some 11,000 jobs involved in the executive structure; 7,000 of these jobs have some kind of Commission control. The remaining 4,000 include individuals who have acquired their executive levels by specific statute or by specific disciplines, such as science.

We believe that if Congress is going to hold the Civil Service Commission and the Office of Management and Budget responsible and accountable for the operations of the career executive service, then these agencies should be able to deal with a unified executive structure.

They should have control over the entire 11,000 positions involved. Thus, the Government Employees Council recommends that any legislation enacted bring the jobs that do not now fall within the active supervision of the Civil Service Commission and the Office of Management and Budget under the day-to-day surveillance of these agencies.

Mr. Chairman, in summary, we do not believe that H.R. 3807 is needed to accomplish the objectives that the Civil Service Commission has outlined. Whatever deficiencies exist in the career executive service at the present time can be remedied in our view by sound internal management, rather than the enactment of special legislation.

Finally, we advocate that the jobs now in the executive structure that do not come within the purview of these agencies be brought into a unified, coordinated structure so that they can be dealt with by Congress and by the Commission and OMB.

Mr. HENDERSON. Thank you very much for your statement, Mr. McCart.

I have one or two questions, with regards to your point on the 3-year contract. Do you feel that the biggest problem, or the most serious

doubt that you have there, is that under the provisions of the 3-year contract that it would not be administered in good faith by the agency heads, or to put the question the other way, if you felt there would be good faith administration, would your objections be to the 3-year contract provision anyway?

Mr. McCART. Mr. Chairman, we don't believe that there is a need or desirability of having a 3-year contract. The contract would violate the merit concept of retaining workers in Federal service so long as they adequately perform their jobs. The 3-year contract concept provides no appellate machinery whatsoever for individuals to contest the failure of the agency to renew the contract.

What this really does is give a unilateral tool to the agency heads, because the only right the employee has is to terminate the contract by resigning, which he can do today.

So the equities of the agency are not fairly balanced. Our basic problem with the 3-year agreement is that it has no place in the career merit system.

Mr. HENDERSON. If the subcommittee and the committee eliminated the 3-year contract provision, would you think it would be well, in your understanding of the proposed legislation, to provide for selection out that would permit the employee or the agency head to appeal to a board, perhaps an ad hoc board, appointed by the Civil Service Commission to determine whether or not the employee had been performing the responsibilities of the office properly in a given period of time?

Mr. McCART. Mr. Chairman, that would mitigate our serious objections to the legislation. But I must reemphasize that we do not believe the 3-year agreement is really the way to advance the career merit program.

Mr. HENDERSON. Relating to your objections as I understand it with regards to the entrance into this Federal executive service, as that may relate to the merit system, do you have doubt that the qualifications boards, which will be established under the proposal, would not insure the most qualified individuals to be appointed into the executive positions?

Mr. McCART. Mr. Chairman, it is a bit difficult to comment in detail on the qualifications boards, because while the Commission proposal indicates that both Federal employees and non-Federal employees will serve, we do not know the mix. What concerns us most, even if the mechanism is correct, is that the philosophy underlying the mechanism, which is that the career executive service should be responsive to practical pressures that exist in the academic community, the political community, and others is fallacious.

Mr. HENDERSON. My final comment would be with regard to the point you made in connection with the provisions of the bill that would give the Congress and Civil Service Commission the oversight.

This is one of the most compelling motivations to attempt to work up some system. Our question revolves around how are we going to do that unless we have some legislation that would give us a different system than we have now, and it is from that point of agreement that I think we move out and get into areas that do raise questions with the employee groups for which you speak this morning.

Mr. McCART. Mr. Chairman, we are not sure that what is needed to accomplish the desirable objective you propose, is to create a new

system. It seems to us in the Government Employees Council that Congress should hold the top levels of an administration responsible for the internal management of the career executives. What is really involved is improving the quality of management at the top political levels so that the career executives do conform to the policies.

In our view, it should not be necessary to enact a law to do that. The only legislative action that we think is needed is to bring the positions that do not now fall within the direct purview of the Civil Service Commission and the Office of Management and Budget, under the supervision of those agencies and under the supervision of this subcommittee.

Mr. HENDERSON. Mr. White?

Mr. WHITE. Thank you, Mr. Chairman.

I just wondered, Mr. McCart, if the way the bill is worded there would be a permission by the executive department to contract for less than 3 years.

Mr. McCART. Mr. White, as we have indicated, we think the entire concept of a contractual arrangement of any duration is not in keeping with the merit principle. We believe that Federal workers from the lowest levels to the highest levels should be able to retain their jobs so long as they perform competently. If they do not perform competently, then they should be separated from the Federal service under the safeguards provided by law and regulations.

Mr. WHITE. Do you feel this proposal will allow much more politics to enter into the selection of the hierarchy of the administration?

Mr. McCART. Yes, sir; we are much concerned that these contracts can be used as the device for manipulating the career service so as to remove individuals a particular administration may not want and bring in individuals that it does want. Subjecting them to the political pressures that exist, the pressures from other elements in the community, we do not believe is the way to operate an efficient career system.

Mr. WHITE. Thank you very much. Thank you, Mr. Chairman.

Mr. HENDERSON. Thank you very much, Mr. McCart, we appreciate your appearance here.

Mr. McCART. Thank you.

(The prepared statement follows:)

PREPARED STATEMENT OF JOHN A. MCCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYEES COUNCIL, AFL-CIO

Mr. Chairman and members of the subcommittee, the Government Employees Council and its 31 AFL-CIO unions represent more than 1.5 million employees of the Federal Government. We appear today to express serious reservations about the pending bill to create a new Federal Executive Service.

To you, Mr. Chairman, and your colleagues on the Subcommittee, the GEC expresses gratitude for arranging these hearings so that witnesses can explore all facets of the legislation.

Our concern is epitomized by these excerpts from a February, 1971, Civil Service Commission document, "The Federal Executive Service, A Proposal for Improving Federal Executive Manpower Management." The explanation and justification accompanied the bill recommended by the President.

On pages 78 and 79 of Committee Print No. 3, the Commission document outlines the pressures experienced by agency heads in selecting individuals for executive positions. Included are—

"Interest groups, for their advocates, Partisan sources, to reward party faithful, Congress, for constituent representation.

"While on the one hand these pressures are designed to influence staffing so that programs will be conducted in ways that agree with the desires of the

groups exercising the pressures, on the other hand, the success of programs frequently depends upon the support of the pressure groups. Therefore, the agency head needs some way to accommodate to these pressures."

Later, on page 88, the Commission paper emphasizes the point again:

"The use of the career/noncareer ratio will accommodate a wide variety of problems now faced by agency heads. It will provide an opportunity for agency heads to make reasonable accommodations to requests for appointment of political party constituents, interest group advocates, academics, and professional group members."

To us, these rationalizations constitute the heart of the problem in the pending bill. The implication is clear. It is an attempt to make career system at the highest levels in Federal Service more responsive to the practical political considerations which face every administration. On this basis alone, we view the legislation as ill conceived.

The bill under consideration would not change the present ratio of 25 percent non career and 75 percent career jobs currently in existence. While we recognize that there will never be sufficient jobs to satisfy the desires of the interest groups noted in the Commission justification, the Council believes it would be a serious error to subject the present segment of the career executive service to the same considerations now applicable in selecting candidates for non career positions.

In short, Civil Service Commission recommendations for correcting deficiencies in managing executive manpower amount to major legislative surgery to cure an illness involving internal administrative policy.

A central issue in the bill before you is its implications for the Federal career service as a whole, including lower, middle, and upper grades. If the Commission's plan is enacted, the precedent for carving a portion of the career service will be established. Having taken that step, it will be difficult for Congress to withstand requests for removing the merit and career principles from grades below the executive levels.

The Commission proposals envision removal of those in the Federal Executive Service from the appointment and pay systems currently applicable to them and other Federal employees generally.

The present method of selecting the individuals in grades 16 through 18 permits agencies to appoint qualified persons from the ranks of career Federal workers or from private life. Under H.R. 3807, these selections would be subject to the approval of a Qualifications Board consisting of "experts" both in and out of Federal Service.

Basically, the designation of individuals to occupy non career jobs would remain unchanged.

While career occupants of executive jobs will continue to be paid GS-16, 17, and 18 rates, their superiors will be able to fix their compensation within this broad range. They will no longer be required to adhere to the standards prescribed for these levels by the Classification Act and developed by the Civil Service Commission. In addition, the present system of planned advancement through various steps in GS-16 and 17 based on completion of periods of satisfactory service would be discarded. Agency officials would be free to grant or deny pay increases to those in the Executive Service, subject only to the general controls exercised by the Commission and Office of Management and Budget.

These drastic changes would remove the individuals involved from the mainstream of the career service. They represent introduction of the "rank in the man" practice into the general career program. Decisions on the compensation and future advancement of executives will depend on the judgment of an individual, without any effective appeal. Present methods of allocating grades to jobs and paying employees on the basis of the duties they perform will be fragmented.

Such practices are inimical to the continuity of grade structure and pay, which is essential for Congress to make intelligent judgments on legislation affecting the entire General Schedule pay program.

The Commission plan envisions the right of agency heads to place career and non career executives in any geographical area or in any assignment they feel is desirable.

Certainly, there is no need to enact legislation to achieve this aim. We would be naive to believe that an agency today is powerless to change the location of an executive's work or his assignment to other duties. Those who think otherwise

are simply unaware of the arsenal of weapons available to agency heads to make policy and place executives where they will best promote that policy by either duties or location.

But the least acceptable element in the entire plan is the provision for three year contracts for career executives renewable at the option of the agency. The choice of an employee not to repeat the agreement represents no particular advantage over existing conditions, because an individual now has the right to resign at any time.

More important is the threat the contractual agreement poses to continuity of policy, job security for the individual, and the possibility of manipulating the agreement to separate executives because of considerations other than performance.

Significantly, when an agency decides to exercise the right to terminate a contract without renewal, the individual employee has no adequate, impartial recourse.

The Commission plan seems to contemplate introduction into the executive levels of Federal management some of practices prevalent in large corporations. If so, we believe that the needs of private enterprise and public service differ substantially, and that the principles of corporate management embodied in the legislation are not applicable to Federal service.

To insure an orderly flow of Federal policies from the drawing board to their application to the public necessitates a continuity, which cannot exist when career executives are subject to dismissal at the termination of a three year agreement. This concept acquires even greater validity when changes occur in political administrations.

Even during the tenure of an administration, Cabinet officials enter and leave office. Thus, the necessary continuity can be disrupted from year to year under the Commission plan.

Underlying the entire plan is a tacit admission of the inability of agencies to properly manage their executive manpower. Rather than discard the present system with all of the resulting disadvantages described above, the efficiency of the Federal service would be much better served by agency heads, the Civil Service Commission, and the Office of Management and Budget concentrating on achieving the needed improvements internally. It makes little sense to us to establish a new type of civil service by law for a particular group of Federal workers, when the problem really revolves around the exercise of sound managerial judgment by agency heads to assure the commitment of nonpolitical executives to the policies of whichever administration is in office.

One aspect of the Commission's rationale for its recommendations seems to have merit. That is its lack of authority over a large number of the 11,000 jobs comprising the executive structure. Some 7,000 of that total are subject to some type of Civil Service Commission control. The remaining 4,000 fall under Commission jurisdiction only to the extent of approving personnel action for established jobs. Included in the figures are positions related to science, and a significant number authorized by specific laws. The result is that there is no effective, centralized control over the jobs in the executive organization. If the Commission is to bear the major responsibility and accountability for the efficient functioning of this segment of the career service, logic indicates that it should oversee a unified structure for general personnel purposes.

In summary, then, the Council finds no justifiable need for restructuring the executive portion of the career civil service by law.

However, it would be appropriate to cover all jobs currently in executive levels under a unified authority for purposes of administration and congressional review.

Mr. Chairman, we hope these observations will assist the subcommittee in reaching a decision on the pending legislation.

Mr. HENDERSON. Our next witness is Dr. Nathan Wolkomir, president of the National Federation of Federal Employees. He has testified on all the major legislation affecting Federal civil service employees in the years that I have been in the Congress, and, I understood, many years before I came.

We have always found you and your organization most responsive to our subcommittee and committee work, and it is a real pleasure to welcome you this morning, Dr. Wolkomir.

**STATEMENT OF DR. N. T. WOLKOMIR, PRESIDENT, NATIONAL
FEDERATION OF FEDERAL EMPLOYEES**

Dr. WOLKOMIR. Thank you for those kind words, Mr. Chairman. For the record, I am Nathan T. Wolkomir, president of the National Federation of Federal Employees, the pioneer Federal union and largest independent union in the Federal service.

It is not our intent to belabor the purpose of this hearing by repetitiously enumerating the various recommendations of the President, his emissaries, and by itemizing the various positions in the supergrade structure covered under H.R. 3807.

Through the 55 years of NFFE "watchdog" responsibility to preserve the merit principle in the Federal sector, we have seen and testified against many attempts to modify, alter, pervert, and undermine the basic concept of a principle that calls for the best qualified in a Government position, regardless of race, color, creed, religion, sex, national origin, or politics.

A principle that also highlights the element of stability in any Government position—regardless of level. This we as an organization have done since 1917 via our well-known "Truth Campaign," our periodicals, and via our testimony before your very committee and others.

Never, however, have we ever witnessed such a concerted and religious effort over a period of 6 years to establish a unilateral classification and ranking system for the Federal executive.

This effort now has transcended two administrations and culminated finally in the proposed H.R. 3807 introduced jointly by Congressmen Dulski and Corbett.

The National Federation of Federal Employees played a large part in the development of the Classifications Acts of 1923 and 1949, the basic documents that attempted to provide orderly personnel standards at all levels in Government. Many studies by qualified task forces in the past—the Hoover Commissions, the Subcommittee on Manpower Reports in 1965, 1966, and many others in which you, Mr. Chairman, played a large part—all testify to these attempts to have the executive branch take the initiative to implement and improve executive standards.

Although the Civil Service Commission should be commended for its efforts to develop same since 1966, its program—the executive assignment program—cannot be divorced from the recent efforts of the job evaluation and pay review task force created by Public Law 91-216, termed the Job Evaluation Policy Act of 1970 and signed by the President on March 17, 1970.

It is our contention that these two were altered to meet present administration whims. We of necessity must marry the efforts of the Subcommittee on Position Classification, chaired by Congressman James M. Hanley with the years of preparation by the subcommittee, chaired so well by you, Mr. Chairman.

After all these efforts and history, however, after all this involvement and expense, does it not seem ludicrous and tragical to read in our communication media such statements as "Executive Hiring Plan In Trouble," "GAO Criticizes Bill on Supergrades," and "We Know of No Executive in the Career Service Who Buys the Entire Supergrade Program."

It has been said that: "the next step after planned economy is planned extravagance." We thus look askance at some of the comments made by those who testified to date in favor of the program as proposed. Although the administration's two key spokesmen have eulogized the program as "a carefully constructed comprehensive system for managing the executive resources" and as a means for obtaining "men of broad vision" I of course allude to the representatives whose agencies will monitor the operation and control of the FES—CSC and OMB.

They have referred to the present system—and we are not in complete sympathy with same by any means—as "fragmented and parochial." Platitudes about retaining a merit system are bandied about with a restrictive 3-year contract plan offered which by its very nature restricts career progression. The power to remove still rests in the hands of the political bureaucratic under a guise of meeting present sophisticated needs.

"New vistas and challenges" can perhaps be perceived only by those in the driver's seat in their blindfold down the party line path and not by many of those who have served the public well in lifetime careers. These focused on narrow goals, say the spokesmen.

We are thus to assume that in the esteemed judgment of but a few well-doers, managers will be developed with a decrease in recruiting managers from the outside. It is our contention that the opposite will prevail with every change of administration. Walter Lippmann once stated that, "very few established institutions, governments and constitutions, are ever destroyed by their enemies until they have been corrupted and weakened by their friends."

Thus, they state, the self-styled central management agencies—OMB and CSC—and the Congress will upgrade the caliber of the managers. The premise is that these political appointees are the super-grade managers who will mold the destinies of our executives via a contract plan, or dropout program, a happy 25-75 percent mix fix, an arbitrary CSC/OMB ceiling, by freelance promotion programs within each agency.

This would presumably release a GS-16 compression and provide upgrading for deserving executives originally selected by 17 expert qualification boards. I personally would prefer to be selected rather than to serve on a board under those conditions—that is, if I wore the right party button.

It was suggested earlier, that the proposed legislation should not be separated from findings and recommendations of the Job Evaluation and Task Force. Under said task force's recommendations, Congress was to have only the basic responsibility for establishing policy and philosophy, and confined to this role alone.

The President and his designated agent were to carry out and have full authority to develop, change, modify, and implement a Federal job evaluation and pay program. H.R. 3807 is appendix VIII of this proposal. It is one of the six basic systems proposed.

We will probably be permitted to go indepth on the overall task force report at the proper hearing, so we will not burden this committee with any comments on the validity of its pay administration, evaluation systems, and other key features of the proposed FES as seen in the eyes of the task force.

I respectfully, however, call to the attention of this committee that CSC and OMB will authorize the number of executives in each agency. Then on an annual basis this will be reported to Congress and automatically become effective after 90 days.

We now start the ballgame with approximately 7,000 ballplayers. A 1-percent increase per year is allowable. No change in umpires however. We have a major and a minor league—that is career and non-career executives. A hybrid is created in the embryo stage before the birth. OMB and CSC will control this hybrid. Agencies may raise the salaries of their ballplayers but never reduce same. The ghost of the Washington Senators and Brother Short are again upon us.

There will be no rules of the game; that is, a classification system. Minor league and major league players will be used interchangeably via control of CSC. The qualification boards will operate as the voting scouts under CSC and approve the abilities of only the career employees. The minor league players may scream but they have no appeal rights. Oh yes, the major leagues will only get a 3-year contract with certain qualifying separation, severance pay, and retirement rights.

It is said that there are about 60 leagues in this bureaucracy known as the U.S. Government. In this FES ball park, however, we will not allow 18 executive branch and eight outside the executive branch teams to play. They will be excluded because they have unique problems. They will be invited however to adopt the rules and play by themselves.

Considering the extent of control, I respectfully submit to this committee the following excerpts from an article that appeared in the U.S. News & World Report, dated April 24, 1972. It refers to the administration's top command and the paragraph quoted is called Proliferation of Agencies.

PROLIFERATION OF AGENCIES

A major factor in expansion of the White House sphere is the array of task forces, councils, commissions, committees and such groups set up by Mr. Nixon. The President has created 39 organizations by executive order and 21 by directives to Cabinet officers and other officials. An additional 64 organizations have come into being through legislation. Of all these 124 organizations created during the Nixon administration 99 still exist.

The White House itself—which once contained virtually all the executive aides—is now the center of a whole complex of buildings housing offices under presidential control.

Most impressive of the White House adjuncts is what is now called the Old Executive Office Building. This six-story structure once was headquarters for the State, War, and Navy Departments. It has been used as presidential office space for many years. Among its new features is a dining room for high officials; it also has a large cafeteria. Mr. Nixon has a "hideaway" office in the building.

Across Pennsylvania Avenue, on 17th Street, is the New Executive Office Building, finished during the Johnson administration. It has 10 floors, almost entirely occupied by groups or individuals who serve the President.

Adjacent to Lafayette Park, across from the White House, are a number of restored "row houses"—almost all of which have important historical backgrounds. Five of these buildings have been assigned to groups created during the Nixon administration. Two others are used for the State Department in conjunction with Blair House, the President's guesthouse for visiting dignitaries.

In the White House itself, the staff dining room has been expanded into two rooms—one for top echelon officials, the other for those a notch lower.

We even have a major and a minor league within the White House.

Besides the White House garage, which has 51,336 square feet of space, there are more than 700 reserved parking spaces for staff officials.

Changing functions. One explanation of why the White House work force has mushroomed during the Nixon Presidency was given by a man who has served in several administrations:

"In Eisenhower's day, a smaller staff was adequate because most of the policy input came from the Cabinet, rather than the White House.

"When an idea was developed in the White House, it was passed along to a Cabinet officer. He would work it up with his own team.

"Today when an idea develops, a White House team is appointed. These people do touch base with Cabinet officers or agency heads, but there are no formal Cabinet policy papers, as such.

"Instead, policy papers—which incorporate Cabinet views—are written at the White House, with various options set forth. Senior staff members such as George Shultz and John Ehrlichman can reject proposals which they feel the President would disapprove.

"As final policy is being evolved, there may be more input from senior White House officials, but seldom from the Cabinet. Finally, the policymaking boils down to the President and his speech writers, headed by Ray Price. After maybe either or nine drafts, a presidential message emerges."

Often, Cabinet members are not told about major policy decisions until just before public announcement is made.

Power and people. A top level official emphasized that as individuals some Cabinet members in the Nixon administration exert strong influence over policy even though the President does not look upon the Cabinet itself as a policy making body.

In comment on the dominant role of the White House staff, a presidential adviser said that it is part of the job of men close to the Chief Executive to know exactly what he wants, so that in meetings with Cabinet officers they can authoritatively accept or reject proposals.

Each of the 14 White House officials in the top bracket—such as Mr. Shultz, Mr. Kissinger, Mr. Ehrlichman and Mr. Haldeman, receives a salary of \$42,500 a year. Down the line, White House pay is in accord with Civil Service standards.

From staff members come these points of view on expansion of the White House:

A key official:

"The pot has boiled over. There are problems everywhere and the people want to solve them. Look at all the attention the President must give, for instance, to social problems, minority groups, the environment. He has found that he must have a large staff."

We are not arguing with this issue.

Another top aide:

"Everybody wants to do business at the top these days. The President receives more than a million letters a year. Then he has to have a lot of people to cope with that sort of thing."

And a Nixon insider sounds a note heard frequently:

"Every President wants his own men—this President especially. Distrustful of bureaucracy. Mr. Nixon has built a kind of defense against it—and in doing so, he has built his own bureaucracy."

I draw this parallel because to me the FES is further attempt to isolate a bureaucracy at the executive level. It is to be noted in the following chart the growth of the White House Bureaucracy.

"U.S. NEWS & WORLD REPORT, April 24, 1972"

The following chart indicates the "Growth of The White House Bureaucracy."

"Since Nixon Took Office:

GROWTH OF THE WHITE HOUSE BUREAUCRACY

In Size of Staff

December, 1968 1,992	December, 1971 2,419
CHANGE: UP 21%	

In Dollar Outlays

Year ending June 30 --	1972 (est.) \$63.3 MILLION
1969 \$30.9 MILLION	
CHANGE: UP 105%	

Note: Figures cover White House office and special executive agencies set up to serve the President.

Source: U.S. Civil Service Commission, Office of Management and Budget

In December of 1968 there were 1,992 employees. In December of 1971 it went up 21 percent. In 1968 there was \$30.9 million spent. The change went up 105 percent, where this bureaucracy presently costs \$63.3 million.

These figures cover only White House offices and special executive agencies set up to serve the President, and the source of my information came from the OMB and the CSC themselves.

Are we thus, under the FES to further the proliferation of Government agencies, compromise the merit system, and satisfy the desires of few by the control of Federal executives under the guise of only "Father Knows Best"?

This is not the democratic way and is mere extension of the abrogation of legislative powers: We do not question the need of agencies for help to run new or expanded activities.

We are aware of today's societal problems and the myriad quality of life requirements of the day. May I state that we as a union are aware of the problems because we are averaging 150 grievances a day in our national headquarters on these issues. But NFFE, through the years has maintained that this leadership can best be obtained via a well-structured merit system. OMB has already indicated to us the arbitrary and capricious manner in which it as a central management agency has created thousands of classification appeals and grievances because of its presumable austerity program.

An approximate 5-percent cut in manpower ceilings, a "grade creep" deescalation, a pursestring manipulation has in truth created a false economy because it has led to costly contracting out, selection out of some of our most capable career employees with tragic losses, and fancily laundered downgrading actions.

It is our contention that the control of executives in the hands of a few could promptly extend such control to the next and then the next lower grades in Government. These are the people we represent to the tune of hundreds of thousands who already are subject to the dangers of career status regardless of grade or position.

We respectfully call the committee's attention to our April 18, 1972, news release on the subject of FES and request that it be made a matter of record as attachment 1 to this testimony.

Mr. HENDERSON. Without objection, so ordered.
(The document referred to follows:)

NATIONAL FEDERATION OF FEDERAL EMPLOYEES NEWS RELEASE OF APRIL 18, 1972

The National Federation of Federal Employees, describing the Administration-proposed Federal Executive Service as a potential "boon to avidly-hungry patronage seekers," will strongly oppose the FES plan at the House Manpower Subcommittee hearings, NFFE President Nathan T. Wolkomir declared today.

"The Administration has called the most important piece of Federal employee legislation now before the Congress," Dr. Wolkomir said.

"When the plan was first announced, the NFFE analyzed it in detail and we stated our strong opposition to it. Nothing has happened since then to change our position. In fact, many things have happened which strengthen our view that this is in fact the most potentially dangerous piece of employee legislation now before the Congress.

"In that sense, and in that sense only, is the Administration correct in its assessment of its importance."

The NFFE said that the FES plan is in essence "a fancily laundered version" of the State Department's harshly arbitrary and now thoroughly discredited "selection out" procedures which are being changed "after many promising careers have been ruined and some lives tragically lost." The union asserted that this "should give prayerful pause" to those now considering a re-run, government-wide, through the proposed FES.

In a featured editorial statement which will be published in the forthcoming issue of the NFFE's national newspaper, The Federal Employee, the NFFE position on FES is set forth in part as follows:

"WHAT FES WOULD DO

"Put in briefest but not necessarily over-simplified form, the Federal Executive Service would take top level positions out of the present civil service merit system. It calls for what CSC said was to be a 'mix' of political and career positions, and every three years, a 'contract period,' jobs in these categories in effect would be up for grabs. Incumbents would be 'reviewed' by some sort of 'board' and on the basis of these 'findings' the 'contracts' either would be renewed or the employees would be knocked back, or out.

"All employees should bear in mind that while the present proposal is limited to the upper grades, if by some chance it should be approved, there is a very strong likelihood that efforts will promptly be made to extend it to the next lower grades, and so on down, a clear and positive danger to the career status of every Federal employee regardless of grade or position.

"But there is really nothing much new about the proposed Federal Executive Service, despite the Administration's hyperbole in hailing it as 'revolutionary.' Such plans have shown up from time to time in the past and have not been approved. It is pertinent, with the Congressional hearings now in progress, again to ask why, and to answer the question.

"WHY NFFE OPPOSES FES

"It is not because the NFFE or Congress or a lot of other people doubt the sincere motivation of those who have developed this particular project . . . or that anybody doubts that constructive steps to improve the quality of top level management are surely worthy of support.

"It is not that at all. It is, rather, that the Federal Executive Program could prove to be one of the greatest boons to the avidly-hungry patronage seekers since all those original New Deal agencies were set up 'without regard to civil service rules and regulations.'

"Who is to judge if an upper level employee, who has attained his position through long years of dedicated and efficient service, deserves to have his 'agreement' renewed?

"What are the criteria to be applied? Who is to apply them? And how?

"If the result is in doubt and there are political job seekers hanging about—as there always are—will the incumbent keep the job? Will he be downgraded? Will he be out on the street, along with the rest of the nation's millions of unemployed? Indeed, the tragic results of the State Department's harshly arbitrary 'selection out' process, and the belated efforts to change it after many promising careers have been ruined (and some lives lost) should give prayerful pause to those now considering a fancily laundered version in the form of a government-wide Federal Executive Service.

"Is anyone naive enough to suppose that if the Federal Executive Service became a reality, there wouldn't be pressure, heavy pressure, to extend the same 'revolutionary' plan down the line?

"If Federal employees in the middle and lower grades think that they have no direct concern about this, since the first bite is to include only some 8,000 top graded employees, they had better think again, and hard.

"MERIT SYSTEM UNDER ATTACK

"One of the major objectives of the NFFE when it was organized back in 1917 was to extend and strengthen the merit system because that must be the firm rock upon which all else is built. Pay increases do not mean much to an employee who has lost his job, whether by RIF or by operation of the patronage system, or any other reason.

"Over the years, the NFFE has worked unremittingly at this fundamental platform. And over the decades the number of patronage jobs has dwindled as the merit system has been extended.

"But from a recent sustained high of about 93 percent of Federal positions under civil service the percentage has been dropping and is below 89 percent according to present indications.

"Despite platform pledges and pious protestations of support for the merit principle, the fact is that increasingly during the past several years there has been a rising tide of attack on the career civil service system.

"These have included removals of jobs from the career service to the 'excepted' category, heavy pressure for political clearances at all levels, 'restructurings' which have been aimed at job changes, improper pressures for partisan political contributions exposed by the NFFE . . . and much more.

"It is not at all surprising, therefore, that the Administration finds its proposed Federal Executive Service to be the 'most important' piece of employee legislation before the Congress, and why it has been lobbying Federal executives with might and main to get their backing for it.

"PROGRAM OF PROGRESS ANSWER

"But as the NFFE sees it, what is needed now is not a Federal Executive Service which puts jobs up for grabs every three years, and a questionable 'mix' of political and career positions, but rather what our Program of Progress calls for and what we are urging at the Congressional hearings.

"That is a merit system to cover all—and we mean all—except a small handful of genuinely policy-making and confidential positions at the Cabinet level.

"Stripped down to its bare bones, what the proposed Federal Executive Service would do—whatever the intentions of its sponsors and creators—would be to both perpetuate and eventually vastly extend the long discredited spoils patronage system. And that is just one of its defects.

"The NFFE believes that the time has come to get rid of the costly, wasteful, inefficient patronage system root and branch, and not be permitted to get its hooks even deeper into the public service in the fancy dress of an FES, a very real Trojan horse operation.

"In essence, FES is 'selection out' pompously arrayed in some new clothes.

"Federal employees, at every grade level and job category, should recognize it for what it is, and what it signifies.

"They will fail to do so at their peril."

Dr. WOLKOMIR. It outlines the NFFE stand, generally, and illustrates why we oppose the FES plan as proposed. As further emphasis we call to the attention of this committee that the recommendations of the job evaluation and pay review task force clearly state that Congress will "abstain from future legislative action that abrogates the above delegation of authority."

Thus, if administrative midwives happen to be given said "delegation of authority," midwives and not surgeons will perform major surgery in perpetuity.

On behalf of the National Federation of Federal Employees and our scores of thousands of career employees in all departments and agencies, I again express appreciation to the committee for the opportunity of presenting our views on a subject which we regard to be of prime importance, now and in the years ahead.

Mr. HENDERSON. Thank you very much, Mr. Wolkomir.

With regard to that portion of your testimony as it relates to the expansion of the administration bureaucracy, especially in connection with the White House, I think it is well to point out and let it go by doing so, that I think the efforts of our committee, especially as headed by Congressman Udall, to turn the light on that situation is going to be very much in the news in coming hours and days, and we will certainly substantiate the point that you have so well made.

Dr. WOLKOMIR. It would be our intent to augment the information Congressman Udall has.

Mr. HENDERSON. I am sure it would be helpful to us if you do that. Don't you feel, however, that the proposed legislation, with the bad that you see in it, would provide more congressional control over the number of executives in the Federal Government than we have now, and isn't that the one worthwhile and necessary objective?

Dr. WOLKOMIR. In actuality, we see just the opposite happening. If the recommendations are read carefully, and may I state I have both volumes of the recommendations that will augment the original bill, you will notice there will be an automatic right on the part of our managers, OMB and CSC, to increase the number of executives at 1 percent a year.

Yes, they will once a year also report to Congress, based upon whatever increases they think would be necessary. Let's go back to my original statement that once given the authority, that it will not be removed from them, and I can see eventually an arithmetical progression occurring, where we can speak about a 75 to 25 percent, and a year from now, it will be 1 percent and 1 percent, so that over a period of 10 years the 75 to 25 mix has gone by the wayside, under the control of the two management agencies, OMB and CSC. I hope that is responsive to your question.

Mr. HENDERSON. Yes, it is. Of course, I had envisioned that the 1 percent was an emergency measure, but what I think you are saying is that you start with the present 7,000, giving greater flexibility to move

them around, they will be moved out of the present jobs and new jobs created, so that you are making the point that we can anticipate that rather than bringing better efficiency of manpower use, we would have growing numbers of bureaucrats.

Dr. WOLKOMIR. I can see a proliferation of the "mix-fix." They will merely let Congress know where they want parts of this 1 percent by agency. I can see the controls being left to the administration and power as to where this condition will occur.

Mr. HENDERSON. The administration witnesses have testified that the current assignment procedures are tied to the job and it is difficult to reassign the executives based on their personal qualifications. Would you comment on their statement?

Dr. WOLKOMIR. Today, throughout Government, and particularly at the executive level, the question of mobility has come up so that no career employee can actually move without mobility. Mobility's intent is to provide a broad spectrum of a smattering of ignorance in many areas of their responsibility by moving them around.

I believe there are enough controls today right within the merit system and its promotional programs and its selection rights to be able to take care of this without granting it to two executive management organizations that, to us in all honesty, have shown poor management in every respect.

So how can we place faith in their control of such machinery?

Mr. HENDERSON. Mr. Chappell?

Mr. CHAPPELL. Dr. Wolkomir, speaking to the need, do you believe there is any need for any essential change from the present program?

Dr. WOLKOMIR. There is in this respect, that there should be, and every President elected should have a capacity to carry out his particular dictums and his particular philosophy. There is no question that he needs this.

Mr. CHAPPELL. Are you saying that you think that all Government employees should be under the merit system except a few advisory people at the top working with the President and his Cabinet?

Dr. WOLKOMIR. That has been our stand since 1970.

Mr. CHAPPELL. How many people do you envision in that capacity?

Dr. WOLKOMIR. Something like 10 percent of the 7,000. Those would be noncareer, appointed by the President and his Cabinet officers in order to establish the policies that each agency, new or old, must encompass.

Mr. CHAPPELL. You are saying he has that authority now?

Dr. WOLKOMIR. Oh, yes.

Mr. CHAPPELL. You would suggest there is no change in the method of either selecting those people or supervising them?

Dr. WOLKOMIR. No question at all about the fact that the President should be given the right to make such selections.

Mr. CHAPPELL. You would not restrict the major policies in that area?

Dr. WOLKOMIR. Restricted to the major policymaking, Cabinet-level positions. Today, we are actually doing this, not at the executive level at the 15's, 16's, and 17's, but actually going down to the 12, 13, and 14 level where we have this proliferation.

Mr. CHAPPELL. What you are saying is that if you have 90 percent in the civil service and 10 percent outside the civil service——

Dr. WOLKOMIR. No, 10 percent of those who are in the executive levels would be in the appointive positions.

Mr. CHAPPELL. That is a little different picture than I understood. You are saying that you take 10 percent of only those in executive positions.

We are talking only about those in the executive branch of Government. You are talking about 90 percent, then, of those, who would be civil service, and 10 percent would be outside civil service.

Dr. WOLKOMIR. Yes. We are talking about 10 percent of 7,000 to 11,000 individuals as presently constructed.

Mr. CHAPPELL. Do you see a need for present changes in the present structure of the civil service for supervising personnel?

Dr. WOLKOMIR. We see many changes necessary.

Mr. CHAPPELL. Would you enumerate the vital ones?

Dr. WOLKOMIR. The system for determining who is worthy for selection for promotion. We are operating under a Civil Service Commission broad guideline directive that states: "This is the manner in which we determine people for progression, whether they be at the executive level or below the executive level." We need a lot more changes in the machinery.

Mr. CHAPPELL. What changes do you propose?

Dr. WOLKOMIR. We have proposed many changes in the methods of determining the elements.

Mr. CHAPPELL. What change do you propose?

Dr. WOLKOMIR. Sir, you are asking us for a directive.

Mr. CHAPPELL. I am asking you for your direct opinion on how we can improve it.

Dr. WOLKOMIR. We need more peer evaluation. We need the evaluation of the people who work with the people directly.

Mr. CHAPPELL. How would you accomplish this?

Dr. WOLKOMIR. By councils, committees, and panels.

Mr. CHAPPELL. Would you write it in the law?

Dr. WOLKOMIR. No.

Mr. CHAPPELL. You would leave it to the Civil Service Commission?

Dr. WOLKOMIR. With direct consultation with employee organizations and others.

Mr. CHAPPELL. How would you change the law?

Dr. WOLKOMIR. I would make no change to the present law. I would not recommend anything in terms of passage of this legislation.

Mr. CHAPPELL. In other words, you are saying insofar as the law is concerned, there are no changes needed in the entire civil service setup?

Dr. WOLKOMIR. That is what I am saying. Also, the fact that what we need is a more accurate application of the laws that presently exist. This is not happening.

Mr. CHAPPELL. Whatever suggestions you would have, then, are for the Civil Service Commission and not this committee.

Dr. WOLKOMIR. The operation of the Commission or the operation of the OMB. Their modus operandi, rather than the change in the law itself, is what I am concerned with.

Mr. CHAPPELL. So you think the method by which positions are approved by the Congress today is satisfactory?

Dr. WOLKOMIR. Basically satisfactory, what we need are minor changes which can be accomplished through agency regulation rather than through law.

Mr. CHAPPELL. Do you view this as broadening the authority of agencies, or more restricting the authority of agencies?

Dr. WOLKOMIR. I would say neither. I think what we need is more objective application, which is where our fault lies.

Mr. CHAPPELL. As a matter of philosophy, do you feel the Congress should set up a procedure by and through which an agency would have the authority to set up some certain procedures and in effect perform legislative functions which would become matters of law until such time as the Congress should disapprove it? Or, do you believe that the the first responsibility lies with the Congress insofar as legislation is concerned?

Dr. WOLKOMIR. The first responsibility, of course, rests with the Congress in the creation of an agency. The latitude with which they permit the agency to operate I think is necessary, because how can Congress possibly control the day-by-day operations of any agency, which we actually have a procedure established by law today?

Our argument is not with the legislative control, because this committee, for example, has an annual review of agency operations. This is important, this is for purposes of review, not for purposes of providing more restrictive legislation on the operation of the various agencies, and your reports annually to this committee indicate this sort of an overseer look at the agency operation.

Mr. CHAPPELL. As a matter of philosophy, do you feel the agency has the powers to do virtually anything within the broad scope of its legislative authority unless it is specifically prohibited by doing so? Or, do you believe it has only that authority which is specifically spelled out in the legislation?

Dr. WOLKOMIR. It is generally spelled out by the legislation, but then restricted in its modus operandi in the guidelines which come from the Commission, which agency was created for that purpose.

Mr. CHAPPELL. But philosophically, do you believe we ought to establish an agency and their powers so that they, in a broad sense, have all powers not prohibited to them by legislation? Or, do you believe that they ought to take the specific authority and power given to them by the law and within that narrow field then define the rules and regulations which accompany that authority? Which is your view?

Dr. WOLKOMIR. I believe the latter is our philosophy of operations.

Mr. CHAPPELL. Thank you very much. Thank you, Mr. Chairman.

Mr. HENDERSON. Thank you, Dr. Wolkomir. You have been very responsive this morning.

The subcommittee will stand adjourned, to meet tomorrow morning, at which time we will hear from the chairman of the National Civil Service League and Secretary Elliot Richardson of the Department of Health, Education, and Welfare. I will direct the staff to check with the members, especially on the minority side, to see what the possibilities are of attendance in order that we can be sure we have the proper attendance for the witnesses tomorrow. Thank you very much.

I will ask unanimous consent that the statement of Secretary Kelley be entered into the record at this point this morning, even though we cancelled his appearance.

(The statement referred to follows:)

PREPARED STATEMENT OF ROGER T. KELLEY, ASSISTANT SECRETARY OF DEFENSE
(MANPOWER AND RESERVE AFFAIRS)

I appreciate the opportunity to present my views on H.R. 3807. I believe it is one of the most important legislative proposals on Federal personnel management to be considered by the Congress in recent years. If enacted, it would provide for significant improvements in the way we administer the job, pay, and work assignment affairs of our civilian top management.

From the point of view of Defense management, the principal advantages of H.R. 3807 are that it would simplify and provide specific criteria for establishing top-level executive positions; provide more flexible compensation arrangements so that executives can be paid according to their job responsibility and how they perform; and encourage flexibility in the assignment of executive level personnel.

I would like to discuss each of these points in more detail.

MANNER IN WHICH EXECUTIVE LEVEL POSITIONS ARE ESTABLISHED

The provisions of section 3134 would simplify the manner in which top-level positions are authorized by eliminating the present fragmented authorities for executive level positions and substituting a single authorization for each agency.

At present, top-level positions in DoD are authorized primarily under four separate categories—each with its own characteristics, controls, limitations, and history. Positions for Research and Development are authorized by Public Law 313 (10 USC 1581); other scientific, research and development, and engineering positions are authorized by 5 USC 5108 (c); positions outside Research and Development are also authorized by 5 USC 5108 (c); and lastly, some positions from the Government-wide pool administered by the Civil Service Commission (5 USC 5108(a)) are available to DoD and all other Federal agencies. In addition, a separate statutory authorization exists for supergrade positions in the National Security Agency.

In the place of this fragmented authority and the centralized position-by-position approval of the Civil Service Commission, section 3134 would substitute a single annual authorization based on a systematic review by the Office of Management and Budget and the Civil Service Commission of actual agency requirements.

This procedure would provide agency management with the opportunity to determine its need for executive level positions and to make its case in relation to overall budget and program.

We believe improved management of executive resources would result because:

The artificial distinctions in the four separate statutory categories would be eliminated, and management could base its allocation of resources on total needs and priorities rather than upon the availability of position authorizations in a particular category;

As changes in organizational structure become necessary to meet mission requirements, accompanying manpower adjustments could be made more promptly and efficiently because control of available executive resources would be in the hands of those responsible for the results;

The cumbersome requirement of position-by-position approval by the Civil Service Commission would be eliminated, thereby avoiding the loss of potential candidates due to processing delays; and

The annual authorization procedure would make it possible to identify and plan to meet executive training and development needs by making provision for those needs within the total agency authorization.

MORE FLEXIBLE COMPENSATION PRACTICES

Section 3139 of H.R. 3807 would authorize each agency to set rates of pay for executives anywhere in the range from the sixth rate of GS-15 to the rate for Level V of the executive schedules, subject to an over-all average pay control.

This procedure would be a step toward providing the flexibility needed in fixing executive compensation by making it possible to take performance into account as well as duties and responsibilities of a position in setting the pay of an individual executive. Section 3139 recognizes that individual performance and value to the agency should be significant factors in fixing an executive's salary, but these factors are not taken into major account under the present rigid job classification system.

Section 3139 also would have the advantage of eliminating the problems now present as a result of having to operate under two different compensation systems for executive level personnel. Some executives are paid in accordance with the rates fixed for GS-16, 17 and 18 in the Classification Act pay schedules; their pay is adjusted automatically with changes in the Classification Act schedule; and within-grade step increases for GS-16 and 17 are provided by law. Other personnel who occupy the so-called "PL-313" positions have their pay fixed administratively and their rates are not automatically adjusted as the Classification Act schedules change, nor do they have any specific within-grade steps. Many of the persons paid under Public Law 313 perform the same type of work as professionals hired under 5 USC 5108 (c), and their pay should be established under the same rules.

FLEXIBILITY IN ASSIGNMENT OF EXECUTIVE PERSONNEL

The current assignment procedure is tied to the job, and it is difficult to reassign an executive based upon his personal capabilities and the priority needs of the organization.

The flexibility provided in sections 3134 and 3139 for establishment of positions and adjusting pay, and the employment agreements provided in section 3137, would make it possible to assign and reassign executives in ways which will meet agency needs and priorities and take advantage of available executive skills.

At present the limitations of the job classification, qualification requirements and diverse pay systems restrict the movement of even the most capable executives and tend to hinder their development and fullest utilization. Under H.R. 3807 it would be possible to assign such persons to other positions based on their career qualifications without the restrictions of the present system which emphasizes job structure and narrow areas of specialization.

In addition, the current sharp distinction between "political" and "career" positions serves to deny the Government needed talent in top-level executive and policy-making posts. Often able men who have chosen to make the civil service their career are reluctant to resign from the competitive civil service to accept non-career positions labelled as "political."

By eliminating the job labels of "career" and "non-career," section 3134 would permit agencies to assign career personnel to any type of executive position while still retaining their career status; and it would also provide greater flexibility in assigning non-career executives to positions where their skills are most needed. The employment agreements provided for in section 3137 also increases the flexibility of executive assignments by establishing procedures through which executives can be offered alternate employment, or retired, when such action is indicated because the need for an executive's services either no longer exists or is greater in another assignment. Under existing laws, such reassignments are difficult to make because of the adverse action procedures that must be used and because alternate courses of action such as retirement or demotion to GS-15 with pay saving are not available to management.

CONCLUSION

In summary, many benefits would result from the establishment of a Federal Executive Service comprised of a mix of well-qualified career and non-career executive personnel operating under a flexible system of job classification, pay and assignment. The proposed Federal Executive Service will facilitate a vastly more efficient use of the fine career and non-career executives and will also attract competent new executives in the future.

(Whereupon, at 11:40 a.m., the subcommittee recessed, to reconvene Wednesday, April 26, 1972.)

THE FEDERAL EXECUTIVE SERVICE

WEDNESDAY, APRIL 26, 1972

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 9:40 a.m., in room B374-C, Rayburn House Office Building, Hon. David N. Henderson (chairman of the subcommittee), presiding.

Mr. HENDERSON. The subcommittee will come to order.

Today we are continuing hearings on a proposed Federal Executive Service, H.R. 3807 and H.R. 6772.

Yesterday we received the statement of Hon. Roger Kelley, Assistant Secretary of Defense for Manpower. Secretary Kelley indicated his support of the proposed legislation.

Spokesmen for employee groups, Dr. Wolkomir, president of the National Federation of Federal Employees and Mr. John McCart, executive director of the Government Employees' Council, AFL-CIO, strongly opposed the administration's proposal.

Today we are fortunate to have as our witnesses the chairman of the National Civil Service League, Mr. Bernard Gladieux, and the Secretary of the Department of Health, Education, and Welfare, Hon. Elliot L. Richardson.

Mr. Gladieux, it is my pleasure to welcome you before the subcommittee this morning, and you may proceed with your testimony.

STATEMENT OF BERNARD L. GLADIEUX, CHAIRMAN, NATIONAL CIVIL SERVICE LEAGUE, ACCOMPANIED BY JEAN J. COUTURIER, EXECUTIVE DIRECTOR

Mr. GLADIEUX. Mr. Chairman, I am happy to be here with my colleague, Jean J. Couturier, executive director of the league.

The National Civil Service League has enjoyed a long and useful history of relationships with committees of the Congress and I am pleased to appear once again to offer our counsel about measures designed to improve the public service.

More specifically, I am here in my capacity as chairman of the league to speak in favor of the principles and objectives embodied in S. 1682. We have followed the development of this proposed legislation from its inception in the Civil Service Commission and believe it represents a striking opportunity for modernizing and revitalizing executive manpower management of the Federal service.

The National Civil Service League is a nonprofit, nonpartisan civic organization representing the public interest in matters affecting the

welfare and capacity of the public service. Founded in 1881 and instrumental in establishing the first civil service system based on the merit principle in this country, the league for almost a century has sponsored measures designed to make the public service a trust for the competent, the loyal, and the dedicated.

Our board of directors is composed of distinguished business and professional leaders, many of whom at one time served as executives of high responsibility in Federal or other Government posts. These members look upon the league as a constructive vehicle whereby they maintain an active interest in Government and continue to participate as citizens in a sustained and nonpartisan effort directed to the improvement of public management. Incumbent public officials are excluded from membership on the board. The league is supported by voluntary contributions and grants from foundations, business organizations, governments, and citizens who are concerned with the quality of public administration in our society.

The league conducts its work as an impartial and public interest body through education, information, counseling and monitoring services, working this year not only in the Federal but in more than 150 State and local governments as well. We also sponsor the career service awards program in the Federal Government, which gives high public recognition to outstanding career officers.

From its inception the league has had as its central purpose the elimination of the pernicious spoils system and the adoption of civil service systems based on merit. We are proud of the achievements of our predecessors on this front during a long period of crusading reform. Even before the World War II period, however, the league began to shift its program away from the negative aspects of opposing patronage to pressing for more flexible concepts of modern personnel management.

This does not mean that our efforts have ceased in combating the deleterious consequences of political patronage systems. However, the mainstream of our effort is now directed to advancing the efficiency and quality of the public service through the more advanced managerial policies and techniques required to address the complex problems of present day government.

In fact, the league is now frequently in the paradoxical position of opposing measures and practices which, in the earlier part of the century, were accepted as sound reform doctrine. In many jurisdictions civil service requirements have become too rigid and reflect a negative orientation; independent commissions at State and local levels tend to remove management authority from chief executives; and desirable protection of the civil servant from political intrusion has been so cemented into personnel regulations that sometimes the Government employee tends to be immune from effective disciplinary action even when incompetent. The league therefore is convinced that we must overhaul antiquated systems while revitalizing the spirit of merit employment.

Mr. HENDERSON. May I break in at that point? I would like to ask a question of you as to the restrictions shown in your statement with regard to independent commissions at State and local levels. Do you intend for us to understand that this is not true at the Federal levels?

Mr. GLADIEUX. We have taken no position at the Federal level. We have taken a position at State and local levels is all.

Mr. HENDERSON. Good.

Mr. GLADIEUX. It is against this history and perspective that we warmly support the objectives and principles embodied in S. 1682 which would establish a new Federal Executive Service. The league does not claim wisdom with respect to every technical feature of the plan. But conceptually we find this proposed legislation wise, sophisticated in its approach, and discriminating in its application. The President and the Civil Service Commission deserve great credit for having initiated the studies which led to the original formulation of this plan in 1971.

The league welcomed an invitation from Chairman Hampton of the Commission to comment on the original draft. While endorsing the concept and approach of the basic proposal, the league offered a number of exceptions and reservations concerning elements of the original plan. In particular, we disagreed with the earlier provision whereby, following completion of the initial period of appointment to the FES, subsequent renewal agreements would be limited to 1 year at a time. We felt that this was an excessive constraint in that it would require a career executive to be subjected to a qualifications test every year thereafter.

We thus recommended a 3-year or longer term for extensions. We also urged greater latitude in interagency transfers, better Government-wide manpower planning, and a wider range of choices on the part of a career executive upon nonrenewal of his employment agreement. The league is gratified that the Commission and the President accepted these as well as other amendments and improvements now reflected in the present legislation.

The FES program before the Congress was formulated to overcome a number of impediments in the present situation concerning the governance of Federal executive manpower. Under the current civil service constraints, department and agency heads are severely handicapped by their inability to deploy executive manpower resources in ways which put the right man or woman into the right job, at the right time, for the right reasons. They are frustrated by the redtape which binds them in filling key positions and the resultant timelag in the appointment process can be particularly serious for fast-moving programs. Furthermore, top agency managers are impeded and understandably irritated by the proliferation of disparate systems and authorities governing executive personnel, each of which operates under a different set of ground rules.

The crucial advance represented by S. 1682 is that it provides the flexibility which insures that executives in the Federal Government are responsive to public policy as enunciated by the President and the Congress. Civil Service reform has for years emphasized the objective executive discretion in the choice of key subordinates as the indispensable principle of modern manpower management.

This same doctrine was strongly urged in a report of the Committee for Economic Development in 1964. This committee, as you know, is composed of some 200 leading businessmen and educators across the country and is distinguished by its perceptive, forward-looking and

objective reports on governmental and economic affairs. In the 1964 CED report titled "Improving Executive Management in the Federal Government," this committee recommended that the principle of flexibility be established for all positions in the Federal service about GS-15 or its equivalent, with no incumbent having any right of tenure in a specific post.

The CED emphasized that each agency head needs full authority to shift, bring in or move out manpower at these levels if he is to be held accountable for results. It further urged that people actually displaced from the upper levels of an agency be returned to a Government-wide pool of eligibles.

The proposal before you for a Federal Executive Service explicitly adheres to these basic principles. Parenthetically, it may be mentioned that I served as a member of the CED Committee issuing this report and fully subscribed to its recommendations.

In the political and economic crises of today, our democratic Federal Government more than ever requires executive personnel who are of the highest intellectual order, professional capacity, and moral stamina. In return for their talents and devotion to duty, the personnel system for their governance must give the entire corps of public servants confidence that merit will not go unrewarded and assurance that they will be protected from the injustices of both bureaucratic and political favoritism.

Furthermore, high-performance Government employees eager to achieve their full potential in contributing to the Nation's progress must be given the assurance that they can rise to the top and exercise high responsibility without being subject to captious dismissal. In brief, while the public interest must always be paramount and while no public servant can expect to "own" a particular post in perpetuity, there must be reasonable security for those men and women of ability who are willing to accept the inherent risk of public service at executive levels.

Our league would be derelict in its duty and unfaithful to its historic mission if it did not carefully evaluate S. 1682 to satisfy itself that the merit concept was fully protected and that career executives were to be treated equitably regardless of the political context.

We have satisfied ourselves that the legislation before you achieves a perceptive and realistic balance in accommodating the parallel requisites of executive discretion in mobilizing staff and of fair treatment of the individual officer in term of merit and tenure. We commend these provisions of the bill in this regard:

1. Not less than 75 percent of the FES must be composed of career executives. Unlike the uncontrollable situation today in which there is always the possibility of excessive political appointments, the now prevailing ratio of 3 to 1 in favor of civil service careerists would be written into the law. This is a significant safeguard on the side of the merit standard.

2. Career executives selected by the agency head must be approved by a qualifications board of eminent and impartial citizens acting for the Civil Service Commission. This is also an important guarantee of the application of merit procedures.

3. A much wider universe of opportunity is opened up to the career civil servant by eliminating the distinction between career and non-

career positions. Under the FES proposal, a civil service executive could become a bureau chief, assistant secretary, or even an under secretary without jeopardizing his career status and security.

4. During the period of his employment contract, the FES career executive can transfer, retire, or resign, but can only be removed for cause and is exempt from reduction-in-force procedures.

5. Upon the expiration of a 3-year agreement, the career executive can be offered a 3-year renewal. If such an offer is not forthcoming then he must be given several options, including a GS-15 position in the competitive service, with his compensation level retained for 2 years, or other attractive alternatives, including retirement or severance pay.

It seems to me that these provisions for protecting the career executive who is not tendered a renewal agreement are eminently fair and generous. Furthermore, there is no coercion involved in forcing present-day, supergrade officials to accept appointment in the FES system. Thus the proposed legislation gives to present civil service executives the choice of retaining their present posts and status rather than accepting a 3-year employment contract.

Likewise, the legislation exempts holders of present supergrade positions or their equivalent from the requirement for review of their eligibility by a qualifications board. Again, these provisions are fair and equitable, and should remove any anxiety by permitting the civil service executive to make his own decision concerning his future career, based on a range of attractive options.

Notwithstanding these assurances, there is fear on the part of some members of the Washington public administration community that this or succeeding administrations will take advantage of the provision for 3-year term appointments to terminate the FES status of large numbers of career civil servants, replacing them without outside people who, though certified by a qualifications board, still have never worked in Government. First of all, as already indicated, those who are so terminated are protected by retreat rights to grade 15, by salary retention for 2 years, and by other safeguards. But I do not think such wholesale termination is a realistic expectation on the part of any administration, no matter how politically motivated. Every administration is inexorably dependent on the skill and public interest orientation of the career executive corps. It would be an act of administrative folly and ineptitude to destroy or impair this indispensable base of public administration expertise, either by excessive termination or by relegating the career staff to the lower range of the FES.

I make this assertion in spite of a deep and mounting concern on the part of the league over the renewed tendency in recent years, and particularly at the beginning of new administrations, to impose political tests for the upper levels of the Federal civil service. This development is a phenomenon by no means unique to the present administration.

Political tests for top career appointments have been progressively expanding for some time. But it is my observation that the requirement for evidence of party regularity has been greatly broadened and made much more absolute by the present administration.

It is common knowledge in the Federal community that a rigid political clearance process is now operated by White House staff,

extending not only to Presidential appointees, for whom such requirements of political loyalty are wholly acceptable, but applying as well to supergrade appointees, and at times even reaching down into lower levels of the civil service.

The league gravely deplores the resurgence of such partisan pressures on the career system. These developments also distress many others concerned with good public management, including many officials in the administration itself. The claim that such clearance can be justified by the need to eliminate "nonresponsivity" in the civil service is, I believe, spurious. There are better and more legitimate ways to assure faithful and competent adherence to Presidential objectives.

At this point, I wish to make a sharp distinction between (1) giving Cabinet-level officers clear discretion within merit standards under the FES system to appoint career men and women who are compatible with Presidential objectives, and (2) requiring tangible evidence of political orthodoxy and suitability as interpreted by White House staff aides. Such political tests are anachronistic for these times, are destructive of merit standards professed by both parties, and are devastating to civil service morale.

One of the reasons for supporting the FES plan is our hope that it will help mute the influence of political factors in the handling of supergrade and equivalent appointments by giving policy executives reasonable flexibility in mobilizing staff; at the same time assuring that accumulated deadwood and mediocrity as well as those who are obstructive of Presidential policy, can be eliminated from the Federal service through the 3-year termination and reappointment process.

No personnel system, no matter how scrupulously drawn, is immune to political manipulation. I am willing to accept the good faith of this administration and take the proposed FES legislation as an earnest of its desire to assure a top quality career service with built-in protections for reasonable tenure. At the same time, I would urge the administration to relax its tacit, if sometimes indiscriminate, and occasionally heavy handed, assault on the career civil service.

In sum, then we believe the FES plan protects the integrity of the Federal service for the 7,000 careerists who are eligible for FES appointment. Furthermore, this legislation will simplify the maze of rigid and intricate personnel systems in the Government today; will give incentives to attract younger people for entering the Federal service by loosening up top job opportunities; and, finally, it will place escalation of job classifications and salaries under more realistic executive as well as congressional control.

Therefore, the National Civil Service League supports S. 1682 because we believe this statesmanlike legislation can help achieve the great and vital objectives of enhancing the capacity of the Federal Government in forwarding the welfare and security of our Nation.

That ends my statement, Mr. Chairman, and Mr. Couturier and I will be happy to entertain any questions.

Mr. HENDERSON. Mr. Gladieux, I want to spend a little time on your points made on pages 9 and 10. In your first full paragraph on page 9, as I understand the thrust of this, you point out the tendency in recent years of the past administrations as well as this administration, particularly at the beginning of new administrations to impose

political tests for the upper levels of the Federal civil service. Then you go on with regard to the present administration. Is it your understanding that the political tests for the upper levels of the Federal civil service are still being applied by the present administration after some 3 years in office?

Mr. GLADIEUX. Yes; this is still my impression and my understanding.

Mr. HENDERSON. I would like you to expand a moment on your last sentence in that paragraph saying:

It is common knowledge in the Federal community that a rigid political clearance process is now operated by White House staff, extending not only to Presidential appointees, for whom such requirements of political loyalty are wholly acceptable, but applying as well to supergrade appointees and at times even reaching down into lower levels of the civil service.

Taking the supergrade appointments at the present time, it is your understanding they are required to have White House clearance before they are appointed?

Mr. GLADIEUX. Yes; this is my understanding.

I should make it clear that this is my observation and I am expressing a judgment here. I have not made a scientific or detailed survey of this subject of clearance.

We do not have statistics. It happens that I had some association either as observer or participant in every administration since Franklin Roosevelt and I am basing my comment here on that experience and observation. It is my observation that this administration has gone farther in requiring political clearance than any of the others.

I am not absolving those others. I am aware of the process that was initiated at the White House for assuring what they consider to be political orthodoxy, but I think the present administration is more rigid, more scrupulous in its clearance requirements and it goes deeper into the civil service ranks than other administrations.

Mr. HENDERSON. We are not just talking about schedule C appointments here.

Mr. GLADIEUX. No; I am talking about classified personnel.

Mr. HENDERSON. The 16's, 17's, and 18's?

Mr. GLADIEUX. Yes.

Mr. HENDERSON. On what do you base your hope as expressed on page 10 that the Federal executive service would help to meet the influence of political factors?

Mr. GLADIEUX. I would hope this administration would accept the FES as a replacement for its political clearance practice with respect to civil service. I am assuming now there will always be political requirements for Presidential appointees and it would be my hope, and I would say expectation, that the administration would rely on the FES to assure that there was a system whereby this somewhat uncertain quality of responsibility would be assured on the part of top career appointees in the Federal service.

Mr. HENDERSON. How could we be convinced or how, if we had the same hope that you do, could we convince our colleagues that we could expect this Federal executive service to bring about less political factors and influence in the selection and appointment of the top executives?

I think you have hit the very crux of the problem that we have facing us. If we agree that this is a better system, I think this is going to be the task if we attempt to legislate this year. I think you are the first witness who has laid it right on the line.

I am very appreciative of your views. I think that I would say that I do not have much hope but rather would take the position that if we enact any system with the full knowledge that the present administration is making greater use of the political clearance process for the supergrade positions, we are approving that political system and expect it to continue even in the new Federal executive service, which is the great apprehension I find among my colleagues in the House.

Mr. GLADIEUX. I know there is this apprehension and in many quarters. I of course cannot give you that assurance. I do not know who can in the administration. People we have worked with in the Civil Service Commission otherwise have accepted their assurance in good faith.

Mr. HENDERSON. You particularly touched on the problem of selection-in. We have had others that have talked about selection-out and it seems to me that what has already been pointed out is the great weakness of the proposal before us. That is, if you have a politically motivated administration, certainly if they are politically motivated on the selection-in of this system, you can expect them to be motivated on the selection-out side.

Many witnesses and many of us think the provisions of the bill on the selection-out are not strong enough.

Let me go back at this point at least by touching on your specific statement on page 9 again that "It is common knowledge in the Federal community that a rigid political clearance process is now operated by White House staff, extending not only to presidential appointees, for whom such requirements of political loyalty are wholly acceptable, but applying as well to supergrade appointees and at times even reaching down into lower levels of the civil service," and say to you that this is my understanding, by way of the common knowledge, that this is occurring.

It was brought more forcefully to my attention since Chairman Hampton and Commissioner Andolsek were before us. On this point it seems to me that, at an appropriate time, they should be recalled in connection with this legislation and this matter explored more fully with them.

Mr. GLADIEUX. May I respond, Mr. Chairman?

Mr. HENDERSON. Yes; I would like you to.

Mr. GLADIEUX. I would like to say first of all what I emphasized in my paper here, that no civil service system that you can possibly devise is wholly immune from political manipulation. There are ways of manipulating almost any system or getting around any regulation. So I would not want this FES bill to be considered as possibly vulnerable on that front merely because of its mechanics.

The second thing I would like to say is we have emphasized here the need for executive flexibility in the appointment and deployment of top subordinates.

I am speaking here for a board of directors, made up largely of executive personnel, persons who have been Cabinet officials in the Fed-

eral Government or officials in Government and most of us have faced the problem of taking over a new entity, business, or government, and reorganizing it and appointing new personnel and being responsible for results.

We know how imperative it is that the chief executive have flexibility in the selection of the people who are going to be his chief counsel and aides.

You have to expect to pay some price for that kind of executive flexibility, some price in terms of employee tenure.

One of the best things I can say for the FES proposal here is that it seems to me that the architects of this bill have achieved a very neat balance of flexibility on the one hand and giving reasonable tenure without cementing in, without entrenching personnel in top posts.

Mr. HENDERSON. Let me pursue this just a bit further if other members will bear with me. Congress has recognized the need of the administrations to have their so-called political people appointed. This is the purpose of schedule C.

Mr. GLADIEUX. Yes; that is right.

Mr. HENDERSON. There are ways of getting rid of incompetents. I think it is just common knowledge in the Federal community that our top supergrade and our management people are generally quite expert and competent.

What is to be gained, if at the time we are granting the greater flexibility to move these top management from one job to another, to put the right man in the right job—and I think a pretty good case has been made for that—what is the necessity to have the political clearance and to have these appointees be of a necessary political philosophy?

It does not seem to me that it is necessary at the present time or would be necessary in the Federal Executive Service.

Mr. GLADIEUX. That is right.

Mr. HENDERSON. The Congress is going to have to put its foot on this intrusion into, what we all like to refer to as, the merit system. I think there is a lot more to merit than qualifications. The case is not too well made, it seems to me, that the new system is going to tighten on this point at all. It seems to me that the administration is really serious about getting greater flexibility, the ability to move the competent people about in the Federal service.

We, in the Congress, are entitled to some assurance that greater attention will be paid to merit and less attention to political clearance.

Mr. GLADIEUX. I agree with you wholeheartedly. Of course it is intrusion of political tests in the career service which is indefensible under any system.

Mr. HENDERSON. We are again adopting, if we adopt the proposals here, the 75:25 percent ratio. If 25 percent is not enough for the political appointments, I would rather make it 35 or 50 percent than to have the administrations, one after another, using the political clearance for whatever, we say in law, is going to be a merit system. I am glad to yield to Mr. Mills.

Mr. MILLS. Thank you, Mr. Chairman. I have been quite intrigued, Mr. Gladieux, by your statement. Just so we can clarify this page nine section, what is a political test? I am not sure I know.

Mr. GLADIEUX. There can be many political tests. I will ask Mr. Couturier to add his definition as well.

One would be actual membership in a particular party. Another would be evidence that the person, the appointee or the person to be promoted or otherwise, enjoys the confidence and support of his chairman of the executive committee, the political community chairman back home, and/or Senator or Congressman.

It may also take evidence of tangible support of the political platform of his particular party; many different things but certainly those would be among them.

Mr. COUTURIER. Those would be the key ones.

Mr. MILLS. Can you name a person who failed the political test?

Mr. GLADIEUX. Personally do I know of cases?

Mr. MILLS. Yes. Would you furnish this to me?

Mr. GLADIEUX. No, I would not; not individual names.

Mr. MILLS. Would you think that there are officials at the top level now that have passed political tests from previous administrations?

Mr. GLADIEUX. I would think so. I have not thought of it in those terms but I would think there are. Yes; I would take it for granted.

Mr. MILLS. Do you believe that we now have deadwood, nonproductive top officials?

Mr. GLADIEUX. We do have in the Federal service, yes; but I would not want to join any blanket indictment of the Federal career service as deadwood or mediocre or otherwise. There are flagrant examples of deadwood and unsuitable people in the Federal service, and I would even go so far as to say there are examples of them in the top career service. But they are isolated; they are in the minority and I would hope frankly that the FES would be the device for eliminating such from the ranks of the Federal career service.

Mr. MILLS. Do you think the action that was taken by this committee and the Congress to form the Postal Service Corporation is a giant step forward in removing political tests from that agency?

Mr. GLADIEUX. I am not sure I am qualified or would want to hazard an opinion at this stage on that. I am not that familiar with it. I know what was done but as to a judgment as to the consequences, I am not sure.

Mr. COUTURIER. I have just sort of a gut reaction, Mr. Congressman. I think it is a step. I think that the record is not in yet. I think the attempt particularly in terms of postmasters is an important attempt. I am not sure how it is going to work as to rural letter carriers and things of this sort. I think that the advent of collective bargaining in its broadest sense in the Postal Service is going to make a radical difference in the whole personnel structure of that agency and I think the answer will be in 4 or 5 years from now.

Based on that and based on the fact that Congress still holds the purse strings on the deficits of the Postal Corporation—and that is a very important issue.

Mr. MILLS. Would you agree the Post Office Department was one of the most politically oriented departments in government?

Mr. GLADIEUX. We said so many times, yes.

Mr. MILLS. Would you accept my personal experience as a person who thinks this chief political pull was in getting rural routes and

postmasters are extremely dissatisfied to find they have no political pull because there is no political pull in the Post Office Department now, that I know of.

So I think from that viewpoint I would have to say to you that it is working without political implications.

On another subject, do you favor the contract principle as found in H.R. 3807?

Mr. GLADIEUX. Yes; I would feel it is quite satisfactory at that level to engage in a normal contractual relationship for your supergrade personnel.

Mr. MILLS. If you were an executive taking over the management of a corporation and you found that your top officials all had 3-year contracts and your tenure of 4 years, would you feel that you were being hamstrung?

Mr. GLADIEUX. Yes; I think I would feel under some constraint. I would expect that that system would not be absolutely rigid and there would be arrangements whereby I could acquire flexibility and elbow room to make certain changes and new appointments which have been under contractual arrangements.

Mr. MILLS. What arrangements?

Mr. GLADIEUX. Transfers, including people to move out or retire early or something of the kind. I admit the contractual arrangement does tend to rigidify the personnel relationship but I would still claim that the contractual arrangement was quite suitable on the understanding that these people are going to be cleared by a qualifications board and therefore going to be very well screened before they are admitted to the FES arrangement.

Mr. COUTURIER. Two further points on that. First of all, you already have the 25-percent flexibility provision which is fairly substantial.

It is probably unrealistic to think any given administration or business is going to find itself cutting off everybody with 3-year contracts. There is going to be overlap.

Lastly, to reiterate, the legislation provides for mechanisms whereby with the person not satisfactory you cannot fire him unless you have cause and go through the adverse action procedures, but you are not required to retain him in that particular job.

Mr. GLADIEUX. You can move him out, give him something else to do and you can in terms of gross incompetence, file charges on him and get rid of him contract or otherwise.

Mr. MILLS. Do you think the bill could be strengthened or weakened by either the elimination of the 3-year contract or a change in tenure?

Mr. GLADIEUX. Well, I am not sure. As I said earlier in my testimony, we do not come here pretending to be experts in all the technical detail of this bill. The concern of the National Civil Service League historically has been in terms of the observance of the basic merit principle, and I think I would have some hesitancy in commenting on specific technical details, number of years and things of that kind.

Jean, you may have something to say.

Mr. COUTURIER. If you recall, the original proposal called for a 5-year contract, renewable for 1 year. The league took very strong exception to that for the kind of reasons articulated here, and we proposed much longer contractual arrangements.

We also proposed that if a person reaches this high executive level, the probability is that he is at least in midcareer and likely to be in his late forties.

We originally proposed if they are going to have this 5-year and 1-year renewal, that the person be given tenure for the rest of his normal career at that salary rate even though he may not be fulfilling that job. In other words you put him back to grade 15 but maintain his level of pay and status.

I think what came out of it was a compromise of several points of view and the 3-year contract came out. I thought that was a fair compromise from our original position.

Mr. MILLS. Thank you. Thank you, Mr. Chairman.

Mr. HENDERSON. Mr. Gross?

Mr. GROSS. Mr. Gladieux, first of all, your organization is not supported by dues-paying members, is that correct?

Mr. GLADIEUX. We do have members that are dues paying. I would rather Mr. Couturier answer this.

Mr. GROSS. I do not care to go into it at length. But your statement indicates that you are supported by foundations and voluntary contributions. Is that correct?

Mr. GLADIEUX. Yes.

Mr. GROSS. You do not say anything about dues-paying members in your statement.

Mr. COUTURIER. We call a person who gives us a contribution of about \$15 or \$25 a member. If a corporation gives us a contribution of \$200 or a wealthy individual, we call him a contributor by and large because he does not want to be characterized as a member of an organization.

Most important is that members of the league are not in the traditional sense members of an association. They do not have voting rights.

Mr. GROSS. Mr. Gladieux, you seem to be telling this committee this morning that the civil service system has gone to hell in a handbasket. When did that happen?

Mr. GLADIEUX. No; I did not intend to leave that impression. I think it is in continuous need of improvement.

Mr. GROSS. No one disputes that but when did it get so bad as you seem to want to describe it here?

Mr. GLADIEUX. I would say over the years it has become progressively in need of fairly radical change, particularly—

Mr. GROSS. Over what period of years? You seem to want to lay it at the doorstep of the present administration.

Mr. GLADIEUX. No; I would distinctly not want to leave that impression. I would say beginning after World War II there was an era in the civil service system of much greater volume of governmental activity and I would say it—I hate to use the word “deteriorated” but perhaps it is appropriate, the civil service system has been deteriorating in that sense after World War II.

Mr. GROSS. You would not want to substitute the present system for any form of buddyism or cronyism, would you?

Mr. GLADIEUX. Definitely not.

Mr. GROSS. Mr. Mills raised the question a few minutes ago as to whether you have taken a serious look at what has happened in the

Postal Service where postmasters have been appointed by selection boards.

Mr. GLADIEUX. I cannot quote from that experience directly.

Mr. GROSS. Would this not be a pretty good place for you to start and see what has happened? Are there better postmasters as a result of this procedure than we had under the old system of recommendations by Members of Congress?

Mr. GLADIEUX. This league periodically over the years inveighed against the political appointment of postmasters. We are on record about it, and we strongly recommended changes in this statute which would permit some kind of merit appointment of postmasters—first, second and third class—and all the rest. We were delighted when the Congress finally removed postmaster appointments from the political domain.

Mr. GROSS. You were delighted but you do not know what happened, is that correct? Have you had some time to look it over in the light of this legislation; to look at what transpired?

Mr. GLADIEUX. We do not pretend to keep tabs on—

Mr. GROSS. How did you arrive at your support of this bill?

Mr. GLADIEUX. On careful analysis of it and a great deal of consultation.

Mr. GROSS. On what you would like to see happen or on the basis of experience?

Mr. GLADIEUX. On the basis of experience as well. We are all involved in government—

Mr. GROSS. But where is the experience from which you based this support of this bill as you are setting forth to do?

Mr. GLADIEUX. Most of us have been in high positions, in executive positions in government for years. We keep in touch with our associates, we have professional relationships which keep us in touch with the Government community. We just know what is going on.

Mr. GROSS. I happen to know of a regional director in the Post Office Department who was appointed under the so-called nonpolitical system before the reduction from 15 regional offices to five, who I do not think had ever been back of a counter in the post office, whose only experience was the ordinary citizen's experience of buying some stamps, mailing a letter, or filing a complaint.

I wonder how he got there under the so-called nonpolitical system in the Post Office Department? How do you suppose he got that job as the director of an entire region?

Mr. GLADIEUX. I cannot tell you.

Mr. GROSS. I would think this would be of interest to those who are promoting a bill of this nature.

Do you consider the present emphasis throughout the Government to hire minority people and promote them in full accord with the merit system of this Government?

Mr. COUTURIER. Yes; we do.

Mr. GROSS. That is all, Mr. Chairman.

Mr. HENDERSON. Mr. Chappell?

Mr. CHAPPELL. Mr. Chairman, I came in late and therefore I missed a good deal that has been said and I do not want to be repetitious. I would like to ask this of the witness, do you feel that scientists, engi-

neers, and other specialized professional personnel should be included in the proposed FES?

Mr. GLADIEUX. Yes; I would say they should be included. I feel they should not be excluded as there have been suggestions. I would include them along with the rest.

If you begin excluding one group, you will have to exclude other groups. If engineers and scientists are excluded, why not political scientists and economists?

At those senior career service levels they all partake of the policy process regardless of whether they are scientists or engineers or social scientists and I think they must all therefore be subject to that kind of a review at the end of their 3-year contractual period to determine if they are suitable should they be continued for the further period.

Mr. CHAPPELL. If I understand your testimony then, you favor this bill just as it is written?

Mr. GLADIEUX. In principle; yes. I hesitate to hedge. I apologize for hedging but we just are not in a position to certify every last little technical detail of it. We have not been that close to it and we would not say that it could not be improved with some technical amendment. We are strongly in favor——

Mr. CHAPPELL. But you have none of those to offer here?

Mr. GLADIEUX. No.

Mr. CHAPPELL. You have no criticism that you think needs technical observation?

Mr. GLADIEUX. I think that is fair to say we do not have technical amendments to offer on our own.

Mr. CHAPPELL. I notice on page 10 of your statement you say, "One of the reasons for supporting the FES plan is our hope that it will help mute the influence of political factors in the handling of super-grade and equivalent appointments by giving policy executives reasonable flexibility in mobilizing staff." To what do you allude there?

Mr. GLADIEUX. An administration when it comes into office following an election and is expected to take over the Government of the country has quite properly reason to expect that it will be able to exercise some discretion in determining the people who will be its principal advisers in reshaping the policies of that particular administration.

Mr. CHAPPELL. In effect it is an absolute necessity if philosophy is to play a part in our system.

Mr. GLADIEUX. It is an indispensable part of good management. I think we would say that the present system——

Mr. CHAPPELL. But you say, "help mute the influence of political factors."

Mr. GLADIEUX. If we accept the present system, that the present system is quite inflexible and rigid, that a Cabinet officer coming in under present circumstances does not have the flexibility that he requires to make those changes in the deployment of his top personnel——

Mr. CHAPPELL. You say this will give him more?

Mr. GLADIEUX. This will give more flexibility. The issues there must always be a balancing of managerial flexibility plus reasonable security and tenure for the employee.

Mr. CHAPPELL. You relate this totally to the policy level people?

Mr. GLADIEUX. Policy level is what we are talking about, only.

Mr. CHAPPELL. I notice you go ahead and say, "at the same time assuring that accumulated deadwood and mediocrity, as well as those who are obstructive of presidential policy, can be eliminated from the Federal service through the 3-year termination and reappointment process." Do you think this bill is adequate to do that?

Mr. GLADIEUX. It is adequate to do that on a 3-year cycle; yes.

Mr. CHAPPELL. You said it is adequate to do that on a 3-year cycle. I am asking you whether it is adequate to get rid of the deadwood. Are you saying that the 3-year cycle of itself gets rid of it?

Mr. GLADIEUX. For a person to be appointed to a new 3-year contract there has to be some positive action on the part of the appointing authority. If he decides that this person has bottomed out or is no longer making a contribution worthy of a grade 18 he can simply decline to give the officer a 3-year renewal.

Then the officer who is being removed has those several options of retreating to a grade 15 or retiring or so on. I think as I have said in the statement there is reasonable security for a career officer under those circumstances. I think what you are driving at, Congressman Chappell, is the fact that only at the end of a 3-year contractual period can this review process take place. Is that sufficient?

Mr. CHAPPELL. What I am really asking is whether this is sufficient to really give an opportunity to keep the people who really get the job done and get rid of those who do not, that just barely get by meeting their contractual obligations, whereas if you were not tied to a contractual obligation, the point that one could be removed from the program simply whether he is not performing the standard of service which his administrator feels he ought to on that day, you would have good reason to remove him and get better people in. I wonder whether you think this is the best answer to it.

Mr. GLADIEUX. It is the best answer in this sense that at least every 3 years there is a requirement there be a reevaluation of the worthiness of this particular career executive. That does not take place now. It goes on in perpetuity. There is no change either from the present system to the FES system in terms of getting rid of deadwood or mediocrity through the formal charge system. In other words, right today—

Mr. CHAPPELL. I do not believe in this formal charge system too strongly.

Mr. GLADIEUX. The only way today you can get rid of someone, who is just a timeserver, is by a formal charge system, to write a letter in which those charges are indicated. That will still prevail under the FES system.

Mr. HENDERSON. I ask you if it would be possible to remain with us about an hour. I do not know what your schedule would be.

Mr. GLADIEUX. As long as I get out by noon.

Mr. HENDERSON. Secretary Richardson is here and I am informed it would be necessary to conclude with him at 11:30 so if you can stay until that time I have one or two more questions. Other members might have questions, too, and I appreciate you accommodating us, sir.

I thank the gentleman from Florida.

Mr. Secretary, it is my pleasure to welcome you. I believe this is the first time you have appeared before our subcommittee. I am sure that you know the other members of this subcommittee. You might want to introduce your staff and proceed with your statement.

STATEMENT OF ELLIOT L. RICHARDSON, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY RODNEY H. BRADY, ASSISTANT SECRETARY FOR ADMINISTRATION AND MANAGEMENT; AND STUART N. CLARKE, DEPUTY ASSISTANT SECRETARY, PERSONNEL AND TRAINING

Secretary RICHARDSON. It is a pleasure to appear here today. I am accompanied this morning by Assistant Secretary for Administration and Management of the Department of Health, Education, and Welfare, Dr. Rodney H. Brady, and the Deputy Assistant Secretary for Personnel, Mr. Stuart Clarke.

We all appreciate very much this opportunity to appear in support of H.R. 3808. We are grateful to the National Civil Service League for yielding to us in order to present this testimony.

Mr. HENDERSON. Mr. Secretary, let me assure you that we will dismiss you at 11:30 according to your request.

Secretary RICHARDSON. Thank you very much. It is, as you said, the first occasion on which I have had the opportunity to appear before this subcommittee as Secretary of HEW, although I remember vividly appearing before its predecessor subcommittee when I was Assistant Secretary for Legislation.

It seems to me that on that occasion also I was dealing more directly then with the subject of supergrades and salaries. I particularly remember Mr. Gross' presence there on that occasion. I am not sure that I convinced him.

Mr. HENDERSON. We are glad to have you again, sir.

Secretary RICHARDSON. I would like to address myself this morning particularly to the perspective of the Department of HEW on the legislation before you and I am assuming, I am sure correctly, that the subcommittee is fully familiar with the terms of the legislation itself.

I very much appreciate having this opportunity to appear in favor of H.R. 3807, which would amend title V of the United States Code so as to establish the Federal Executive Service. Speaking as I do from the vantage point of Secretary of one of the largest executive departments, I believe this is a vitally needed measure for the effective management of Federal departments and agencies in the years of great challenge which lie ahead.

The bill before you would affect some 7,000 Federal executives in the supergrade levels, GS 16 to 18. In HEW this represents close to 600 of the more than 106,000 employees throughout the Department and its agencies. But the importance of the bill before you far outweighs the simple arithmetic proportion of employees affected. Clearly, the 600 supergrade employees of HEW are in many ways its most critical manpower resource since these are its institute directors, bureau chiefs and other key managerial, technical, and administrative personnel. While the essential policy direction of the Department must come from the political appointees, including the Secretary, Under Secretary, and

Assistant Secretaries, there is no question but that the effectuation of those policies and the leadership of the great bulk of HEW's employees are, and must be, the primary responsibility of the supergrade personnel. These are the "key men" and the "key women" of the Federal executive branch.

Last December, following my first year in office as Secretary, I undertook for all HEW employees to express my sense of our Department's mission and role as well as what I saw based on my experience, as the chief obstacles to our performing with responsibility and responsiveness.

I will not attempt to summarize the entire document here, but I believe it is important enough, in the context of my testimony on this bill, to ask that my address be inserted in the record following my statement.

Mr. HENDERSON. Without objection it is so ordered.

Secretary RICHARDSON. Thank you, Mr. Chairman. The essence of my message was that HEW's mission includes both a direct role, such as in the social security system, and an indirect role, in which we support the teachers, the healers, the social workers and the rehabilitation counsellors who are not employed by HEW but by State and local governments and by private agencies.

The success with which HEW carries out its indirect supporting role depends in turn on our effectiveness in backing up those who teach and heal and serve. However, a number of obstacles, in many cases created by the laws under which we operate, get in our own way as well as in the way of the service providers.

Among these obstacles is a needless multiplication of categorical grant-in-aid activities. Another is the multilayered network of specialized and autonomous services combined with constricting and frequently conflicting Federal guidelines. A third is a series of uncoordinated, often rigid, Federal Civil Service requirements which impede the ability of the Department's managers to deploy its key men and women most effectively to achieve the Department's mission.

H.R. 3807 is designed to eliminate this last set of obstacles, which along with the other obstacles I have mentioned, diverts our attention to the tending of governmental machinery instead of where it ought to be: outward, toward people and their problems in their neighborhoods and communities, and to the effectiveness of what we do in seeking to give them help.

You have already heard authoritative testimony from Chairman Hampton of the Civil Service Commission concerning the impact of the proposed Federal Executive Service on the Federal structure. I would like to be as specific as possible about the nature of the obstacles presented to HEW's managers by the whole patchwork of nonsystems for supergrade employees and the ways in which the Federal Executive Service would eliminate those obstacles.

THE EXISTING HEW PATCHWORK QUILT OF SUPERGRADE CATEGORIES

Our Department is presently authorized some 596 supergrade spaces which fall within four distinct categories, each with different restric-

tions on what types of persons and classification of job they are qualified to hold:

Under sec. 210(g), Public Health Service Act-----	150
Under sec. 3104(a) (3), title V, U.S.C-----	13
"Nonquota" GS 16-18-----	230
"Quota" GS 16-18-----	203
Total supergrades-----	596

Under present civil service law and regulations, the Secretary of HEW may assign throughout the Department, in accordance with departmental priorities, only 203 so-called quota supergrades, which represents approximately one-third of its key personnel. The other three categories, representing 393 or almost two-thirds of the Department's key personnel, may be assigned only within specific categories of position regardless of the priorities set by the Congress or the President.

HOW THREE OF THE FOUR SUPERGRADE CATEGORIES HINDER HEW MANAGEMENT

First, section 210(g) of the Public Health Service Act provides 150 positions for specifically qualified scientific, professional, and administrative personnel to carry out the research and development activities of HEW's health agencies. Ninety-eight of these positions can be used only in the National Institutes of Health and cannot be reassigned, even if there is a higher priority need for them in other health service areas, such as the Indian Health Service activities under the Health Services and Mental Health Services Administration or the food inspection activities of the Food and Drug Administration.

The remaining 52 section 210(g)'s cannot be reassigned, even if there is a higher priority need for them in other than health programs—for example, in the proposed Welfare Reform Administration or in the Administration on Aging under the Social and Rehabilitation Service.

Second, section 310(a) (3), title V, United States Code authorizes 13 positions for specifically qualified scientific and professional personnel to carry out the research and development functions of HEW. While this authority applies Department-wide, unlike the section 210(g) authority, it is still restricted to a specific type of function and is therefore not available for other line or staff persons, beyond research and development, no matter how much greater the priorities for additional personnel in those areas may be at any given time as compared with research and development.

Third, similarly, the "nonquota" GS 16-18 authority covers professional positions in the physical and natural sciences, medicine and professional engineering, all of which are primarily concerned with research and development. Just as in the case of section 3104(a) (3) positions, these are department-wide but limited to a relatively narrow job classification. Again, the Department needs for additional scientists, engineers, and medical officers may be outweighed by those needs for managers of all types, educators, and specialists in other nonscientific, nonmedical fields. But this very substantial pool of supergrades would not be available for those higher priority needs.

Fourth, finally, the grade and rank of each individual supergrade are presently a major impediment, entirely apart from the three restrictive categories I have described to the effective redeployment of such personnel to changing needs. By setting very specific criteria for each grade level between GS-16 and GS-18, the current civil service law creates excessive rigidity—for example, most GS-18's are line managers rather than staff. This has meant that I have been unable to transfer a GS-18 line manager to a staff position in which the agency head and I agreed that the GS-18 would be more effectively utilized.

WHAT FES WOULD DO TO OVERCOME THE OBSTACLES OF THE PRESENT PERSONNEL STRUCTURE

First, special restrictive categories of supergrade would be eliminated under FES. In place of the present patchwork there would be a single category of Federal executive personnel, assigned in accordance with their training, experience, and performance to senior executive positions as needed to meet the priorities established by the Congress, the President, and each Department Secretary.

Second, grade levels within the single supergrade category would also be eliminated under FES. In place of the rigid GS 16, 17, and 18 ladder, there would be a continuum of compensation for Federal executives, based upon the training, experience, and performance of each. An individual executive's salary would be assured during 3-year periods, after each of which his compensation would be renegotiated. If at the end of any 3-year period, no agreement between him and his employer were reached, the executive would be assured of his employment at grade 15, subject to the current civil service regulations.

Third, to ensure that the flexibility afforded to the executive branch with regard to the assignment and salary of supergrades is properly used to meet national priorities, such Department would be required for the first time to justify its supergrade requests to the Civil Service Commission annually on the basis of its agency program activity, and budget requests, its pending legislation, and other statutorily established criteria.

Fourth, to ensure further that there is no abuse, politically motivated or otherwise, of the flexibility afforded to the executive branch, the Civil Service Commission would be required to submit a report to the Congress annually together with a full explanation. In addition, no more than 25 percent of the supergrades could be noncareer; at least 75 percent would have to be career civil servants.

CONCLUSION

As I stated at the outset, Mr. Chairman, the current restrictive maze of laws and regulations governing supergrades is one of the serious impediments I have found, in my stewardship at HEW, to the effective management of the Department in achieving its mission of helping people. The proposed Federal Executive Service would greatly simplify the supergrade system and afford much-needed flexibility in the deployment of key personnel.

As President Nixon stated in his message on the Establishment of a Federal Executive Service on February 2, 1971—and I quote:

The proposed new Federal Executive Service would result in simplification of the existing fragmented system. But its most important result would be to improve the capacity of the executive branch to meet the challenges of our democratic system. Freed from unnecessary obstacles and from much redtape, the career executives of the Federal Government would be better able to realize their potential, both personally and in terms of program accomplishment. At the same time those responsible for agency performance would be given sufficient authority over the selection and use of their most able manpower to meet their agencies' goals more fully and more efficiently.

This concludes my prepared statement, Mr. Chairman. I would be glad to respond to questions you and your colleagues may have and if I cannot answer them, I will call on my associates.

Mr. HENDERSON. Thank you very much, Mr. Secretary.

Perhaps at the point of introduction I might have said to you, and I would like to now, that the cooperation that our subcommittee has received from Mr. Stuart Clarke has been outstanding. I certainly want to compliment him and you at the time of your appearance before this subcommittee because almost on a daily basis or at least on a week-to-week basis, as our subcommittee staff takes up problems with Mr. Clarke. We find he is most responsive and most helpful. I would certainly be remiss if I did not say this to you in your appearance this morning.

Secretary RICHARDSON. I appreciate your mentioning that, Mr. Chairman.

Mr. HENDERSON. I think on every occasion that I have had the opportunity to ask a Cabinet officer, I have tried to emphasize what I think is so important from our viewpoint of manpower and manpower utilization, to express my hope and desire that you, Mr. Secretary, through Dr. Brady or someone else, have a delegation of a clear responsibility for that person to look at the total manpower picture throughout the Department. I know of nothing that would accomplish the objectives of our subcommittee better than the Secretaries of the Departments, or the head of the agency, having someone periodically report to them and someone responsible for taking a total overlook, as we attempt to do from time to time, as to the total manpower picture and the efficient use of the manpower.

It is quite obvious from your prepared testimony that you have had personal experience with regard to top management, the supergrade positions in the Department, and I commend you for that interest.

Secretary RICHARDSON. Thank you, Mr. Chairman. We do make an effort to look at the responsibilities and requirements of the Department as a whole. We are seeking increasingly to understand and to reinforce the interrelationships among Department activities.

We certainly agree with you that a comprehensive overview of manpower needs and resources are indispensable to our being able to work effectively as a single Government agency. I am greatly indebted both to Dr. Brady and to Mr. Clarke for their contributions to this objective.

We recently, for example, reviewed our manpower situation from the point of view of opportunities to reduce in some places while expanding in order to meet statutory functions in others.

We have also recently conducted a complete review of our supergrade requirements, and have made a full presentation on this subject to Chairman Hampton and his associates.

Mr. HENDERSON. Mr. Secretary, I am very impressed with your statement regarding the enactment of this proposal to eliminate the difficulties and the maze of authorities in giving greater flexibility to get the management people in the right place.

Could you tell us that the enactment of the Federal Executive Service would reduce the number of managerial positions which are presently called supergrades or that, in the immediate future, after the enactment, it would lessen requirements for additional managerial personnel if you had that flexibility and authority under the proposed Federal Executive Service?

Secretary RICHARDSON. First, Mr. Chairman, I would have to say in candor we need more supergrade positions than we have now, in fact quite a considerable number more, so that we would not be able to reduce the total. On the contrary, we would hope to persuade the Civil Service Commission that we would need an increase.

But, we believe that the enactment of this legislation would make it possible for us to meet our responsibilities with a somewhat lower aggregate number of supergrade positions than we would have if we persist under the present combination of heterogeneous systems. This will be true, we think, because of the very factor of flexibility. Where now we must leave a scientist in a bench position, perhaps we could move him into a managerial role.

The result is that we cannot combine resources as effectively as we could if, for example, we were able to introduce a lower grade scientist to carry on investigative work while using the senior scientific officer to carry out a managerial function.

Consequently, at the present time we would have to seek an additional supergrade position for the scientist when he moves into the managerial role, or else we would be unable to get him and would have to bring someone else in to do that job at a higher grade.

Mr. HENDERSON. Mr. Secretary, the subcommittee has received testimony to this effect, and I quote:

It is common knowledge in the Federal community that a rigid political clearance process is now operated by White House staff, extending not only to Presidential appointees, for whom such requirements of political loyalty are wholly acceptable, but apply as well to supergrade appointees, and at times even reaching down into lower levels of the civil service.

Are you aware of that common knowledge? Do you have an understanding that this is a true statement? And if you do, I would just ask that you briefly tell us what your understanding is of that clearance process.

Secretary RICHARDSON. Mr. Chairman, I don't think it is true that there is a clearance process extending down into career supergrade positions. Of course, there is a White House interest in schedule C positions for understandable reasons.

Mr. HENDERSON. Obviously.

Secretary RICHARDSON. But to my knowledge, we have had full responsibility and freedom to fill career positions at supergrade level with the best qualified people during my tenure as Secretary of HEW.

Mr. HENDERSON. To your knowledge, there has not been any clearance by White House staff of any of the supergrade appointments in the Department of HEW?

Secretary RICHARDSON. Aside from the schedule C positions; yes. Mr. HENDERSON. Outside the schedule C positions, of course. That is all I have.

Mr. Mills?

Mr. MILLS. Thank you, Mr. Chairman. Mr. Secretary, it is certainly an excellent statement.

Do you think that you have, or do you feel you have, some deadwood types of the top level now that you are unable to do anything with?

Secretary RICHARDSON. I think we feel there are individuals whose capacities are not fully up to the present responsibilities of the roles they fill.

They are people who, in many cases, are fully capable of performing conscientious work. But, in a department like ours, whose responsibilities have expanded, and for which public expectations are constantly rising, it is important sometimes to be able to move into a job someone who has a more current sense of what the requirements are, perhaps a more recent exposure to professional investigation, research in his field, and so on.

Mr. MILLS. Do you feel the 3-year contract would give security that could hamper performance?

Secretary RICHARDSON. I think we feel, Mr. Mills, that the 3-year contract is a way of giving a significant degree of security in a particularly responsible role on the one side, and at the same time giving management the opportunity to get together with the individual to reappraise the situation at the end of 3 years.

The likelihood would be, of course, that if the individual performed well, he would be continued in the role unless there were still more demanding responsibilities for him.

On the other hand, if there were not, in many cases even the individual would feel more comfortable not being required to try to perform in a capacity in which he was not fully succeeding.

There will undoubtedly be cases in which the individual feels that he was doing better than perhaps his peers or his superiors would agree. But that is the kind of responsibility that we think management should be in a position to exercise so long as the individual, as he would be under this legislation, is protected by tenure at least at the GS-15 level.

Mr. MILLS. There should be some type of appeals procedure?

Secretary RICHARDSON. We think there should be, of course, and I understand there would be appeals for certain types of things. But, we do not think the question of whether or not the individual has professional capabilities and individual capacity which justify the continuance of the agreement should in itself be appealable.

To put it the other way around, the need for that very kind of managerial judgment would be a reason for the legislation. It is the lack of opportunity for management to be able to make that kind of judgment that results in the situation we have now; that individuals who are, to be blunt about it, deadwood, although it is not always that clear cut a judgment, that leads to this need in the first instance.

Mr. MILLS. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

Mr. HENDERSON. Thank you, Mr. Mills.

Mr. Chappell?

Mr. CHAPPELL. In the existing classification system, do you feel generally there are no meaningful distinctions between the job descriptions of most supergrade positions?

Secretary RICHARDSON. No, I would not go that far, Mr. Chappell. I think the job descriptions often represent very conscientious efforts to describe the role.

The problem as we see it is that the opportunity to fill a supergrade position is dependent upon the creation of each supergrade position one by one through the establishment of its description and so on.

The supergrade slot is then tied strictly to that position, even though other higher priority needs may emerge, and even though the specific job for which the position was created may no longer be as relatively important as it was originally.

So in these situations under the present system we have to go back to the Civil Service Commission in every such case. I take it that the primary objective of the legislation is to give agency heads the opportunity to make judgments about the relative priority and importance of given assignments, without the necessity for going through that process every time.

Mr. CHAPPELL. Do you think that this proposed legislation would give management the flexibility and authority it needs to hire the people it feels it ought to hire and fire the people that management thinks ought to be fired?

Secretary RICHARDSON. It would, perhaps, have some advantage in hiring at senior levels. It probably would not affect much one way or the other the recruitment of junior-grade people into the Federal Government.

As to firing, I think it would not significantly affect the power to fire a man clean on out of the Federal service. It would make it possible at the end of the 3-year agreement period to reduce his responsibilities to a level deemed more nearly commensurate with his abilities.

Mr. CHAPPELL. I am not sure you answered my question.

Secretary RICHARDSON. I would be glad to try again.

Mr. CHAPPELL. Are you satisfied that this law would give you the power you need to run your department as you think you ought to run it insofar as these 16, 17, 18 levels are concerned?

Secretary RICHARDSON. Yes.

Mr. CHAPPELL. Do you find there is a significant enough difference in that compared with what you have to make it truly worth while?

Secretary RICHARDSON. By all means. I think the three central features of this that would greatly contribute to the effectiveness of our management are: First, instead of having four or five different types of supergrade positions set up under different pieces of legislation, there would be only one Federal Executive Service subject to consistent requirements, and rules throughout the whole Department.

Second, there would be the opportunity on the part of the Secretary of HEW and top management of the Department, each year to establish those positions within the Department subject to the quota assigned by the Civil Service Commission that were the most important from the point of view of the allocation of the available positions.

Third, there would be the opportunity we have just been discussing for management to deploy people where they are most effective. If an

individual proves not to be fully effective in a given role, the inertia attached to keeping him there would be reduced and there would be an opportunity to replace him.

Mr. CHAPPELL. In one of the analyses that we have of this bill, I notice this observation: "If an executive's job performance is poor he will be removed for inefficiency. If his performance is adequate but not up to the high level expected, his employment agreement would not be renewed."

Does that not indicate to you, however, that if he is just mediocre, the only way to reach him would be through the flexibility of removing him to another assignment? Is that what you are saying?

Secretary RICHARDSON. Yes. But that would be a significant gain.

Mr. CHAPPELL. If at the end of the 3-year contract period he has not performed, you can remove him. Do you think the 3-year period is an appropriate period of time or do you feel it should be shorter or longer?

Secretary RICHARDSON. This, of course, is a judgment question. I have found persuasion of the considerations that led the Civil Service Commission and the Office of Management and Budget to propose 3 years. They arrived at that number because they thought it was about long enough to give the individual placed in a supergrade position some assurance of continuity in the role which would be important in inducing him to take it.

At the same time, it is short enough so that if it does not work out well, you are not stuck with him indefinitely.

Mr. HENDERSON. Will the gentleman yield on that point?

Mr. CHAPPELL. Yes.

Mr. HENDERSON. Mr. Secretary, do you think that the legislation would be improved if, after the first 3-year period of contract or appointment, the individual was renewed to continue in his position but legislation would enable the agency head to make an annual review of his performance? Do you think that would be an improvement?

As I envision the legislation now if he is performing satisfactorily at the end of the first 3-year period, you enter into another 3-year contract with him. Would you consider it an improvement if the legislation provided rather than the second 3-year period, his performance would be reviewed annually?

Your argument is impressive with regard to the continuity and affording him full opportunity in the first instance but would that apply in the second 3-year period necessarily?

Secretary RICHARDSON. I see the point, Mr. Chairman. I think there may well be some advantage in giving him another 3-year renewal rather than to introduce a new degree of uncertainty at that point.

On the other hand it seems to me there is real force in the suggestion that the appraisal of his performance ought to be annual in any case because that gives the opportunity at the end of each year, even at the end of the first year, both for the programing and the individual executive in the Federal Executive Service position, to review the situation at that point and perhaps to identify opportunities for the improvement of performance.

Mr. HENDERSON. Mr. Chappell?

Mr. CHAPPELL. One further point, if his performance is of a high quality, his pay can be raised, indicating that at the end of a contract

period under the law then the management would renegotiate that contract.

How are those limits set? How do you understand those limits to be set by the law?

Secretary RICHARDSON. My understanding is that the law would establish a range from \$31,000 to \$36,000 at present levels.

Mr. CHAPPELL. Then management would hire at whatever it discovered was in its judgment the right figure and establish that in the contract?

Secretary RICHARDSON. That is my understanding; yes.

Mr. CHAPPELL. I suppose you have answered the question. If he is not of the highest quality, you could probably reduce it. In other words it is open for renegotiation at the end of 3 years but not during the 3 years.

Secretary RICHARDSON. That is my understanding; yes.

Mr. CHAPPELL. One final question and I think maybe Mr. Mills may have touched on this, are you satisfied that proposed legislation would not have an adverse effect on the Government's ability to attract top quality personnel?

Secretary RICHARDSON. I do not think it would. I understand that the Civil Service Commission has presented data to the committee that are indicative of the feelings of recruits into the Federal service in the junior grades toward the possibility of their own promotion ultimately into the supergrade positions. These data, as I understand it, suggest that the recruitment in the first instance is not significantly affected by that prospect one way or another.

A great many of those who ultimately end up in supergrade positions currently, I understand, entered the Federal service without even the expectation that they were going to stay very long but got interested and found out they were good at it.

As to those who come in directly at the supergrade level, the proportion of these who intend to remain more than a few years is in the minority. The Civil Service Commission data I am told established this number at about 37 percent. Most of those who do enter at this level who receive noncareer appointments are under the FES so they are then in the same situation as other top career people.

Mr. CHAPPELL. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. HENDERSON. Mr. Gross?

Mr. GROSS. Mr. Secretary, I want to ask this question for purposes of clarification. The committee report as of March 1972, that is the Manpower Subcommittee report for the Post Office and Civil Service Committee, shows that as of December 31, 1971, HEW had 650 supergrades, and I believe you stated or one of your aides stated that you had 596 as of this date. It is that correct?

Secretary RICHARDSON. Yes. The discrepancy, Mr. Gross, is accounted for by the fact that the higher number, the one you have, includes executive level positions of which there were 23 and the balance is accounted for by the Commission's own officers of the Public Health Service in the top grades of that service.

Mr. GROSS. But your figure did include Public Law 313 employees, did it not?

Secretary RICHARDSON. Yes; it did.

Mr. Gross. I understand now the discrepancy as between the two figures. You have not actually lost 50 odd supergrades.

Secretary RICHARDSON. No. We would have screamed very loudly had that occurred.

Mr. Gross. On page 6 of your statement you say, "to ensure that the flexibility afforded to the executive branch with regard to the assignment and salary of supergrades is properly used to meet the national priorities, each Department would be required for the first time to justify its supergrade requests to the Civil Service Commission annually on the basis of its agency program activity." Don't you have to justify it today?

Secretary RICHARDSON. We have to justify requests for assignments of any additional positions, but we do not have a requirement annually for justifying all those we already have one way or another. Of course a number of them are outside the direct jurisdiction of the Civil Service Commission anyway.

Mr. Gross. Am I correct in assuming you like this proposed law because there would be no quotas?

Secretary RICHARDSON. There would be a quota in the sense that the Civil Service Commission would assign to us our share of the total number available to the Government, and we would then have to establish, on the basis of the relative importance of our programs, the increased functions given to us by the Congress, the relative expansion of program activity and so on, what our needs were. We are saying that we would rather take our chances with that situation than to have to go through the very complex process we have now and remain subject to the rigidities that currently exist.

Mr. Gross. Of course it would all be very simple if we had some form of dictatorship in this country. No one would not have to worry about what happened where or when in that situation.

Secretary RICHARDSON. We would be paying a very heavy price for being relieved of worry.

In this instance, of course, in the case of the Federal Executive Service we seek not only to clarify responsibilities within the executive branch by giving the annual power of review to the Civil Service Commission and OMB, but also to clarify the role of the Congress. We think, under this legislation, Congress would have a substantially greater opportunity to exercise judgment than it now can have over such a variety of separate laws.

Mr. Gross. You, Mr. Richardson, were with the State Department for some time, were you not?

Secretary RICHARDSON. Yes.

Mr. Gross. Some of the skepticism that I have concerning this bill goes back to the experience that I had a few years ago in connection with the Otto Otepka case, when I was tipped off that two employees of the State Department, grades 14 or 15, who, under subpoenas by the Senate Investigating Committee had testified under oath in support of Mr. Otepka, were sent to their Siberia which was an abandoned building on the State Department grounds. There they had been sitting for months virtually without work, counting the mice and other vermin that roamed the premises. They occupied the only two furnished offices in that building that was being abandoned by the State Department.

Other rooms on all the floors were littered with trash and empty whiskey and beer bottles.

When a department or agency of government can pull that kind of stuff, I do not know whether you need this kind of legislation, Mr. Richardson. It seems there is already authority to exercise some pretty crude and brutal power now in some instances.

Secretary RICHARDSON. Without trying to imply a judgment one way or the other on the Otepka case with which I am not that familiar, I would simply say, Mr. Gross, that no system can be constructed that is totally proof against some abuse in some situations.

We think that the Federal Executive Service proposal before this subcommittee is in many respects less subject to potential abuse than the existing system. It is more open as well as more flexible. It does contemplate annual accountability and it proposes that at least 75 percent of all positions established thereunder be career positions. These in turn could only be established on the basis of outside professional judgment passing upon the qualifications of each individual or such a position. Of course, there would continue to be appellate procedures in the case of any action to remove an individual. The one respect in which there would be enlarged flexibility as to tenure in the particular role would be subject to the 3-year agreement, and that we think is essentially necessary in order to enable management to do its job.

As long as it is understood that these are the conditions of the agreement, you really cannot have it both ways. You cannot tell an individual that he is entitled to a grade and a function regardless of the judgment of management as to how effectively he performs—you can't give that guarantee—and simultaneously achieve effective management. You have to choose which of these things you are to do and we think the bill reflects a fair way of doing this.

Mr. Gross. You certainly do not condone that kind of action as a method of handling personnel in an agency or department, do you?

Secretary RICHARDSON. No.

Mr. Gross. What would be your concept concerning the makeup of the qualifications boards? Who would appoint those boards and who would in your opinion constitute the membership of those boards?

Secretary RICHARDSON. The membership of those boards would have to include people with particular competency in a given field. There is contemplated, I think, something like 15 boards reflecting particular fields of expertise.

The boards themselves would be appointed ordinarily with Government-wide jurisdiction. The appointing authority for the boards would be, I believe, the Civil Service Commission.

Mr. Gross. I believe you agree with me then that this is a pretty important function and certainly with respect to those already on the Federal payroll, those entering the Federal service.

Secretary RICHARDSON. Yes, it would indeed be a very important function.

Mr. Gross. Let me ask you the same question that was asked the preceding witness. In determining your support for this bill, did you attempt to appraise the experience of the Post Office Department which has, through selection boards, appointed between 4,000 and 5,000 postmasters in this country?

Secretary RICHARDSON. No; I have not reviewed that experience, Mr. Gross. I did once when I served as an assistant to the then senior Senator from Massachusetts have some exposure to the process of selection that applied to postmasters at that time. But I am not current on that subject.

Mr. GROSS. You are not current on what the corporation did?

Secretary RICHARDSON. No.

Mr. GROSS. Perhaps we ought to have a Government-wide corporation to control these wicked or incompetent employees or whatever they are. I will not pursue that.

Secretary RICHARDSON. Thank you, Mr. Gross.

Mr. HENDERSON. Do you know the number of social security checks we are mailing each month?

Secretary RICHARDSON. It is nearly 25 million, Mr. Chairman; 24.6 million.

Mr. HENDERSON. I think it would be fair to say that at the rate of 8 cents for postage per month and, if you had one communication with the recipient every 2 years, it would be easier to come at the figure of dollar per year per recipient, so that we roughly have on postage costs alone for social security checks, \$25 million a year.

I have been trying to get the attention of the necessary people—and I realize it would take very complicated legislation, probably to be handled by two or three of the congressional committees, but it seems to me with the sophisticated bank system we have in our Nation, their tremendous computer operations and so on, that it would be possible, if the Congress would authorize or the administration would propose, that we take social security checks as well as veterans' checks and so on, out of our mail system.

It seems to me for \$25 million we could accomplish a lot of good. We have the problems of theft of the mail. I explored this some time ago, and I have not refreshed my recollection for the hearing. One of the objections, and I believe that it came from the Social Security Administration, to my proposal was that they had to know when the recipient died. I did not think that was a very telling argument when no one knows quicker of the death than the Social Security Administration, or the bank in which the recipient is doing business, or has an account.

Without even asking to comment on this, I would just like to throw this to you as a possibility. I have talked to Postmaster General Blount. I have not had the opportunity to follow this with Postmaster General Klassen, but I certainly would like you, when you have a spare minute, to give some thought to the possibility.

It seems to me if we did not accomplish anything but my primary objective—that is, to get that workload out of the Postal Service—if we were trading off between \$25 million cost, even paying it to the banks—and I did not think we would have to do that—I think we could make a case for saving some money. I do believe by working to eliminate the peakload in our postal system on the first of every month, it would be well worth the undertaking. I would certainly be glad to work with someone if you think there is some merit to the idea, to see if we could explore this. I mention this because I think if it were to come from the Secretary of HEW, who has the authority over the

social security system, with the proper coordination from Treasury, we ought to be able to get legislation before the Congress if there is any merit in my proposal.

Secretary RICHARDSON. The idea certainly does seem to me, Mr. Chairman, very much to merit further exploration. I will ask the Commissioner of Social Security to review it. I will also ask Assistant Secretary Brady who, as I mentioned earlier, is our Assistant Secretary for Administration and Management, to work with the Commissioner on it.

The idea is now being tested in Pennsylvania and one or two other States with respect to welfare checks, with the individuals on welfare being asked to come into the bank. This appears, on the basis of a relatively short period of testing, to be contributing significantly to the reduction of theft and loss of checks.

Mr. HENDERSON. I envision the possibility there might be others; that you could take the social security recipients and give them alternatives.

The first would be, on the first of each month the amount of his check would be deposited in his checking account.

Second, if he wanted to receive cash, he could go to the bank on the first of the month, or thereafter, and receive his cash.

Third, in order not to completely shock the entire Nation or the recipients, if they wanted a check we would authorize the local bank which would be handling the other accounts to write that check and I would think we could devise it so that all the banks could participate.

That check would only move in the local mail system. Here in Washington, D.C., it would not have to go through from where they are presently written to the post office where it is distributed. I would hope eventually we could eliminate this third choice.

Going back to the first choice, my recollection is that the response I received from the Treasury Department in opposition to the proposal was that the Government has a note and obviously there is some advantage but again that did not seem to be a very compelling argument to me. The recipient is entitled to it on the first of the month and if we can facilitate it by getting it into his checking account, look at a lot of things that could benefit from this. He could sit down and write his check or even have draft arrangements made and know that his rent was going to be paid, as well as his light bill and water bill. So there are a lot of benefits flowing from that. I am not sure that the test on the welfare checks will necessarily determine that it would work for social security checks.

Secretary RICHARDSON. No; I mention it only because it is indicative of a comparable kind of approach.

Mr. HENDERSON. I am not altogether the originator of the idea because I know the military are using this for military paychecks and some of their civil service pay is being arranged under the voluntary arrangements in certain areas. I certainly would like to see the legislative proposals perhaps give the authority for a trial experimental base, in perhaps one region, to prove if it is a better system and then perhaps implement it, depending upon the results.

Mr. Secretary, I promised that you would be dismissed at 11:30.

Secretary RICHARDSON. Let me just add this, Mr. Chairman. You

have very clearly set forth the idea in your remarks just now and I will ask to have the transcript of your statement on this point made available right away to the Commissioner so that it would not be necessary for you to spell it out further. We will proceed from your description of the approach as it appears in this record.

Mr. HENDERSON. Fine. Thank you very much for your appearance and your testimony, Mr. Secretary.

(The following article entitled "Responsibility and Responsiveness," was submitted for the record by Secretary Richardson.)

INTRODUCTION

WE ARE STANDING at a unique juncture in the course of history. At no other time have we been so aware *both* of how breathtakingly close we have come to realizing the promise of America for all its citizens *and* of how painfully far we are from locating and gathering all the resources that would fulfill that promise tomorrow.

The founders of this complex and diverse Nation, and each succeeding generation, set themselves truly awesome tasks to perform. For the most part, their aspirations and their capabilities have been within hailing distance of each other. In our own time, great though the growth in our resources, the growth in our expectations has been even greater. Today these expectations are like a giant helium-filled balloon cast loose from its moorings, sailing beyond sight. We must somehow bring our expectations back to earth: We must level with each other. For either we shall understand the reality of what can and cannot be done over time, or we shall condemn ourselves to failure, and failure again and again.

When we compare ourselves with those who preceded us, or with others in the world today, there is no denying that we are succeeding, that we are in fact moving ever closer to the promise of this country. We are now one of the oldest nations in the world with an enduring and vital Constitution. We have not only retained our original freedoms but have enlarged upon them, particularly with respect to civil rights. Our lives are longer and healthier. We are better educated. And the number of people living in poverty is not only a relatively small proportion of the total population, but it is declining. The miseries suffered by most of the world's population are fortunately beyond the imagination of most Americans.

We are also beginning to gird ourselves for new tasks in the temper of a changing time, and have begun to shift our priorities accordingly. Since the present administration took office, human resources expenditures have risen from 39 percent of the total Federal budget to 44 percent, while national security expenditures have declined from 41 to 34 percent. HEW's budget, meanwhile, has been rising at an annual rate of 15 percent—more than twice the average rate of increase in the GNP over the past 10 years. In the next fiscal year, Department expenditures will approach \$80 billion, roughly one-third of the entire Federal budget.

Yet, despite the gains that we can see and despite the change in national priori-

ties, frustrations and disappointments abound, and alienation from our basic institutions seems endemic. Why is this so?

One reason, it seems to me, stems from our very successes. As Alexis de Tocqueville wrote many years ago:

The evil which was suffered patiently as inevitable seems unendurable as soon as the idea of escaping from it crosses men's minds. All the abuses then removed call attention to those that remain, and they now appear more galling. The evil, it is true, has become less, but sensibility to it has become more acute.

It is not, then, that we have come so far, but that we seem so near, so exasperatingly near, to realizing our national hopes, that some of us grow impatient and angry. What could be suffered silently or even cheerfully when there was no chance of improvement, becomes intolerable as soon as it is learned that a cure is within our capability. And then we must have the cure immediately.

Another reason is that we are constantly setting ourselves ever more difficult goals to achieve. We may reach a goal today that appeared improbable or optimistic yesterday, but instead of finding in this success a source of satisfaction, we find a sign of failure.

There is, besides, much actual failure. Exaggerated promises, ill-conceived programs, over-advertised "cures" for intractable ailments, cynical exploitation of valid grievances, entrenched resistance to necessary change, the cold rigidity of centralized authority, and the inefficient use of scarce resources—all these add to frustration and foster disillusionment.

Population growth, technological change, mass communications, and big government, meanwhile, have been progressively submerging the individual's sense of personal significance in a gray, featureless sea of homogenized humanity. In a country which has been dedicated from its beginning to the liberation of human aspirations and the fulfillment of human potential, these massive changes result in vague feelings of anxiety and unease. We yearn for a greater voice in—a greater impact on—the processes that affect our lives. We long to make a difference.

But the most profound and far-reaching source of our frustrations and disappointments is to be found in the "expectations gap" to which I alluded before. There is a fallacy abroad in the land—and rampant in the Congress—to the effect that passing legislation solves problems. There are, to be sure, many problems that cannot be solved without new legislation. But all too often—and increasingly so—new legislation merely publicizes a need without creating either the means or the resources for meeting it. If this kind of legislation is implemented at all, it is at the cost of spreading resources still more thinly over existing programs.

Just this, in fact, has been happening at an accelerating rate. In the first full budget of the Kennedy administration, congressional authorizations for HEW programs exceeded amounts requested for their operation by \$200 million. In the current fiscal year, authorizations for HEW programs exceed appropriations by \$6 billion. Legislation likely to be enacted by this Congress may add still another \$9 billion in new authorizations for next year and even larger amounts for future years.

What does this accomplish except to create expectations beyond all possibility of fulfillment and then, because they were not fulfilled, dash the hopes of those who have the greatest needs?

Then, there's the nagging problem of inequity in helping those who need help. The Federal, State, and local cost, both public and private, of assisting individuals whose dependency might have been prevented is running at an average annual rate of about \$19 billion. And yet the cost and quality of assistance to such individuals varies widely. If our assistance to all these people met the standards applicable to the most-favored one-third, the annual cost would be nearly \$7.5 billion more than it is now.

If, in addition to raising benefit standards for those now receiving assistance, we increased eligibility by uniformly applying a standard for assistance corresponding to the most liberal one-third, another enormous expenditure increase would be required.

Consider just the following list:

- Fulfillment of the Right to Read objectives.
- Homemaker services, mental retardation services, and vocational rehabilitation services for all who need them.
- Developmental day care services for needy children.
- Good compensatory education for every disadvantaged child.

To meet even these few goals, we would have to increase our spending by roughly \$27 billion per year *and* recruit and train 6 million more professionals, paraprofessionals, and volunteers!

When we begin to take into account other large claims—health care, higher education, urban redevelopment, transportation, and environmental protection, for instance—we rapidly enter a realm of almost unimaginable numbers. The needs are real, but we cannot conceivably meet them all comprehensively and all at the same time.

Glaring gaps between needs and their fulfillment are thus inevitable. That does not mean, of course, that we should not try to narrow them. On the contrary, it is the job of this Department and our sister agencies in the States and localities to fight as hard as we know how to do this. Our sympathies and our missions both demand it. But a "need" is subjectively perceived, and this perception reflects the expected response. The more unrealistic, therefore, are the expectations of our fellow citizens, the more we who struggle to meet those expectations tend to be looked upon as failing.

A consequence is the erosion of confidence in government itself, especially as a means of bringing about desirable change. Americans have never been particularly trusting of government, but still, something is much amiss when surveys show a continuing decline in the percentage of adults expressing a degree of trust in their government.

"Let's face it," the President said in his state of the Union address last January,

"Most Americans today are simply fed up with government at all levels. They will not—and should not—continue to tolerate the gap between promise and performance in government."

We in HEW must, and we can, help to restore confidence in government. We can do so by making ourselves more *responsible*. We can do so by making ourselves more *responsive*.

Today, I should like to tell you about specific actions being taken to shape this Department into a more responsible and responsive instrument for meeting the needs of the people we serve. Many of you have contributed to one or another of these shaping actions, but few have had the opportunity to see how they tie together in a coherent pattern. In a way, this is my progress report to you.

TOWARD RESPONSIBILITY—INTERNAL PROCESSES

CONSTRAINTS

IN THE CURRENT fiscal year, 85 percent of HEW's budget is "uncontrollable" in the sense that neither the executive branch nor the appropriations committees of Congress have the power to add to or subtract from the amounts required to fulfill such binding statutory commitments as social security benefits and health services for the poor. Only a change in legislation already on the books could alter our commitment to these important purposes.

The estimated increase in this kind of "uncontrollable" expenditure in our budget from this year to next year will be nearly \$8 billion*—almost as much as the entire HEW budget, including trust fund expenditures, for fiscal 1957, the year I came to HEW as Assistant Secretary for Legislation.

Most of the remaining 15 percent of the HEW budget—the so-called "discretionary" part—is committed to worthwhile activities initiated in prior years, such as research on physical or mental illness. We can hold the line in some places and make limited reductions in others to make room for new and exciting initiatives, but not even such urgent claims as drug-abuse treatment or cancer research can be used to justify offsetting cuts in other HEW programs. We have, as you know, some 280 of these programs, and most of these—whether environmental education or adult illiteracy, mental retardation or product safety—could effectively use more money.

These are the constraints of the past and present on the future. And the future has its own set of constraints.

We start with HEW's share of general tax revenue estimated on a basis that assumes conditions of full employment. To this we must apply the fiscal 1972 budget base of \$71.7 billion, add the above-mentioned \$8 billion in uncontrollable increases, and make such allocations as we can afford to newly enacted programs. Only what remains can be used for new initiatives, including the not-yet-enacted welfare and health insurance reforms.

These two boundaries—one behind us and one in front of us—lead to the inescapable conclusion: We must choose.

*Includes \$3.6 billion in social security benefit increases in H.R. 1.

The President has the most complex and broadest choices to make. He must, within the constraints imposed on him, select from among efforts to improve the environment, to improve transportation, to make the Nation more secure at home and abroad, to bring sense and humanity to our welfare system, and from among a host of other worthy and pressing objectives.

The Secretary of HEW must choose among efforts to bring health services into poor neighborhoods, to increase the educational opportunities of children living in those same neighborhoods, to reduce the isolation of the aged, to offer alternatives to delinquency and drugs, and among many other objectives, all of which again are worthy and compelling.

And down through the tiers of government it goes, the inescapable necessity of choosing.

Choice is the basic reality, and for us it is doubly difficult and saddening because whatever we have to give up is not something bad or trivial, but something that is only somewhat less important, if that, than what we have selected to do.

Because choice is so important, because so many lives are affected by our choices, we must constantly improve the way in which choices are made. And those who review our choices—friends and foes alike—should understand how and why we made them.

How may we improve the way in which we make choices, the way in which we reach decisions?

IMPROVING DECISIONMAKING

WE MUST, first of all, create a process of rational decisionmaking that is both open and honest. The choices must be made clear and understandable, their advantages and disadvantages fully stated, and the alternatives brought into the light—as in the use of expanded nutrition or family planning services, instead of more medical services, to obtain a certain amount of improvement in health.

These requirements necessitate, in turn, that we carefully analyze issues, evaluate each of our existing efforts with respect to their impact on the problems they are supposed to affect, and systematically draw together all of our analytic and evaluative information to determine how any one decision will affect the Department as a whole. This places a heavy burden on us to gather and interpret data, but we cannot otherwise determine what the major problems are and what in fact is likely to help and at what cost. To be sure, values, feelings, and attitudes will always, as they should, play a large role in the final choice, but the effort to improve our analysis of the issues cannot help but increase the likelihood that the resulting decision will be sound.

Departmental Strategies

The effort to apply these principles to our decisionmaking for the coming fiscal year began last August when the Offices of the Assistant Secretary for Planning and Evaluation and the Assistant Secretary, Comptroller, worked out a number of alternative strategies which, for the first time, would force departmental decisionmakers to confront the most fundamental issues of program emphasis. As a first step, the two Offices calculated the margin between committed HEW funds and HEW's share of projected revenues over the next 5 years. It is not a large margin. What, then, should be our priorities? Should we seek simply to do more of the same? Should we give first priority to income maintenance? To education? To health? Or emphasize the prevention of dependency and the accomplishment of institutional reform?

In pondering these questions, I was, of course, mindful of the fact that important initiatives had already been taken. A comprehensive income-maintenance strategy is reflected in the President's Welfare Reform program and social security proposals. The former will transform our presently degrading and chaotic nonsystem of welfare into a truly coherent system in which at least the minimums of decency and dignity can be preserved; the latter will accomplish a whole series of long-needed improvements.

On the health side, the President's National Health Strategy seeks to correct each of the identified deficiencies of health care in the Nation. It will commit a substantial share of future resources, both public and private, to financing good medical services for nearly everyone, but particularly for those who cannot now afford to pay for it.

In education, the foreseeable budget margin will be sufficient only to meet certain quite specific national priorities. Among these are research, the encouragement of innovation and reform, education of the handicapped, the Right to Read, and "career education." For the Federal Government to play a significant part in helping to eliminate reliance on the inequitable and regressive property tax for the financing of public elementary and secondary education would require a new Federal revenue source. At the President's direction, the issue is under intensive review.

This process of elimination brought me to the last remaining alternative—a strategy directed toward *the prevention of dependency and the accomplishment of institutional reform*. Not that the alternatives are mutually exclusive. On the contrary, adequate income maintenance is one very effective means of preventing dependency, as are preventive health measures and career education. All our legislative initiatives, notably welfare reform, would contribute in one way or another to institutional reform. But a strategy emphasizing the prevention of dependency and institutional reform is, to me, strongly appealing for a number of reasons.

To begin with, the effort to prevent dependency responds to the deepest instincts of a society which affirms the ultimate worth and dignity of each indi-

vidual. As one of the founders of the National Association for Retarded Children once said, "We learn (many of us perhaps only subconsciously) that if our way of life is to survive, every individual . . . must be counted an individual and accorded his place in the sun."

Whatever the cause of dependency—mental illness, retardation, drug abuse, alcoholism, or traumatic injury—the main goal is a dignified and self-sufficient way of life.

Moreover, resources invested in the prevention of dependency can yield major long-term dividends. One disabled individual may, during a lifetime, receive anywhere from \$30,000 to \$100,000 in public assistance payments. If he were not dependent and had an average annual income of \$8,000, the same individual in a family of four would pay taxes totaling \$42,000 over his lifetime. Thus, when a handicapped person is helped to become a contributing member of society, he is transformed from a charge on the public into one who is not only independent of the government but able to contribute through his taxes to helping others.

The objective of institutional reform also responds to what I believe to be basic perceptions and values in our society. All of us can agree, I think, that in a vast, increasingly urban, increasingly homogenized society, the most critically needed changes in our institutions are those which increase their humane responsiveness. Institutions and their activities, after all, do not exist for their own sakes; they exist for people. Where programs are rigid, they must be made flexible; where programs suffer from hardening of the categories, they must be opened to consumer participation; where they are remote, they must be made accessible.

Like the prevention of dependency, institutional reform can also contribute to the conservation of limited resources. It can seek to assure that the agencies, organizations, and skills that are capable of making some contribution to the protection and development of human resources are wisely deployed. The great needs and high expectations of those who call upon our human service institutions require that these institutions be made to work as efficiently and as effectively as possible. Overlap, waste, duplication, jurisdictional jealousies, persistence in outmoded methods—any or all of these things can only drive deeper the wedge between promise and performance.

And, finally, a strategy emphasizing the prevention of dependency and institutional reform affords a sound basis for selecting among potential initiatives. In the President's fiscal 1973 budget for HEW, this strategy is reflected, for example, in requests for additional funds to:

- Reach over a 2-year period all of the welfare population that could benefit from vocational rehabilitation services.
- Prevent alcoholism and drug addiction and strengthen community-level mental health services.
- Improve the availability of health services—especially through health maintenance organizations.

- Continue progress toward the goal of providing family planning services to all women who want such services but cannot afford them.
- Expand education for the handicapped.
- Reorient vocational education and general education so that they prepare students for realistic occupations as well as offer sound academic training.

Planning Cycle

Forcing ourselves to consider these departmental strategies was the first step in a concerted effort to reduce the Department's tendency to operate in reactive fits and starts. We are now instituting an annual planning cycle which meshes program priorities, management objectives, long-range planning and budgeting, development of legislation, evaluation and research, and operational planning. This cycle will be guided by a master planning calendar which establishes key milestones in order to assure that we consider all aspects of a decision before moving on to the next step.

The cycle begins almost 2 years before the beginning of an "implementation" year, with a "think period" during which we look ahead to identify major human and social problems that confront the Department and begin to consider how we might deal with them. We look at alternatives and analyze the costs and benefits of various approaches. We look carefully at our current goals and priorities, at our performance in resolving human problems, and determine how we ought to change these goals and better the performance. We also estimate the amount of money and the numbers of people, never sufficient, we expect to have available to work on these problems.

This phase is followed by guidance to the agencies of the Department laying out the strategic directions we wish to take. The agencies respond with 5-year-plan proposals. These are reviewed carefully, and issues that cannot be resolved are raised in memoranda and meetings with the agency heads, the Assistant Secretaries, and the Secretary. Major decisions are made in the context of an overview of the Department as a whole.

By the end of the summer, most decisions about resource allocations, at least for the coming fiscal year, will have been made and major priorities set. In August, when we receive from the Office of Management and Budget a preliminary estimate of how much money we can expect to carry out our plans for the coming year, each agency begins to translate policy and priority decisions into specific dollar amounts for all programs. The agency budgets are put together and then sent to the Office of Management and Budget in November.

The development of a strategy, the selection of program priorities, and the setting of management objectives is a process moving from the long range to the immediate, from the general to the particular, and from the imprecise to the measurable. Lacking a sense of the broad goals defined by strategic decisions, we have no rational means of selecting program priorities, and without program

priorities we have no means of establishing measurable management objectives. As the planning system is now set up, it is the responsibility of the Office of the Assistant Secretary for Planning and Evaluation to be concerned with the first two of these components of the planning cycle; the third is the responsibility of the Assistant Secretary for Administration and Management.

Operational Planning System

HEW has been called unmanageable. It is not. In HEW we have the management tools and the people to make the Department an outstanding example of effective management in government.

The Operational Planning System, an innovation in managing social programs initiated by Secretary Finch, is a key element in this effort. Its purpose is to insure that departmental resources are allocated in accordance with our long-range strategies and priorities. Through this system, we establish specific goals and set deadlines. My staff and I hold periodic meetings with the responsible managers to assess our progress. The managers are held accountable to the Secretary for specific accomplishments, and the Department, in turn, is held accountable to our fellow citizens.

Conscientious application of this process can, I believe, achieve for us a degree of responsible management that has seldom been attained by government agencies and bring closer the goal of restoring confidence in government.

Involvement of People

But none of this—not the planning cycle, not the strategy, not the priorities, not the operational objectives—amounts to a tinker's dam unless it is understood and supported by the people who have to make the whole system work. This requires that they be involved in establishing the Department's goals, priorities, and objectives. We have been working particularly hard to accomplish this. In developing the operational planning objectives for fiscal year 1973, we will start with the States and go on through the Regions to the line agencies before ending up with the Office of the Secretary. This should insure not only the participation of each level but, because of this, that the objectives thus established are fully shared.

For reasons I touched on earlier, it is also important for us actively to seek the views and criticisms of the people outside HEW who are most affected by what we do. Our planning processes, by illuminating the difficult choices that confront us, can help to make broader participation in these choices more possible and more valuable.

Complementing the planning system, our Office for Consumer Services is working with Department agencies to increase opportunities for consumer par-

ticipation in the development of HEW policies. The Food and Drug Administration, for example, has started to hold meetings with consumer representatives. Moreover, the Office of Education recently amended its regulations under Title I of the Elementary and Secondary Education Act to require that the parents of the children be given a strong voice in local policy decisions. The Office of Child Development has taken similar action in Head Start.

But these are only limited first steps in a process that needs to be applied to a much wider range of departmental activities. I have accordingly asked our General Counsel to develop model charters for citizen participation in HEW-supported programs which will attempt to strike a sound balance between the accountability of program managers and the justifiable demand of those we seek to help for an effective voice in matters that intimately concern them.

Flexibility

The process I have been describing, while continuous, is not inflexible—a train fixed to a railroad track, not to be deflected. A rigid planning and decisionmaking process would hardly serve the changing circumstances of our people or our government. It would be utterly mindless, for example, if citizens to whom we opened the doors of participation brought us new facts on reality, and our response was, “Sorry, but our plans cannot be altered.”

The HEW planning process, therefore, allows for revising our policies and changing our strategies whenever either makes sense. The information we receive from a policy of open participation is one means by which we are helped to recognize such a need. In addition, we depend upon three closely interrelated processes. One is the acquisition of new knowledge through research and development; a second is the continuing evaluation of our programs to assess their efficiency and effectiveness; and the third is the analysis of costs and benefits with respect to specific problems. Because these processes are absolutely crucial to our capacity to carry out our mission with greater impact and credibility, I shall describe each in turn.

RESEARCH AND DEVELOPMENT

NOT COUNTING BIOMEDICAL research, the Department has spent \$3.1 billion in the last decade on R. & D., \$2.4 billion of this amount in the last 5 years. Too much of this money has gone into poorly conceived projects, too few of the results have been rigorously assessed, and our means of disseminating the worthwhile results have been too feeble. This means that we know less than we should, that we're less sure of what we know, and that too few people share the knowledge we do possess. If ever a situation cried out for institutional reform, it's right here.

As a first step toward correcting it, I asked the Office of the Assistant Secretary for Planning and Evaluation about a year ago to review completed R. & D. proj-

ects in order to break loose any findings that might have greater potential for useful application than they had thus far received. Several good ideas were unearthed by this review. The provision of comprehensive health, education, and counseling services for unwed school-age pregnant girls was identified as an effective way to reduce the likelihood that these girls would cut short their education, have additional unwanted pregnancies, or become dependent on welfare. Promising programs to teach reading, to train teachers, and to train physicians' assistants were also uncovered, and the agencies are now stepping up their promotion of these ideas.

In carrying out this review of completed R. & D. projects, however, we learned that there really aren't a great many good ideas sitting on the shelves in the agencies waiting to be promoted. The prospect of any substantial payoffs, therefore, must depend on managing our R. & D. programs so that more useful and convincing results are produced. We must make sure that our limited R. & D. resources are focused on important questions, that projects fit together, and that they do not wastefully overlap.

To these ends, the operating agencies have now established R. & D. planning procedures and are working on the improvement of project design. We no longer tolerate the failure to submit R. & D. project reports. Each report is scrutinized to determine what, if anything, has been learned, whether the project should be replicated on a more sophisticated or larger scale, whether the results justify limited application and limited dissemination, or whether they should be widely promoted. In one major research area, enactment of the President's proposal to establish a National Institute of Education will greatly strengthen our capacity to make this kind of determination.

The process by which R. & D. results are disseminated is also being improved. For some users, it is enough to provide easy access to project reports through information retrieval systems like those operated by the National Library of Medicine and the National Clearinghouse for Drug Abuse Information. For others, the R. & D. offices which produce the results will need to make increasing use of demonstrations, conferences, and direct personal contact. Training programs and State and local planning projects can also serve as conduits for ideas.

EVALUATION

EVALUATION is the way we try to find out how well we are doing. Given the squeeze between uncontrollable costs and rising expectations, our society can no longer afford to indulge the "don't just stand there, *do* something" syndrome that has so often characterized reactions to current appeals. It is not that "doing something" is necessarily wrong. At a time of disillusionment with the integrity of government, however, ineffective responses to needs we do not really know how to meet can only compound distrust and reinforce alienation. In George Washington's day, it may not have done much harm to indulge the belief that

leeches could cure a fever; in our own, the failure to acknowledge the limitations of our capacity to treat heroin addiction would be inexcusable.

It is thus more urgent than ever before to be able to apply objective measures to the performance of our programs. Despite this urgency, our present capacity to do this is sharply limited: We need better methods of measuring performance; and we also need to make evaluation a regular part of program administration.

The first step toward overcoming these deficiencies must be a clear understanding of just what it is that needs to be evaluated. We too often speak of evaluating a "program" without knowing what we mean when we use the word. A "program" is the sum of the activities related to specific, usually categorical, legislation, such as the Comprehensive Alcohol Abuse Act. A "program" is also the sum of the activities directed toward a particular goal—for example, the "Right to Read program" or the prevention and control of cancer. Or the word may be used to refer to the sum of the activities of an on-going administrative function—for example, the "Upward Mobility program."

The proper object of evaluation will from time to time be a "program" in any one of these senses of the word. Ordinarily, however, the more appropriate object of evaluation is a way of doing something—a method of teaching reading or an approach to the treatment of alcoholism. We want to know what works. We want to know what works best. We want to know what it costs to get some improvement. In order to put our resources in the most effective places, we want to be able to measure the tradeoffs between competing alternatives.

We're working hard to improve our ability to answer this kind of question. We have established evaluation offices at high levels in the agencies and have recruited good people for them; each year as they plan and manage evaluations, these people will strengthen their skills. We are also beginning to develop training programs for evaluators. The Health Services and Mental Health Administration, for instance, has contracted with several universities to design a training program for this purpose.

But well-trained people soon run up against limits in the evaluation techniques available. HEW is pushing to improve these techniques. We have contracts to develop measurement tools—to measure health status and social and emotional development, for instance. We are increasing the use of control groups and learning to vary systematically the program models being tested.

Perhaps most significant of all, we are learning through the PEBSI (Program Evaluation by Summer Interns) program how to make effective use of community people in "telling it like it is" about the gaps and failures in activities we support. The PEBSI approach generates its own follow-up. Changes occur because many of the recommendations point to corrective actions that can be stimulated by a local feedback process. The PEBSI interns are not professional evaluators who go somewhere else once the study is done. They are, themselves, not only the evaluators, but the "follow-uppers" because they can advocate change as members of the local community.

We are also building the process of evaluation into the structure of our pro-

grams. In several programs, such as the Emergency School Assistance program, we have designed systems which provide information useful both for operations and for evaluation. For all programs, the requirement of annual evaluation plans forces the evaluators regularly to identify the most important questions. All evaluation projects, moreover, will hereafter have to specify at the outset how their results are to be implemented. Evaluation offices will be required to identify regularly those implications of their studies that are important enough to be passed on to possible users.

But none of this will be fully effective until and unless we get in the habit of demanding evidence for decisions, and, as our evaluation efforts begin to produce results, discipline ourselves to take advantage of them. We cannot achieve the twin goals of responsibility and responsiveness until we not only know what our activities produce at what cost and with what impact, but also make use of that knowledge. Ultimately, we should like to know what the results would be from one small addition in resources in any activity.

COSTS AND BENEFITS

WE NEED, in short, the capacity to relate costs to benefits and to compare the benefits of one program with the benefits of others. Our society's total resources are limited by population, technology, and natural endowment. To solve the resource allocation problem effectively within the public sector, we must perform four difficult tasks much better than we ever have: (1) Clarifying the goals we seek; (2) ranking these goals in importance; (3) considering different ways of approaching each goal; and (4) calculating the costs of each alternative. We have made some progress on each task, but much remains to be done.

I am repeatedly reminded of how little agreement there is on the objectives of some of our public programs. We want to *improve* the delivery of health services, or we want to make higher education *more accessible* to the disadvantaged. But what does "improve" mean? How can we measure "accessibility"? How much improvement or accessibility do we want? This, I think, is one of the great values of the evaluation process: when it is well done, it forces us to be specific about our goals. We cannot measure results until we sharpen our perception of what it is we want to do.

Once we have a clear goal in mind, we face what may be the most difficult job of all: We must compare the benefits of one program with the benefits of others, and decide which ones should be expanded, and which ones not.

How does one compare the benefits of one program with the benefits of another? Rarely can we reduce these benefits to dollar figures without the result being so artificial that we lose confidence in it. Yet such a comparison is essential to every budgetary choice we make, because the budget forces us to balance a dollar spent on one program against a dollar spent on others.

Let me give an example. We often speak of a single human life as infinitely precious, and so it is. But when it comes to the allocation of time, money, and

energy, it is obvious we do not literally mean it. Each year our society tolerates thousands of deaths which might be prevented. Last year 114,000 Americans were killed in some form of accident. Of these, about 23 percent were in the home, about 48 percent were on the highway. Some 95,000 Americans died from preventable illnesses, nearly 60,000 of these from lung cancer caused by smoking cigarettes. But building safer cars, highways, and homes, and reducing cigarette smoking involve "costs." By not pushing these things as far as we could, we implicitly put a value on the lives they might save. Unfortunately, such implicit valuations do not give us an explicit measure of the value of human life that could be compared with the value of a year of education or a reduction in water pollution.

I have suggested from time to time that we should develop a benefit unit called the "HEW" for use in comparing cost-benefit ratios among our activities. Such a unit would force us to look at just how much importance we really place on our efforts to deal with any single problem. And it would permit us to compare our real effort in one area—and the returns we got for it—with our real effort and returns in another. If a child-year of preschool education is worth one "HEW," how many "HEW's" is it worth to avoid one traffic death? To rehabilitate one disabled worker? To cure one drug addict?

Using such a benefit constant, we might readily see that the incremental costs of reducing a very small number of deaths by seafood poisoning might be better applied to reducing a larger number of deaths on the highway, or that the additional resources that would allow us to inspect every food-processing establishment twice a year could be more advantageously used to immunize our children. Similarly, it might show that we would achieve higher benefits in lives saved by investing in the safety of products than in special ambulances for victims of heart attacks.

The comparison gets harder to make, of course, when we come to the reduction of injuries, discomforts, and irritations, and when the outcome is uncertain. How much should we be investing, for example, in finding a cure for the common cold? Reducing noise pollution? We make such choices anyway, of course, but the process is seldom both deliberate and explicit.

Hard as it is to define our goals clearly, and then to rank them in importance, we must also deal imaginatively with the third of our four decision tasks: Considering different ways of approaching each goal. Cost-benefit analysis must open the door to fresh and imaginative alternatives. It must enable us, if such be the case, to say that there is a better way of attacking a problem than by an HEW program and that we should shut ours down and support another, somewhere else.

Our fourth job in better decisionmaking is to measure the cost of each alternative. We already do better at this part of the task than at the rest, but still our skills are seriously underdeveloped. We are not always careful to remember, for example, that the true "cost" of a Federal program is not invariably measurable by the number of dollars we allocate to it in the budget. Did we include air

pollution costs in our accounting for the Federal highway program? Do we charge ourselves for the loss of recreation, fish, and wildlife when we develop our rivers and harbors? Do we take into account the possibility that Federal dollars collected from some sources may have more adverse effects on economic activity than those collected from other sources?

Further, our ability to predict what the budgetary costs of alternative programs will be is seriously lacking. There are a few shining examples of good cost estimation in the Federal Government. The Actuary's Office in the Social Security Administration is one. But there are many more dismal cases of complete ignorance about what resources will be needed to carry out proposed programs.

Our success at these four tasks of cost-benefit analysis can be improved, though not easily. Yet even if we do them a great deal better, there will remain severe limits on the practical use of evaluation and cost-benefit analysis. Such techniques may help us to choose the best way to use an additional \$1 million on homemaker services for the elderly or preschool education for disadvantaged children. They may even offer some basis for comparing the social return on one or another such investment. But a choice between homemaker services and preschool education cannot and should not rest only on this kind of analysis. Even though it could be shown that the investment in preschool education paid larger dividends for a longer future, our feelings toward the generation to which we owe our own existence and education cannot be fed into this kind of calculation.

The hard choices, in the end, are bound to depend on some combination of values and instincts—and, indeed, it is precisely because the content of choice cannot be reduced to a mathematical equation that we need the political forum to reach the final, most difficult decisions. To recognize this, however, reinforces the importance of being as honest and explicit as possible in articulating the non-measurable considerations that transcend the limits of objective analysis. Only if these considerations are exposed to full view can we bring those whose expectations have to be deferred or overruled to accept the legitimacy of the process by which this was done. Only thus can we hope to reconcile the loser to losing and encourage the impatient to wait.

TOWARD RESPONSIVENESS—EXTERNAL PROCESSES

SO FAR, I have been talking almost entirely about the way in which we can and should take care of our own household, how we should plan, evaluate, manage, and the like. I want to turn now to our relations with others.

THE HEW ROLE

HEW has two main roles, one direct and leading, the other indirect and supporting. In our direct role, we administer programs in which the sharing of responsibility would not be administratively feasible. Such, notably, is the social security system. Since both eligibility for benefits and benefit levels depend on contributions to the system over a working lifetime, payroll records must be centralized, and eligibility determinations must be uniform. Federal administration is a practical necessity. Much the same considerations underlie the provisions of H.R. 1 calling for Federal administration of the income-maintenance aspects of the President's Welfare Reform program.

So it is, too, with every other activity in which HEW has a direct role: The reasons why it is direct are practical, not theoretical. We provide health services for Indians and Alaskan Natives because there are no other health care providers who normally live and work in the places where Indians and Alaskan Natives live. HEW monitors the safety and efficacy of drugs and biologicals because uniform national standards could not otherwise be enforced. And although our Public Health Service "marine hospitals" may seem to be an exception to the practicality principle, there were no local facilities able and willing to take care of sick merchant seamen when this system was born.

We perform our direct roles well, I believe—and, with due recognition of budgetary constraints, outstandingly so. Indeed, the consistency of the Social Security Administration's performance in meeting ever-higher standards of efficiency is the strongest evidence we have that HEW can do an outstandingly good job of administering the Welfare Reform program.

Our prevention of dependency and institutional reform strategies, however, will primarily engage our indirect, supporting role, rather than our direct, leading

one. The teachers, the healers, the social workers, and the rehabilitation counselors, after all, are not employed by HEW, but by State and local governments and by private agencies. And while this is in a sense only an historical consequence of our Federal system, the system itself was built on a pretty solid understanding of the needs and problems of people. Even if, in other words, the Constitution had not originally contemplated a secondary and supporting role for the Federal Government in providing services to people, a sensitive awareness of human needs and a sensible understanding of the structure required for responding to them would have brought us out at the same place. To paraphrase Voltaire, if we did not already have a Federal system, we would have had to invent one.

It follows that the success with which HEW carries out its indirect, supporting role depends on our effectiveness in backing up those who teach and heal and serve. They are the frontline troops. Our mission is to provide planning and logistical support. Our job is to help by identifying the needs to be met; to help by making sure that the people who can make good use of better methods of providing services are made aware of them; by supplying financial support of such services; by increasing the supply of service providers where there are shortages; and by improving communications within the whole service system.

These, at any rate, are the things we should be doing. The trouble is that in attempting to do them, we all too often get in our own way as well as in the way of the service providers.

At the head of the list of self-created obstacles is the needless multiplication of categorical grant-in-aid authorities. The multilayered network of specialized and autonomous agencies which the Federal Government has spawned—combined with constricting and frequently conflicting Federal guidelines—yields fragmented, overlapping, inefficient and unresponsive service delivery. This Department administers more than 200 special-purpose social, educational, and health-related service programs, generally administered through separate State agencies and, in turn, through their separate local affiliates. The result is too much scattering of resources, too little coordination and consolidation. The examples are endless of the dedicated people seeking to respond to some urgent community need who have been driven to despair by their inability to penetrate the categorical jungle.

To become fully effective, we must “disenthrall ourselves” from the existing system. We must wrench our attention away from the tending of governmental machinery and turn it outward to people and their problems, to the neighborhoods and communities where they live, and to the effectiveness of what we do in seeking to give them help.

CUTTING AWAY RED TAPE

THE MOST UBIQUITOUS outgrowth of program proliferation is the strangulating vine called “red tape.” We have launched a three-pronged attack against it.

The first prong is headed by the Federal Assistance Streamlining Task Force.

Inaugurated by Secretary Finch, FAST has studied 225 grant programs representing approximately \$15 billion in HEW domestic assistance. It has offered, and helped to implement, a number of recommendations on ways to improve administrative and operational procedures. For example, in 1965 under Federal formula grant programs for Health, Maternal and Child Health, and Crippled Children, Tennessee submitted a plan 790 pages long, a budget of 35 pages, and another 94 pages of expenditure reports—919 pieces of paper! In the present fiscal year, after FAST, Tennessee need submit only a one-page, preprinted certification plan, a one-page budget, and a one-page annual expenditure report—three pieces of paper, satisfying all Federal requirements.

Following other FAST recommendations, the Health Services and Mental Health Administration has delegated all decisionmaking for specific individual projects to the 56 regional medical programs around the country. Local projects no longer have to be approved individually in Washington; the job can be done faster and more simply at the local and regional levels.

From a second direction, the Office of Grant Administration Policy is seeking to standardize and simplify the requirements we place on a varied lot of grantee institutions and organizations. A single, standard form has been developed for all HEW construction grant, loan, and interest subsidy programs. A single form to replace 14 forms for reporting expenditures under research grants is in process. Other matters being considered include a common timetable for processing grant applications and the desirability of giving program managers discretion to use either grants or contracts.

Third, we're trying to facilitate access to grant funds. One useful device will be the "switching station," a mechanism invented by a group headed by the Assistant Secretary, Comptroller. Because many worthwhile projects deserving HEW support are too broad in scope to be wholly financed by one categorical grant-in-aid program, a prospective grantee is forced to divide his project into pieces which match the Federal categorical programs. He must then hunt separate funding for each piece.

The switching station will change this. If a future grant applicant has a project requiring funding from several different HEW project grant programs, he will submit a single application to the switching station. The station will review his project as a single entity and, if it is approved, will arrange to combine funds from the applicable categorical programs into a single, integrated grant award. This is our most promising approach so far to establishing a grant-packaging capability in HEW. We are continuing work on others.

GRANT CONSOLIDATION

EVEN THE BEST administrative expedient cannot be more than a partial solution. More efficient and straightforward is the legislation this Administration has proposed to consolidate separate but related categorical authorities. Our pro-

posal for special revenue sharing in education, for example, would consolidate 33 categorical activities into a single authority embracing five broad aspects of elementary and secondary education. In so doing, special revenue sharing would reduce the number of regulations and guidelines, broaden existing programs, and foster comprehensive planning to use Federal funds more effectively. For the States and local school districts, it would mean both a larger responsibility and a greater ability to deal with their educational problems in ways adapted to their own requirements.

The Assistant Secretary for Health and Scientific Affairs is formulating a similar initiative for health. There are about 40 separate Federal health grant programs, making it almost impossible for consumers and for health agencies and professionals to put together anything resembling comprehensive health services. With the advice and assistance of such groups as the National Advisory Health Council and the Association of State and Territorial Health Officers, we hope soon to have a health revenue-sharing proposal comparable to the one in education.

SERVICES INTEGRATION

CUTTING AWAY RED TAPE, grant packaging, and grant consolidation will, separately and in combination, make Federal support less hampering and more useful. They will help to bring about more comprehensive, less categorical service-delivery systems. But the fragmentation of services is by no means a consequence solely of Federal policies and procedures, and it cannot be overcome by Federal action alone.

At the community level, the agencies devoted to helping people are too numerous, too limited in function, and too isolated from each other. Local agencies tend to be fully as jealous in protecting their own turf as any Federal entity. Professional disciplines do not lose their guildmindedness at the local level. As a consequence, an individual in need is all too often forced to go from agency to agency, none of which is capable of dealing with him as a whole person.

It is not enough, therefore, simply to improve the ability of each provider of services to perform its particular role. We must also promote communication among the various service providers, joint planning among them, coordinated program operations, and comprehensive systems of dealing with the needs of people.

This effort to help service providers break down the barriers that impede concerted and effective action is going forward within HEW in two allied thrusts. First, we are working with State and local service providers to design various R. & D. models for testing the desirability and feasibility of services integration, and our regional offices are assisting a number of States and communities that are already committed to the principle of services integration. Second, we are developing Federal legislation to help local service providers break down the categories that slice the individual into segments, bridge the barriers between the

helping professions, and build an integrated approach to the goal of reducing dependency.

Working With Service Providers

We now have about 20 projects built around a variety of services integration models. In one promising experimental project, social services are being provided after school hours in a public school building. We are also testing the feasibility of integrating social services in hospitals. And, in another approach, four agencies providing separate services are joining in a common outreach capability.

Our aim is not simply to put all services under one roof, if that indeed were possible. Nor is it simply to be able to say that all services in a community have been linked together. Our most important model is a conceptual model developed by the Community Services Administration of the Social and Rehabilitation Service in which goals are clearly formulated and progress will be measurable. This model assumes a continuum ranging from total institutional dependency to economic self-sufficiency, with people being assisted at every stage in the continuum. The goal is to move as many as possible up to the next stage, and finally to self-sufficiency.

Our Regional Directors have already found 24 cities with a strong desire to integrate local services and pull together relevant HEW resources. The HEW response ranges from assisting service centers to expand the range of their services to helping local governments coordinate a diversity of services. Several Governors and State officials, with our assistance and encouragement, are also trying to pull together social services at the State level.

Services Integration Legislation

Legislation we are now developing will make possible a quantum leap beyond the work with service providers that is now in progress. Its aim is to make it easier for Federal, State, and local governments to work together to deliver services to people in a coordinated and effective way. It will help to build the capacity of service providers for joint plans and operations across program lines to alleviate conditions of dependency. It will also widen the flexibility of Federal support for States and localities through provisions for transfers of Federal funds between programs, waivers of inconsistent Federal program requirements, and limited funding for planning and administrative costs. In turn, States and localities will organize themselves to provide services to their citizens in a more comprehensive and cohesive manner.

The proposal will encourage, assist, and support—but not require—the integration of services. It epitomizes our institutional reform efforts: It would not pay for additional programs, but underwrite the administrative costs of improving the

system, thus enabling communities to allocate resources more efficiently and responsively to the total needs of individuals and families. The people served will have their needs assessed comprehensively, and have access to a full range of services. As a result, we hope, they will feel that the machinery of government is working to help, not frustrate, them.

The task of fitting the roles of service providers into a comprehensive whole will be painstaking and time-consuming even for a limited range of services and in a limited geographical area. As the number and geographic scope of included services both enlarge, the necessary planning will become still more complex. And yet there can be no hope of building service networks without gaps or overlaps yet capable of reaching all those eligible unless we acquire the planning capacity necessary to establish clear definitions of authority, responsibility, and territory. The proposed legislation should help to develop the knowledge and experience needed to undertake this final stage in the creation of a truly adequate human services system.

DECENTRALIZATION

IF HEW IS to be of maximum use to the front-line forces engaged in health and education and welfare services, we must not only make our support of those forces as adaptable as possible to community needs, but also see to it that our support is as accessible as possible. It follows that our support functions must be moved up as close to the front as we can get them. This in turn requires that we place increasing reliance on our regional offices.

Under the polite but persistent prodding of the Assistant Secretary for Community and Field Services, a number of concrete steps have been taken to strengthen the regional offices and accelerate the process of decentralization. For example, the newly established Project Grant Review and Control System gives the Regional Directors an opportunity to review and concur in selected centralized grants before awards are decided. In addition to providing advance knowledge of pending grant awards, the system allows the Regional Directors to hold up for further consideration any proposed grant that seems inconsistent with regional priorities. Even this system, however, is just a precursor to the more effective management systems needed by, and currently under consideration for, the regional offices as stepped-up decentralization takes place.

During the next year, assuming favorable OMB and congressional action, we will expand the management authorities of the Regional Directors. Such staff functions as personnel support, financial management, program analysis, program evaluation, management information, and public affairs will be strengthened. The Regional Directors will also play a larger role in determining how our evaluation and research and demonstration resources are deployed. To increase their leadership capacity, I have asked that their staffing be substantially increased and that they be provided the funds required to support their added functions.

The Assistant Secretary for Administration and Management has identified decentralization as the most important step we can take in our program to improve the management of the Department and has established it as his No. 1 priority for the year.

Under the President's Federal assistance review (FAR) program, we have identified 63 programs suitable for decentralization, but the agencies report that they have so far decentralized only 15 of these. We are determined to quicken the pace in the months ahead, and I am holding each agency head responsible for insuring that decentralization is being aggressively pursued and accomplished in his agency. The final phase of the FAR effort will call upon key individuals who know the process of decentralization and who will be charged with assisting the agencies in accomplishing it.

Relations With General-Purpose Government

One of the most important objectives of decentralization is the opportunity for our regional offices to work more closely with units of State and local general-purpose government.

Increasingly, HEW must look to these general-purpose units for leadership, advocacy, accountability, and comprehensive planning. As we devise service strategies that cut across traditional agency lines and involve private organizations as well as established public service agencies, we shall come to depend more and more on the participation of general-purpose governments. Only with their help can we solve the horizontal coordination problems at the State and local levels that have for so long been aggravated by our own vertical, categorical relationships with our counterpart agencies.

The list of our present contacts with general-purpose government is already quite considerable, and the Office of Field Management is rapidly extending it:

- Building on past experience with the model cities program, the Department is participating in the current experiments known as "Planned Variations."
- Capacity-building grants to general-purpose governments, a part of last year's services integration demonstrations, will be stepped up this year.
- State and local governments are playing an increasing role in our Operational Planning System.
- HEW personnel are serving in State and local governments in seven States, and these contacts will be expanded under the new authority of the Intergovernmental Personnel Act of 1970.

The combined effects of these efforts will be measurably to enhance the ability of the Department to respond to real needs where they exist and to make us more open to the influence of citizens and their elected officials.

ENCOURAGING CHANGE

LIFTING THE red-tape burden, simplifying the grant-in-aid system, and increasing the capacity of general-purpose governments to integrate services will, over time, make sense out of the relations between HEW and the institutions which bring needed services to people. But how, one may ask—if we do all this—how can HEW still exercise leadership in promoting important national interests?

Insofar as the question implies that effective national leadership depends on multitudes of categories and mountains of paper, it rests on a fallacy. One well-designed categorical grant-in-aid program can be effective in promoting a defined national interest. Each of several such programs may evoke a positive response. But as the number grows, a point is reached at which the Federal leverage exerted by any given program has been almost completely dissipated. Categorical grant proliferation, therefore, accomplishes no more on behalf of national interests than could be accomplished by an unconditional transfer of resources, minus the amount eaten up by ballooning overhead, prolonged delays, and endless aggravation.

Reducing the number of categorical grants, therefore, will restore, not weaken, national leadership. Fewer categorical grant programs, appropriately divided between the formula and the project approach and with a sharp focus on carefully defined areas of urgent national concern, could exert greater impact than the unwieldy profusion we now have. At the same time, funds would be freed for allocation to State and local governments through less restrictive block grants or through special revenue sharing for broadly defined purposes. The broad definition of a program, in any case, does not preclude the protection of particular national concerns like civil rights or financial accountability through such specific provisions as those contained in our education special revenue sharing legislation.

There are ways of exercising national leadership, moreover, that do not depend on pulling strings attached to Federal funds. One affirmative, noncoercive way is through the kind of capacity-building assistance that our Allied Services legislation would provide. Another relies on providing expert technical assistance to State, local, and voluntary agencies. Significant contributions can also be made by a system of communications capable of disseminating new ideas and enlarging awareness of national concerns. Having already discussed the first of these approaches, I should now like to say something more about the latter two.

TECHNICAL ASSISTANCE

ONE OF THE good results of simplifying the categorical grant structure is that hundreds of HEW people now employed in tending grant-in-aid machinery can be liberated for constructive roles in rendering technical assistance to service providers.

The proposed renewal strategy of the Office of Education is a good example. This strategy will create for the first time a nationwide cadre of education extension agents working directly with local school people, just as agricultural extension agents work directly with farmers—to help them understand and test new ideas, products, and processes.

Equally important in the education renewal strategy will be a new approach to helping local communities assess their own needs and then plan and carry out a comprehensive, long-term effort to change education. HEW will seek to make sure that all those responsible for renewal in each school district have access to the best available ideas and products from which to choose. No longer will it be necessary for a school district to deal with a myriad of Federal guidelines, applications, and funding patterns; time formerly spent on grantsmanship will be freed for improving the education of our children. The result should be a process of reform and renewal in hundreds of school districts and a workable system for installing the best knowledge we have where it is most needed.

A similar capability is called for by our various approaches to the integration of social services, as well as by our efforts to rationalize the delivery of health services. Concurrently with the award of limited funds for planning Health Maintenance Organizations, for example, we are also training specialists who will be able to advise the sponsors of such organizations on the pros and cons of the various options open to them.

Based largely on our regional offices, such technical assistance efforts will complement the President's general as well as special revenue-sharing proposals.

COMMUNICATIONS/PUBLIC AFFAIRS

WHETHER WE ARE trying to raise the level of debate over major issues, report performance, deflate overblown expectations, or bring the latest news from R. & D. to practitioners, we are dependent on communications of one kind or another. We need good communications to increase understanding, to gain support, and to effect change.

In many respects, any distinction between our internal and external communications of HEW is artificial. This is true both because we are trying to say the same things to each other and to our fellow citizens and because our means of communication are just as much external as internal. It is my guess, for example, that most of the people in HEW learn more about what the Department is doing from the news media than through any departmental channel. When we think of communication as a means of creating understanding, gaining support, and

producing change, we should be thinking, therefore, of all the means of communication at our disposal or within our reach.

Measured against the task, HEW's communications system has been woefully weak. For this reason, I have raised the rank of the person in charge of HEW's communications to Assistant Secretary and have asked him to build a communications system that will do the job we need to have done.

This new system, now falling into place, is based on this reality: The size, complexity, diversity, and geographic dispersion of the Department's activities make the centralization of communication activities impossible as well as undesirable.

What is needed is a strong coordinative effort with a modicum of functional control. The responsibility for directing this effort resides with the Assistant Secretary for Public Affairs. The Communications Council which he has established is the place within the Department where communications components are melded into a single plan addressing all of HEW's programmatic priorities and paralleling the Department's Operational Planning System.

A primary goal of the new public affairs management system is to communicate the interrelated—and often mutually supportive—nature of the Department's programs to their direct beneficiaries, to departmental constituent groups, to the general public, to the State, local, and private institutions that administer many HEW programs, and to the Department's employees.

A "COALITION" NOT A "CONGLOMERATE"

A FAIR MEASURE of the communications system's success will be the degree to which it dents the public's persistent perception of HEW as a confusing conglomerate instead of as a viable instrument for achieving social progress.

The fact is that the interrelationships among our programs and activities are far more significant than their divergences. The grouping of these functions and activities in a single Department is not haphazard or arbitrary. We are not a "conglomerate." We are a "coalition."

Take a random list of our most urgent concerns: Poverty, drug abuse, alcoholism, juvenile delinquency, mental retardation, child development, the aging, rehabilitation of the handicapped, or any other. Nothing on such a list falls within the exclusive province of any one HEW operating agency. None is exclusively a "health" problem, or an "education" problem, or a "welfare" problem. All involve aspects of each.

Consider mental retardation: Genetics, biochemistry, infectious diseases, psychiatric and psychological diagnosis, residential care, day care, training, special education, public education, teacher training—each has a part either in the prevention of mental retardation, the care of the retarded, or their maximum self-development.

Or drug abuse: Psychopharmacology, diagnosis and treatment of personality disorders and deficiencies, education as to the dangers of drug abuse, community

mental health resources, commitment procedures, rehabilitation programs—all have a part in combating the problem.

A similar list of complementary and mutually reinforcing activities could be made for each of the Department's most urgent and difficult problems.

To have a hope, then, of solving any of these problems, there has to be an integrative process. Fragmentation must be replaced by integration to produce a whole greater, not less, than the sum of the parts. Planning, program development, and resources must be seen comprehensively and in perspective and, where necessary, not only brought together but fitted together.

If, as some people urge, health and education and the rest of HEW were split apart and made into three separate agencies, this would not in the slightest diminish the importance of close cooperation among them, nor would it eliminate the need for some external authority to resolve issues arising among the three agencies, to reconcile their respective roles in a joint plan, or to coordinate their performance under such a plan. To be carried out at all, these functions would have to be assigned to the President's personal staff, either in OMB or under the Domestic Council. But both OMB and the Domestic Council already have all they can do to achieve better integration among the departments and agencies now reporting directly to the President. There are real advantages, moreover, in giving responsibility for integrating human services programs to a Presidential appointee who is both visible and publicly accountable, rather than to the White House staff. These, indeed, are major considerations underlying the President's proposal for a Department of Human Resources, which would embrace not only HEW's present activities but add such related functions now performed elsewhere as food inspection and manpower development.

HEW PEOPLE

OF ALL THE things directed toward improving the Department's operations, I am proudest of what we're doing to help improve the opportunities and capabilities of the people who do the Department's work.

When my appointment as Secretary of HEW was announced, Oliphant produced a cartoon for the *Denver Post*, showing the Secretary's office filled with sniggling, smirking coffee drinkers clustered around the Secretary's chair. The caption was, "Come in, sir, we represent the thousands on your staff. You will find us petty, uncooperative, devious, unreliable, and thoroughly bureaucratic."

After nearly a year and a half on the job, I am here to say "it just ain't so." HEW career people bring to the task of Government something which few politicians, and alas, even fewer Republicans, have—many years of continuous service in the executive branch. Those of you who rise to the top of the Civil Service and the Public Health Service and, so far as I have been able to see, those beneath you, have a wealth of knowledge and insight into the problems of government that politicians rarely attain. You are men and women of strong principle and high competence. You respect the role of the political appointee, which is to express, on behalf of the President, the will of the electorate, and you deserve to receive respect in return.

As one who considers himself both a "politician" and a "bureaucrat," I embrace both labels with equal satisfaction. I do not deny, of course, that the word "politician" can have sleazy connotations, just as the word "bureaucrat" can imply inertia. But politics is the art of reconciling competing claims in a free society, and bureaucracies are the indispensable means of translating policies into results. All of you in this Department who have devoted your careers to government service deserve to take special satisfaction in this fact, especially since you are playing significant parts in helping millions upon millions of other people.

To enlarge opportunities for this kind of career service, to strengthen the capabilities of those who participate in it, and to increase the chances of advancement within it, we have initiated a number of interrelated activities.

The most significant and far reaching of these is our upward mobility program. Comprised of several interrelated components—the public service careers program, the Upward Mobility College, job restructuring and refined career ladders, the STRIDE program, special training programs for the disadvantaged, and

career counseling—the program is designed to enhance the training, development, and career advancement opportunities of some 65,000 DHEW employees in grades GS-1 through GS-7 and wage board equivalents.

Undoubtedly, the most innovative and farthest advanced of these is the Upward Mobility College—sometimes known as “The College Without Walls”—which literally brings the campus to the student by offering, at work, a full range of academic courses leading to an associate or bachelor’s degree. We currently have approximately 1,740 employees enrolled in this program in the Washington-Baltimore area. We expect to expand this effort and extend it to the field as rapidly as the necessary arrangements can be made.

Recognizing the unique problems which affect the status of women, both within the Department and in society as well, and our limited knowledge of the fundamental causes and nature of these problems, we established in February 1971 the women’s action program. Its broad charter is to examine all departmental activities from the point of view of their concern to, or impact on, women. The program has already given us new insights into the problems faced by women in our society and has begun to define means through which HEW programs can be used to alleviate them.

We also created this past year an Office of Special Concerns. It fulfills two major functions which I cannot see a Secretary of HEW doing without: It provides a listening post within the Department which enables the Secretary to hear the grievances as well as the aspirations of members of minorities, and it is a channel through which people in these minority groups can achieve both self-expression and advocacy for action.

Another important effort is the DHEW management intern program, designed to train carefully selected young persons for future administrative and managerial assignments. Consistent with our overall desire to enhance the career opportunities of HEW employees, the number of trainees entering this program was doubled to 40 last year, with half of these being “in-house” selections. A positive—and successful—effort is being made to attract a larger number of minorities and women to the program.

Two fundamental concepts govern these efforts: First, we are convinced that whatever we do to improve the careers of our lower graded employees, the disadvantaged, minorities, and women will at the same time improve the Department’s performance. We fully expect, through these efforts, to attract and retain a more stable and highly motivated work force. We believe this will result from our efforts to show that HEW—a “Department of the people”—truly cares about its own people. And second, the mission of this Department and the nature of its programs dictate that we must exercise positive leadership in the national effort to recognize and promote human dignity and individual worth. We cannot do this merely by precept or even by furnishing money to support worthy undertakings. We must first “practice what we preach,” and this is a challenge that I, personally—and I trust the entire Department—wholeheartedly accept.

Our collective goal should be to make of the Department an institution closely

knit in its operations, unified in its purposes, and capable of enlisting the loyalty and pride of all those who belong to it.

I cannot leave the subject of the people within HEW without saying something about two other vitally important groups. The first is the Commissioned Corps of the Public Health Service. The Commissioned Corps, as a separate personnel system, has been studied repeatedly over the past decade, and during that period the health functions of the Department have expanded enormously and have themselves been reorganized several times. My decisions regarding the personnel structure for the health arm of the Department reflect my belief that we can develop a flexible and responsive personnel system capable of meeting not only today's responsibilities but tomorrow's as well. In the implementation of this system, I am determined to avoid further shocks and sudden disruptions and to assure that the personnel of the Commissioned Corps are treated with the fairness that their long and distinguished history requires.

Finally, a word about those with whom I work most closely—the heads of agencies and the assistant secretaries. There cannot be many Cabinet officers who were as fortunate as I was, on assuming office, in finding talented and dedicated people already in place, and in enjoying the benefit of their continued service. We all owe these people a very great deal. Over the last year and a half, through the diligent efforts of the Executive Manpower Board, we have brought to full strength a team which I believe to be one of the most distinguished and competent in the whole Federal Government. These new people, and those whom they joined here, have come together to give the Department a sense of movement, direction, and professionalism. They have made it possible to envision a renovated and invigorated Department, responsive to the human needs of this country, and capable of helping to restore confidence in government.

If we are to make this Department what it can be, and what any honest recognition of our responsibilities to the American people requires that it be, then we shall need the best efforts of everyone within the Department—civil servants, Presidential appointees, officers in the Commissioned Corps, employees of all grades, women and men of all races and backgrounds. I believe we are already gathering momentum, and that, with the help of each person in the Department, that momentum will deepen and broaden, to the ultimate benefit of those whom we all seek to serve.

CONCLUSION

What I have been saying comes down, I believe, to this: We in HEW are charged with a fourfold task—to identify the problems of the people and of the institutions with which we are concerned; to eliminate the gaps between promise and performance by setting and meeting attainable goals; to make the best possible use of the resources we have, and to fight for the additional resources we know how to use well.

We know how enormously difficult a task this is. We know how much remains to be done—how great are the needs of our fellow citizens and the demands for more money, more manpower, new ideas, new technology, better management, more efficient deployment of resources, and more responsive institutions.

But we also know that in performing this task, we are bringing closer the fulfillment of the promise of America. It is still an inspiring promise. And if at times our progress toward it seems frustratingly, even agonizingly, slow, there can be no greater reward for any of us than the satisfaction of playing a part in bringing it closer.

STATEMENT OF BERNARD L. GLADIEUX—(Resumed)

Mr. HENDERSON. Mr. Gladieux, thank you for waiting. I have some questions.

I will refer specifically to section 3303, entitled, "Competitive Service Recommendations of Senators or Representatives." This language appears:

In examining an applicant for or appointing him in the competitive service, the individual concerned may not receive or consider the recommendation of this applicant by a Senator or Representative except as to the character or residence of the applicant.

What will be your reaction to the amendment of the legislation before us to provide that kind of restriction for all persons in the Government outside of the agency involved? We might even restrict political recommendations within the agency as it relates to the competitive service.

What I am trying to get to, do you feel that it would be an improvement in the legislation to specifically prohibit what is the common knowledge in the city, the Federal community, with regard to the political clearing process that we referred to earlier?

Counsel suggests to me that we certainly can get some language and, I guess my question is, how effective do you think it would be or would you recommend that we put that prohibition into the law?

Mr. GLADIEUX. Mr. Chairman, I have seen these provisions and I have had the issue posed to me before, and I must confess I am somewhat ambivalent on it. In principle, of course, I would like to eliminate any process from its introduction of partisan factors, and quite honestly many of them do come in through the congressional senatorial route.

On the other hand, much of this in my judgment is quite legitimate; that is, much of the recommendation that is sought on the part of a person, even a civil service person who wishes to have recommen-

dations made certifying as to his character and/or comments. Much of this is quite germane.

Mr. HENDERSON. Let me be specific. Do you know of any Senators or Representatives that do make political appointments as they relate to the initial appointment of a supergrade or do you understand that this happens very often in violation of the law?

Mr. GLADIEUX. No; I am not suggesting that. I am simply opening the way for the possibility that a candidate for a post is expected to present letters of recommendation from people who know him may quite properly include therein a recommendation from a Congressman or Senator who personally knows him and it has no political implication whatsoever. This is where my ambivalence comes in.

Mr. HENDERSON. What I am trying to get at is my understanding of the so-called clearing process. I am not so concerned about what goes on within an agency, but it does seem to me that the merit system, or the competitive system, is not going to be the best, or what it could be under the present law or under the proposed FES, if the appointing authority has to go somewhere other than to the Civil Service Commission to get any kind of a clearance.

Mr. GLADIEUX. Well, we would certainly agree with that.

Mr. HENDERSON. Do you think to write restrictive language into the law would improve that?

Mr. GLADIEUX. On balance, I think it would even though, as I have seen letters from Senators or Congressmen on occasion that I thought were quite appropriate and quite germane.

Mr. HENDERSON. On that point I would have no objection if someone knew a career employee that happened to be on the White House staff to write a letter for that person's file. But this is not the so-called kind of clearance.

Mr. GLADIEUX. No.

Mr. HENDERSON. I do not believe any of the agency heads on either side of the aisle, call and ask to get any kind of clearance on their desires to put someone into grade 16 or 18. If it has been done at even lower levels, I think that might be justified more than it would be at the top management level because we are talking here about people that must have officially demonstrated managerial expertise.

Mr. GLADIEUX. Yes. As I say, on balance we would prefer that kind of a restriction written into the language. It should be done carefully and cautiously and should not appear to eliminate direct personal knowledge of a particular person whom a Senator or Congressman might quite legitimately wish to make a recommendation about, non-political as it may be.

Mr. HENDERSON. I want to thank you very much.

Mr. GLADIEUX. I wanted to come back to Congressman Chappell's questions. I do not think we properly answered his question of mediocrity and how you get rid of it when we interrupted for Mr. Richardson.

Mr. CHAPPELL. Yes.

Mr. GLADIEUX. Let me try to explain it this way. Under the present system there is really no really effective way to eliminate mediocre people or people of pallid semicompetence from the Federal service. The only way you can do it is under strict charges of incompetence or malfeasance or something of this kind.

In practice it is not resorted to. So someone who is able just to get by carriers on and can carry on practically in perpetuity because superiors will not resort to those formal charge procedures which are stretched out, onerous, and frequently the superior loses anyway.

There is no change in that system under the FES procedure. If you wish to get rid of someone who is merely mediocre during the course of his 3-year term, you would have to resort to these formal charges and in practice again the superior does not do it.

What is different in the FES is that every 3 years you get an opportunity to review this man's performance and unless it is distinctly superior, he simply is not offered a new contract. If he is mediocre, if he is just one of these pale semicompetent people, the contract runs out, he is not offered a renewable one, and he then goes to his retreat rights.

So what you are exchanging here on this front here, you are changing a system which can attenuate mediocrity in perpetuity in the indefinite future on the part of the individual forever until he retires or passes away; you are substituting at least a periodic 3-year positive review. To me that is a very significant advance in trying to eliminate deadwood and obstructionists and so on from the Government.

Mr. COUTURIER. One other small point, during that 3-year period, the agency head still has the right to reassign, much more right than he has now.

Mr. CHAPPELL. Of course what is happening now is that you are just promoting some to get them into some other place because you are not satisfied with him in this Department, so this is done, is it not?

Mr. COUTURIER. That is right.

Mr. CHAPPELL. Do you have anything to offer to the committee to make an improvement, overall, in this situation?

Mr. GLADIEUX. You asked Secretary Richardson a question—I thought he gave a very good answer to it—and I would like to try my hand at it. You asked him his opinion on the ability to attract top quality people. My own view is that the eager, bright, ambitious young man who is anxious to make a maximum contribution, who is not too much worried about security and pensions and all that, and who wants to rise to the top without artificial ceilings, is going to be all for this FES system because he could rise if he is good enough to be an Undersecretary and still be within the civil service.

I think that kind of bright, eager chap will welcome FES.

On the other hand, the cautious person, one who is not very innovative, who does not like to make waves, who plays by the books, who is very much concerned with security and pension rights and all that, FES is going to scare him off. He will not want to take the risks and I say this is good.

Mr. CHAPPELL. This is really the reason I am a little concerned about the 3-year period.

Mr. GLADIEUX. As Mr. Couturier said, it originally had in there a 1-year period. We opposed that because we thought that was much too restrictive, would keep the career service in turmoil. Every year they would have to be worried about their evaluation: Do I have my job next year or no?

Mr. CHAPPELL. How about a 2-year period?

Your people even hire new Congressmen every 2 years.

Mr. GLADIEUX. I think on balance we came out with 3 years, not 5 which some had suggested—that was too long—and not 1 year.

Mr. CHAPPELL. Then let me come to this quickly, Mr. Chairman, and I will conclude. In the analysis made by the Civil Service Commission, it says this:

Paragraph 3 bars an agency from reducing the pay of a career executive during the period of continuous service in the Federal Executive Service. This means that a career executive initial rate of pay may not be decreased during his continuous service in the Federal Executive Service. If an agency increases an executive's pay during his employment period, he must continue to be paid at the higher rate of pay for the remainder of his continuous service in the Federal Executive Service.

To me that means that even if he finished his 3 years of the 3-year contract and it was renewed, which meant he was in continuous service, there would be no opportunity to reduce and that was one of the points I was trying to get back to Mr. Richardson.

If that is the right interpretation of the bill as it is written, would you concur with that?

Mr. GLADIEUX. Yes; that is my interpretation and I do concur with it on the ground that it is part of accommodation. You are placing those who go into FES in jeopardy in a sense. They have to accept some risk if they want to move into these upper circles of the counsels of government.

At the same time you do want to give them as much protection as you reasonably can and you do not want to penalize them.

Mr. CHAPPELL. Is that protection? Because what you are going to do is force that agency to let it not renew its contract, if he has to pay at that level and if he is not performing at the higher rate of level that management thinks. My point is he might be doing a \$30,000 job but he might not be doing a \$35,000 job. He might have the competence to do that.

The way this law is written under that interpretation, management has two choices: renegotiate his contract at not less than what he is already making or he has to separate him. To me that is not necessarily good for the employee nor do I think it is good for management. I think if you are going to a 3-year renewable proposition that it makes more sense to say you renegotiate. This may mean that you pay him more. It might mean that the man has the option to take less and stay.

Mr. GLADIEUX. The renegotiation would be in terms of his retaining his salary level, whatever that was.

Mr. CHAPPELL. Mr. Chairman, I hope we will make a note to check into that particular point in any event because I would certainly propose an amendment to clarify that section.

Mr. GLADIEUX. As I said, Congressman Chappell, in my statement here, I thought these retreat rights are generous. I do think they are generous and I emphasize that because I have heard so much complaint, shall I call it, from others who do not think they are generous at all, and who want to lock in not only greater rights, greater tenure, but larger compensation amounts.

Mr. CHAPPELL. Tenure can be a very fine thing but it can be an awfully devastating thing to management, too. I think sometimes we see too much of it in the school system for example, perhaps too much.

What I am saying here is that if you have this bright young man you are talking about, the one you want, he is not going to be concerned anyway. He is going to go on. But, how about the mediocre fellow—he is the type fellow that is going to ride with mediocrity and if the Department still wants him, they might reduce him \$5,000 and he might be perfectly satisfied because he wants to stay. It seems to me if we are after the bright young people, they are not going to be concerned about that feature anyway and that is the type of people we should try to get.

Mr. GLADIEUX. Exactly. Well taken.

Mr. COUTURIER. I just add one comment I think is worth looking into. I think one of the problems you are getting at is the compression of the executive levels which has occurred. Although Federal junior and executive salaries have gone up recently in years, we still have the problem of compression. I think one of the problems you are going to face is the grade 15 at the top—I do not remember what his salary is—\$34,000 or \$35,000. It is not that high; it is very close there—and I think this problem you are going to find is a tendency to hire one in a compressed area above the grade 15 top and the maximum allowed under the FES.

What I am saying is in the short run you do not have a problem. I think in the long run there is certainly going to be a spreading of the differential. Then you do have a serious problem. I think you are raising a serious issue.

Mr. CHAPPELL. Thank you, Mr. Chairman.

Mr. HENDERSON. Mr. Mills, do you have any questions?

Mr. MILLS. Yes, Mr. Chairman.

Mr. Gladieux, I do not like to belabor a point but I do not believe we should leave the part of your statement which I really questioned, without clarification. This is again on page 9, where it says, "But it is my observation that requirement for evidence of party regularity has been greatly broadened and made more absolute by the present administration."

Yet, we have discussed the Postal Service which is one of the largest employers of the Government which disproves this statement and you have heard the testimony by Secretary Richardson. I am wondering, sir, if you still believe that this is an accurate statement?

Mr. GLADIEUX. I still do believe it is an accurate statement. I heard Secretary Richardson and he, of course, is entitled to his interpretation. I am only speaking of my own knowledge and expressing my own observation and judgment on this matter.

Mr. MILLS. But you cannot give us specific cases?

Mr. GLADIEUX. I know of specific cases, widespread over the Government and it is my judgment that political factors or partisan factors are more broadly applied and more scrupulously and more penetratingly applied than in other administrations than I have experienced and I have seen all of them from Franklin Roosevelt, on.

That is my judgment. I regret to say it. I do not say it with any great relish at all. I deplore it. As I have said in the testimony, I would hope that with this FES, which opens this way for a systematic reappraisal of people, at least every 3 years, I would hope that this administration would accept that as the legitimate means for eliminating those who are of mediocre competence or who are obstructive of Presidential policy.

Mr. HENDERSON. Will the gentleman yield?

Mr. MILLS. Yes.

Mr. HENDERSON. I want to pursue this point specifically with Mr. Gladieux. Your statement is to the effect as now operated by White House staff. With regard to previous administrations, would you say that the political clearance has been at White House staff level?

Mr. GLADIEUX. With some administrations; yes. I would say for the last perhaps 20 years, I would say it has been centralized quite directly in the White House; yes.

Mr. HENDERSON. I thank the gentleman for yielding. I think my earlier statement was to the effect that I think there has to be some political clearance. If there is going to be, I would rather see it within the agency. Take HEW, I would not expect Secretary Richardson not to apply some inquiry, political or otherwise, but I do not like it where it happened in this or previous administrations that the department agencies have to clear with anyone outside of their own agency or within their own authority to do so. This is what disturbs me.

Mr. Mills?

Mr. MILLS. I think, Mr. Chairman, if I may, the part that I find hard to agree with in any way is the fact that it has been broadened, when under this administration, one of the largest sections of the Government, one of the largest employers of personnel, has been completely removed. I do not see how you can say it has been broadened in the face of that. I disagree with you but I thank you, Mr. Gladieux.

Mr. GLADIEUX. I would just like to say finally in closing, I think that this FES program is a technically superior system for the Government's career executives than what we have. That is really the issue. It is a better system. I think it is more equitable, and it is more administratively manageable than this present terribly complex system we have. So on a technical front, I have no reservation whatsoever in recommending this wholeheartedly to your committee.

Mr. HENDERSON. You sort of hit my nerve on this because of the reservations I have, and I do have some about the Federal Executive Service. I hope through our deliberations we may be able to mute some of those objections or reservations that I do have. I certainly think you could get on the other side and testify as to the imperfections of the present system. I am highly motivated that Congress have greater control. We do not have very much control now over the total broad supergrade spectrum and it is for this reason that I look with a lot of favor on doing all we can to see if we can improve the legislation and then put it to the final test of our own good conscience.

Mr. Gladieux, I am very appreciative of your appearance this morning. Thank you very much for remaining and staying with us on what I think is a very important point involved in this whole legislation. I certainly want to thank the members of the subcommittee for attending and being with us this morning.

Mr. GLADIEUX. It has been a real privilege.

Mr. HENDERSON. We will adjourn until tomorrow morning at 9:30, when we will hear from Dr. Charles E. Walker, Under Secretary of the Treasury; Mr. John F. Griner, President, American Federation of Government Employees; and Mr. James Hill, Director, National Federation of Professional Organizations.

(Whereupon, at 11:55 a.m., the hearing adjourned.)

THE FEDERAL EXECUTIVE SERVICE

THURSDAY, APRIL 27, 1972

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

The subcommittee met at 9:30 a.m., in room B374C, Rayburn Building, Hon. David N. Henderson (subcommittee chairman) presiding.

Mr. HENDERSON. The subcommittee will come to order.

We are continuing today our fifth day of hearings relative to the establishment of a Federal Executive Service, as provided in H.R. 3807 and H.R. 6772.

Yesterday, the subcommittee heard from two witnesses strongly advocating the establishment of the Federal Executive Service; the Secretary of the Department of Health, Education, and Welfare, Mr. Richardson; and Mr. Bernard Gladieux, who is chairman of the National Civil Service League.

Today it is our privilege to hear from the Under Secretary of the Treasury Department, Dr. Charles E. Walker; the executive vice president of the Federation of Government Employees, Mr. Clyde Webber; and, if time permits, the executive director of the National Federation of Professional Organizations, Mr. James D. Hill. There may be some limitation on our time for the latter witness.

Dr. Walker, it is a pleasure to welcome you before the subcommittee this morning. You might want to introduce your associates.

STATEMENT OF HON. CHARLES E. WALKER, UNDER SECRETARY OF THE TREASURY, ACCOMPANIED BY WARREN F. BRECHT, ASSISTANT SECRETARY FOR ADMINISTRATION, AND MRS. ESTHER LAWTON, ACTING DEPUTY DIRECTOR OF PERSONNEL

Mr. WALKER. Mr. Chairman and members of the subcommittee, I would like to introduce on my right our just recently appointed Assistant Secretary for Administration, Mr. Warren F. Brecht, whom we recently stole from the Department of the Interior. On my left is a long-time career employee, Mrs. Esther Lawton, who is Acting Deputy Director of Personnel. So, if you want to go into the nitty gritty of our personnel operations, I am well fortified.

Mr. HENDERSON. Your reference to the matter in which you obtained Mr. Brecht causes me to ask this first question about the Federal Executive Service. Would it have been any easier to get him if you had had the Federal Executive Service?

Mr. WALKER. Yes, it would. It is a very special position. We have requested legislation so that the position can have a presidential appointee, level 4, subject to confirmation in the Senate. That is not the case now. The position is filled by appointment by the Secretary with the approval of the President which is a rather interesting arrangement.

But at any rate, we would have saved time if we had had the FES.

Mr. HENDERSON. I suppose if you have to have presidential approval, you might as well get White House clearance in the first instance.

Mr. WALKER. It works the same way.

Mr. Chairman and members of the subcommittee, it is a pleasure to appear before you today in support of H.R. 3807 regarding executives in the executive branch of the Government.

I will not describe the proposed Federal Executive Service. Chairman Hampton of the Civil Service Commission has done this admirably both here and in the Senate. In his statements he also discussed major advantages of the proposed system. I agree with his discussion and wish only to add my own observations at this time.

The management of any organization is only as effective as the managers who direct its operations. And I can say through hard-earned experience that flexibility is one of the most important assets of anyone who heads an organization and has to meet the needs of the moment. The proposed plan, in its various provisions affecting the Federal Executive Service, has just the flexibility that a good manager needs.

I would like to endorse some of these flexible features as they relate to a large Cabinet department such as the Treasury Department.

First, I very much like the idea of a system which recognizes that cream comes to the top—that the word “executive” means a person at the top levels of government regardless of the particular position he holds in the organization. I look forward to the prospect of being able to utilize virtually any executive on almost any kind of job that needs to be done.

I don't want to worry about preparing documents, especially a position description, to try to find someone to do a particular job, and then prepare other documents to justify to the Civil Service Commission the someone who is selected. I would like instead to feel to call on a pool of competent executives and utilize any of them as needed without the delays now experienced in trying to qualify someone for a particular job which is fixed in the concrete of a position description.

Second, I think it is a good idea to assure those who have made careers of the Government service that they will be given the opportunity, through a truly merit process, to reach the top levels of Government and be assigned to work which in many cases was given only to noncareer executives in the past. And it is especially desirable that executives can be given a variety of assignments that will challenge and stimulate them.

In this connection, I also favor the proposed provision for temporary noncareer executives who will be selected from industry and universities to take short-term specialized assignments without endangering the tenure of the career executives and without going through the long processes now involved in selection, even with the excellent cooperation

of the Civil Service Commission. And, finally, I applaud the provision to have also on board noncareer executives who reflect prevailing Presidential and congressional policy. The ability to use career or non-career executives on jobs simply because they are executives would provide maximum flexibility to agency heads.

In our experience in Treasury in the last few years we have had constant changes in program emphasis. From the gold drain to today's economic stabilization program, we have had serious economic problems to face but we have had to struggle to get qualified people quickly or to get supergrade slots easily at the particular amount of need.

The kind of system proposed here which provides for annual identification of anticipated needs would have made it much easier to furnish successive Secretaries of the Treasury with qualified people almost immediately. As it is, we have frequently had to juggle supergrade slots and have often had to "rob Peter to pay Paul." We have taken important supergrade slots from one office when they became vacant and placed them in another office because an unnatural priority system was necessary to get a particular program started, or because we might lose a likely candidate.

For example, when the Bureau of Customs was reorganized and regional offices set up in 1964, we had to drop several supergrade jobs in the headquarters office and place them in the regional offices in order to get them started. But the people who worked in the headquarters office were over the field offices—except in grade. It was an inequitable situation and not all the inequities have been cleared up yet. Such a practice is disruptive and time-consuming as well as inequitable to the people whose expected supergrade jobs are snatched away from them.

In the proposed Federal Executive Service, agencies would have more freedom to base supergrade needs on existing and foreseeable program.

I recognize the need of having always on board, knowledgeable, experienced career employees who are available to furnish background information needed to develop administration policies or to take action. The proposed Federal Executive Service provides for a reasonable ratio between career and noncareer employees which will help assure continuity for those actions and programs that do not reflect party preferences. This, too, is an excellent feature because in Treasury so many of our jobs require background knowledge and expertise acquired through experience over a period of time.

Another feature of the proposed system which I like because it would be most useful to the Secretary and others in the Treasury Department is the appointment procedure.

Those of us responsible for carrying out Presidential and congressional programs have got to be able to get people working immediately—before they can change their minds or before someone can change their minds for them. By being able to appoint noncareer executives comparatively freely, essential programs can get started faster.

As a manager, I am particularly pleased with the proposed contractual aspects of the proposed service. It is a businesslike approach to holding competent career executives. Unfortunately, from time to

time, persons get into executive positions through accident or sheer longevity, but they are not able to carry out their assignments effectively. The proposed 3-year employment agreement would at least help to remove the less competent person from an executive position more easily and indeed more humanely than at present.

Furthermore, the group of executives who have their contracts renewed will stand out as a nucleus of demonstrably informed, competent, career civil servants available to undertake any kind of assignment and provide invaluable background experience.

Certainly one of the most attractive features of the proposed plan is the flexible pay system which is geared to the individual himself, to his availability on the labor market, and to his contribution to Government. Frankly, from a management point of view, I would like to see it even more flexible than proposed, but, being in the Treasury Department, I recognize that there is a need for some fiscal control. Therefore, I cannot object too much to having the Civil Service Commission and Office of Management and Budget fix an average executive salary which cannot be exceeded but which can be adjusted from time to time for emergencies—within established minimum and maximum rates.

Provisions for (1) maximum utilization of executive skills to meet any needs rather than those particularized in organization charts and other documents; (2) obligatory training and development opportunities; and (3) appeal rights of career executives who may object to certain assignments, are also desirable but not only from the point of view of management: they are desirable from the point of view of the executive himself. Such provisions are, in fact, essential to a well-rounded executive employment system.

One provision which I strongly favor is the annual requirement to analyze agency needs for executives based on present and anticipated agency programs, budget, staffing and legislation. This will compel all heads of agencies to look at their agencies critically and analytically in order to assure the necessary executive help in the ensuing year. It should also help to reduce the number of frantic requests for executives on an emergency basis throughout the year.

I believe that the creators of the proposed system deserve much praise. They have provided a plan which carefully blends a manager's dream of efficiency with an individual's image of achievement—by permitting maximum flexibility in getting a job done while at the same time allowing maximum opportunity for self-development.

Mr. HENDERSON. Thank you, Dr. Walker.

My first question or observation with regard to your statement would relate to the last page, in that paragraph in which you sum up the provisions: "(1) maximum utilization of executive skills; (2) obligatory training and development opportunities; and (3) appeal rights of career executives."

I think it is on the third point that some of us have had major concern with regard to the bill before us, the proposed Federal Executive Service, feeling that perhaps the appeal rights for upper career executives are not as meaningful as they might be.

Without unduly restricting the agency head, we have explored the possibility of the appointment and ad hoc boards by the Civil Service

Commission to review the decision upon request of the executive involved. What would be your reaction to that kind of strengthening of the legislation?

Mr. WALKER. I know some discussion has centered on whether there should be a right of appeal for contract extension. Does this suggestion include or exclude that right of appeal?

Mr. HENDERSON. At this point my personal thinking—and we have not been locked in on it in language—it would very definitely apply to the action that would require the executive to go back to the level GS-15 with saved pay. Possibly it would be applicable to the scientists and professionals, who would be identified, if they were required to move out of that group of scientists and professionals to other assignments.

We are just exploring some possibilities. Let us take the first instance where the agency head, upon the review of the contract and the executive have not worked out an arrangement satisfactory to both, and the executive's only choice is going back to level 15 with saved pay.

What would you think of giving him greater appeal rights or rights to appeal from the agency head to a board appointed by the Civil Service Commission reviewing his competence, his performance in Federal Executive Service?

Mr. WALKER. I do not believe I would favor that, Mr. Congressman. It is a very difficult thing to know just where to come down and where to come out when you are trying to create a modern and efficient and streamlined management system which can operate within the peculiar framework—and I do not mean peculiar in any bad sense—but the unique framework of Government service.

I know many businessmen—I worked as an executive in both the private and the Government sector, and in the Federal Reserve System, which is an in between sort of thing—come to Washington all bright-eyed and bushy-tailed; they are going to put in a real, business executive system, not realizing the special nature of Government.

But you cannot and should not have a system, which as in the case of an executive in a business corporation, gives the head of the agency almost the right of life or death. You cannot do that, and you should not do that.

On the other hand, I think that the provisions in this legislation spring from a humane standpoint and from a career protection standpoint. Given the level of income of the GS-15 relative to the 16's, 17's and 18's, no person is going to be significantly hurt by the sort of decision provided in this legislation.

Therefore, I would come out on the side of leaving the flexibility and action to the agency head, without the sort of second guessing that he would get from an ad hoc board.

I do not want to make that too strong; but I come out on the side of letting the manager run the agency, and then through congressional review you can keep tabs on him.

Mr. HENDERSON. We have received testimony that if the system does work, we are talking about executives who generally, by and large, hit it off and do a good job and are moving up. So they come into the Treasury at a GS-15 level with a 3-year contract.

I would envision chances are before the 3 years he would get an increase in pay. He might get another assignment even by going to responsibility that would justify an increase in pay; and he might get it in the same assignment for doing a good job. This is all very appealing to the management side.

It has even been suggested to us if he is bright, doing a good job, and getting a new program in another agency, he might be shifted from Treasury to get that program started, and there he would have, as I understand this system, a rearranged 3-year contract.

On this side it looks great, but suppose the man does not do the job he is contracted for in Treasury, even to the point that the Secretary has to say after the first or second year, "You have not performed," and give him notice as far as he can that he is not going to renew his contract.

I think it possible that they are looking at this case, saying, "Now, if this executive could be moved to another agency in another slot, he could do the job." What are really going to be his chances if that is the decision of the agency head?

He has almost no alternative but to get back to the GS-15 level with "saved pay." It would seem to me that the ad hoc board in reviewing this would be one that would fully review his performance up to that time and give it some protection.

I am not sure of this. We are just exploring how we can make it a better system.

Mr. WALKER. I am trying not to be parochial, but I must say, with all due respect both to the Civil Service Commission and OMB, that the people, who know best that he is doing the job and can do a job in the Treasury Department as of today, are the Secretary of Treasury and the Under Secretary. So, I would need to know more about how this ad hoc review thing would work.

Anything that protects the rights of the individual has great appeal to me, but we have to blend that with management flexibility.

Mr. HENDERSON. I think I could agree if I understand one of the hesitations you have here. It would be bad if the ad hoc board overruled the Secretary of the Treasury and you had to keep the man, would it not?

Mr. WALKER. That would cause great difficulty.

Mr. HENDERSON. I do not want to take too much time, Mr. Secretary.

On March 21, Chairman Wilbur Mills wrote me, as chairman of the subcommittee related to these hearings, about a suggestion that it would be desirable to exempt the Internal Revenue Service from the provisions because of the special sensitivity of this agency.

Have you had an opportunity to review the correspondence on this, and would you comment on the suggestion Chairman Mills made to us?

Mr. WALKER. Yes, sir; I would.

Chairman Hampton, at the request of the chairman of the full committee, responded in detail to Mr. Mills' suggestion.

Mr. HENDERSON. Yes; and I should have referred to that. I will ask unanimous consent that both of these letters be put in the record at this point.

(The letters referred to follow:)

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, D.C., March 21, 1972.

HON. DAVID N. HENDERSON,
*Chairman, Subcommittee on Manpower and Civil Service,
Cannon House Office Building, Washington, D.C.*

DEAR MR. HENDERSON: I noted from an announcement of the advance schedule of hearings for the Committee on Post Office and Civil Service that your subcommittee will hold hearings beginning on March 28 on H.R. 3807, to establish a new personnel system for upper level officials of the executive branch (to be known as the Federal Executive Service).

I have one point which I would hope that you would be willing to modify with respect to this bill. I, of course, recognize the desirability of having a strong Federal executive service which is responsive to the basic policy decisions of whatever administration is in power. While I have not studied this bill in detail, as a general principle, this concept has strong appeal to me. Nevertheless, I believe that it would be desirable to except the Internal Revenue Service from this provision because of the special sensitivity of this agency.

You will recall that in 1951, serious scandals and lax administration in the Bureau of Internal Revenue were disclosed in an investigative report by a subcommittee of the House Ways and Means Committee. At one point, the report states:

"Only the abolition of the system of political appointments can restore the public confidence which the Internal Revenue Service has to some extent lost."

Subsequently, in 1952, the Bureau was reorganized as the Internal Revenue Service. The reorganization proposal (reorganization plan numbered 1 of 1952) stated:

"The Bureau will be comprised of career personnel, with the sole exception of the Commissioner, the civil service merit system will be the accepted order with its accompanying high standards of professional competence, integrity, and loyalty."

It is my opinion that, with merit appointments for all top officials under the Commissioner, the Internal Revenue Service has, in fact, regained public confidence in its integrity and nonpartisan effectiveness. It seems to me that this situation should be continued but might well be jeopardized if Service officials were placed under short-term contracts and subject to assignment practices controlled by politically appointed officials.

For the reasons I have indicated, in the event you report out H.R. 3807, I would urge you to include amendments to preserve the present arrangements for career, merit system officials in the Internal Revenue Service under the Commissioner. There are 14 agencies, or parts of agencies, exempted from the employment provisions of the bill and I would recommend that the Internal Revenue Service be added to this list. I believe that this would involve inserting the words "the Internal Revenue Service," in section 3132(1)(B) on page 6, line 21, of H.R. 3807.

In addition, the bill establishes a special system of paysetting for "supergrade" positions or their equivalents moving under the executive service. Since I believe it is undesirable for the Internal Revenue Service personnel to be included in this service, alternative language for the IRS would be needed. One way in which this could be handled would be to insert at the end of section 2(b)(2) (page 32, line 18) the following:

"(C) On and after the effective date of this Act, the Secretary of the Treasury or his delegate, without regard to any other provision of this Act or other statute, may fix the pay of not to exceed 250 positions in the Internal Revenue Service, at any rate of annual pay he determines to be appropriate that is not less than the sixth rate of GS-15 nor more than the rate for level V of the Executive Schedule."

The language proposed exactly parallels that provided in (B) for the Federal Bureau of Investigation which also is exempted by H.R. 3807 both as to the employment and paysetting provisions. The maximum number of Internal Revenue Service positions which this amendment would authorize, 250, is 75 above the current number of positions, but well below what I understand are the IRS needs for these positions. In any event, this figure could be changed if necessary.

I would appreciate your sympathetic consideration of these amendments and the underlying reason for their submission, the need to continue an impartial administration of the tax laws, free of any suspicion of distortion through partisan interests.

Sincerely yours,

WILBUR D. MILLS.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 10, 1972.

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

DEAR MR. CHAIRMAN: I appreciate your forwarding to me for comment the letter dated March 21, 1972, sent you by Chairman Mills of the Joint Committee on Internal Revenue Taxation, which proposes that the Internal Revenue Service be exempted from H.R. 3807, legislation to establish a Federal Executive Service.

I must say at the outset that I cannot agree that the Internal Revenue Service should be excluded from the Federal Executive Service. When we were framing the FES proposal we gave careful consideration to the question of the inclusion or exclusion of each of the groups now paid in the supergrade range, including the Internal Revenue Service.

The agencies and employee groups that, after study, we decided to exclude, are:

Those which have a comprehensive special personnel system covering employees at all grades, which we would be reluctant to disturb.

The groups which are now outside the purview of the Civil Service Commission; the bulk of these are outside the executive branch. (It would be inappropriate, I believe, for the executive branch to oversee so basic a resource as executive manpower for agencies not under its management authority.)

The Internal Revenue Service does not fall into either of these two categories.

I understand Chairman Mills' apprehension about any possibility of diluting the career nature of the executive staff of the IRS and, indeed, we considered this very point ourselves. It was only after we had satisfied ourselves that the FES would strengthen rather than weaken the career service that we included the IRS in it. To begin with, the bill provides that ratios of career to noncareer employees, be set on an annual basis individually for each agency. Mindful of past history, the Civil Service Commission will see that the proportion of career executives in IRS is kept at a very high level and the Congress will have an annual opportunity to ensure that this has been done.

At present, the Director of the Internal Revenue Service—a Presidential appointee—designates which career employees will be proposed for supergrade appointments. He would do so also under the FES and under Chairman Mills' proposal. But under the FES each proposed career executive would be subjected to the impartial scrutiny of a Qualifications Board composed of eminent individuals from both within and outside the Government service. Under Chairman Mills' proposal no review of the decisions of the Director of the Internal Revenue Service would be made, even by the Civil Service Commission. I believe that the FES proposal provides a much stronger bulwark against corruption and mismanagement than does either the present system or Chairman Mills' proposal.

Chairman Mills rests his case for exclusion of the Internal Revenue Service on only those features of the FES designed to insure the continuing high quality of Federal executives. When he has had an opportunity to study the bill in detail, I am sure that he will come to realize, as I know you do, that the FES proposal is much more far-reaching in its effects. It is a total personnel management system affecting many aspects of the way the Government uses its executive resources. It provides for:

Setting the number of executive authorizations based on current program needs of each agency.

Fixing compensation of executives based on contribution to mission accomplishment.

Flexible use of executives in the organization to meet shifting program needs.

Monitoring the numbers of noncareer executives.

Placing the appointment of career executives under public scrutiny with emphasis on merit system principles.

Maintaining the quality of career executives during their average 10 to 15 year tenure as executives.

I would like to comment also on Chairman Mills' proposal to increase the super-grade positions authorized for the Internal Revenue Service from 175 to 250 (an increase of well over 40 percent). As we all know, there has been a constant upward trend in numbers of supergrades for several years. However, I think this request to make a special executive authorization for a particular agency without regard to the needs of other agencies, and to write it into law, where it becomes very difficult to alter when program demands change, is an excellent example of the kind of action which has left the present system so chaotic, and which has removed more than half of the executive positions in the Government from the meaningful oversight of the Civil Service Commission and of your committee.

Under the FES each agency must justify its need for executives annually. The Civil Service Commission and your Committee will have oversight over executive manpower for the entire executive branch and can annually review needs in light of the priorities of the entire service. The FES would even provide the flexibility to deal with added temporary demands such as those imposed on IRS by the present price control program without establishing the additional authorization as a permanency.

In summary, then, I must oppose Chairman Mills' proposal to exclude the Internal Revenue Service from the Federal Executive Service. It seems to me that the provisions of the FES are especially well designed to meet the executive manpower management needs of the IRS and to exempt them from its provisions would be a disservice to the public.

Sincerely yours,

ROBERT E. HAMPTON, *Chairman.*

Mr. WALKER. I would like to associate myself very strongly with Chairman Hampton's response. I say this fully aware of the absolutely critical need to maintain public confidence in the tax collection system of this country. We have a tax collection system which is the wonder of the world because it is fundamentally a voluntary system.

Mr. GROSS. Will you repeat that again.

Mr. WALKER. I should not have said voluntary system. It is a system in which the taxpayer voluntarily assesses the tax and fills out the form. You try to do that in a foreign country and you will get zilch; "I don't owe anything." Voluntary compliance is the word, not voluntary with respect to taxation.

I say this fully mindful of the bad days of the early 1950's when it became clear that there was corruption in the Internal Revenue Service. I am mindful of the imperative need not to permit anything like that to happen again.

Nevertheless, when we were analyzing and commenting upon the proposals for the Federal Executive Service some 2 years ago, and specifically discussing whether any agencies of Treasury would be exempted, we concluded that only the Office of the Comptroller of the Currency, which is a special operation maintained by funds that are obtained from the banks of the examiner, should be exempted.

We do not believe any of our law enforcement activities should be exempted, the Secret Service, the Bureau of Customs or the Alcohol, Firearms and Tax Division, nor do we believe IRS or any of its law enforcement activities should be exempted.

I cannot conceive that giving greater management flexibility to the Secretary of the Treasury, the Under Secretary and the Commissioner of Internal Revenue would in some way or other compromise the positions of the career people in the IRS.

So I would hope, Mr. Chairman, not only that this legislation would pass, but that all agencies of Treasury, excluding the Comptroller of the Currency's Office would be included.

Mr. GROSS. Would the chairman yield at that point, since he has mentioned the Office of the Controller of the Currency.

Mr. HENDERSON. Yes, I would be delighted to.

Mr. GROSS. Why did you ask for exemption for the Office of the Assistant Secretary of International Affairs?

Mr. WALKER. This is an operation in the Treasury Department, Mr. GROSS, which grew out of the creation of the Exchange Stabilization Fund, which was set up in the 1930's for the critical purpose of the maintenance of the dollar in international markets.

The operations of the Office for the Assistant Secretary for International Affairs are fully funded out of the Exchange Stabilization Fund, although we follow in that office the same basic procedures, the evaluation of the people, the personnel operation that is found throughout the rest of the Treasury.

I feel certain that we would follow the same basic provisions and flexibility in what we call OASIA as we would in the other parts.

Mr. GROSS. Do you have any supergrades in the Office of the Assistant Secretary for International Affairs?

Mr. WALKER. We have people at the supergrade level, yes; we do.

Mr. HENDERSON. Thank you very much, Mr. Secretary. I believe those are the questions I had at the moment.

Mr. Mills?

Mr. MILLS. Thank you, Mr. Chairman.

Mr. Secretary, do you believe the creation of the Federal Executive Service without congressional quotas will mean additional numbers of supergrades?

Mr. WALKER. No, sir; not necessarily. This will depend on programs. It will depend upon the activities of the Congress in funding programs, so in and of itself I do not see additional super grades necessarily. Not that everybody does not want additional supergrades; you and I know that very well.

Mr. MILLS. Do you feel that all the top provisions except those you have mentioned specifically should be included?

Mr. WALKER. Yes, sir; I really do.

Mr. MILLS. Has it been your experience in private industry that most top executives have actual contracts with a board of directors or with the head of the corporate structure?

Mr. WALKER. Very seldom does it go beyond the chief executive officer, depending on the size of the organization. If you are talking about an executive cadre of some 100 people, I would know of few instances where it has gone much beyond four or five.

Mr. BRECHT who has had great experience in management consulting firms is here, and I would like him to add a comment. Are there sometimes more?

Mr. BRECHT. I think what you have just said, Dr. Walker, is essentially what takes place.

I think, generally speaking, when you talk about contracts they are usually of shorter duration, and a number of the people at the upper levels can be retained or fired pretty much at will.

Mr. WALKER. In the commercial bank, with which I am most familiar, as I recall, the officers are selected for 1 year, and frequently there will be a management contract with the chief executive officer and two or three others, for a 5-year period.

As often as not those are tied to the peculiarities of our tax structure, so there can be deferred compensation and other advantages. That is just as important as the contract price.

Mr. MILLS. Of course you have stated that we are in competition for good executives. Do you feel then that the 3-year contract is an attractive feature to allow the Federal Government to obtain the best from the executive?

Mr. WALKER. I certainly do. I think it is a very fine proposal. I wish you had had it all the time I was here. I wish you would get it before I leave.

Mr. MILLS. Do you feel it would be unfair to private industry in any way?

Mr. WALKER. No; I do not think so. I think that most of the people that I really respect in private industry, not only understand the problems of staffing government; they are very, very eager and happy to see their people, particularly at the middle management level, come into government and get experience with government. I can see no real problem.

Mr. MILLS. That is all, Mr. Chairman. Thank you.

Mr. HENDERSON. Mr. GROSS.

Mr. GROSS. Mr. Walker, it seems to me you come down hard on the management end of this proposal, but not too hard on the defense of the rights of the Federal employees who are being dealt with under this bill.

For instance, how many supergrades in the Treasury Department and its superior organizations do you think would voluntarily come under this act if it were approved by Congress?

Mr. WALKER. I see no reason to doubt the figures that I believe Chairman Hampton quoted, which was the preponderance or the majority of employees.

As a matter of fact, I am so parochially proud of Treasury, I feel practically all Treasury executives would elect to operate under a program which would permit them to show what they can do, as opposed to some of the rigidities that we now have.

In Treasury, if you exclude the lawyers—of which we have a large number—we have only 5 percent of our employees in positions which are noncareer jobs. I think the vast majority of people in Treasury would elect for the program because they are good.

Mr. GROSS. You know, I am beginning to think you are a born optimist.

Mr. WALKER. Yes, sir, I am; and I am very proud of it.

Mr. GROSS. On page 4 of your statement you say, "obligatory training and development opportunities." Are not these executive supposed to be highly qualified when they are hired into these high-paying jobs?

Mr. WALKER. Highly qualified, but that does not mean they cannot and should not further develop. I think that in most instances in private industry you could probably drop the word obligatory, but I am a very great believer in the operation down at Charlottesville, the Federal Executive Institute.

I have the privilege of lecturing down there frequently, and it is a pity that so many people in Washington in the supergrade levels and

other grade levels who should go and benefit from that institute simply "cannot be spared from their jobs" for that period of time.

I look upon the obligatory aspect, as being as much obligatory on the head of the agency, to get this man out for training, as I do on the executive, because the type of executive we are talking about will not need urging to broaden himself and to improve himself.

Mr. GROSS. You know it gives me pause almost every day around here when I think in terms of the money that we are spending on education, generally, and within the Federal Government. We seem to be digging our grave deeper every day. Problems increase, and I often wonder what all this means.

With the greatest of ease yesterday we passed a \$4 billion deficiency appropriation bill, piling \$4 billion on top of the regular appropriations bills last year. We are getting deeper into trouble every day in this Government of our financially, and in many other ways, but particularly financially.

I cannot help wonder what all of this education and training means. It seems to say we ought to have well qualified people. Perhaps you cannot answer the question, and I suppose I do not pose it as a question. If you have any comment, I would like to have it.

Mr. WALKER. I do have a comment. As a former professor, as a manager of various specialized schools in the banking and financial field, and as an executive who has asked his people to engage in executive training and activities, I feel we are not—and I even say this of almost any activities in a free enterprise, democratic society—getting full measure for our dollar in any area, and that includes the education area.

It is a slow process changing that sort of thing. I think improvement can and should be made.

On the other side of the general fiscal problem of the Federal Government; yes, we have problems. We have a democracy in which everybody wants more but does not want to pay for it, and as a consequence we find ourselves in the red frequently.

One first step that could help in this direction and that is being considered by the Appropriations Committee is a fully binding expenditure ceiling that is just as binding on the Congress as it is on the executive branch. We favor that legislation.

Mr. GROSS. Do you feel there is sufficient protection for the selecting out at the top personnel level in this bill?

Mr. WALKER. To the individuals?

Mr. GROSS. Yes.

Mr. WALKER. Yes, I think there is. I would not want the people of the United States to think we cannot remove incompetent people now; they would lose faith in their Government quickly.

We can improve competence but it consumes a lot of my time and Mr. Brecht's time and the Secretary of the Treasury's time. Any fair person would say that this should be done and very quickly.

For protection, basically, to rights, go back to the integrity of the officials that you appointed or that the President appoints to the Cabinet positions. This is the ultimate protection. I think there is adequate protection in the FES proposal and it does give the needed flexibility.

Mr. GROSS. I wonder if we just organized this Government into a corporation and abolished Congress, or some other aspects of it, if we might not get along better from your viewpoint.

Mr. WALKER. No, sir. You might for a short period of time, but you would obviously end up in a sort of dictatorship.

I very much respect the Congress and enjoy my workings with the Congress. I was sincere when I said I have been looking forward to appearing before this committee for some time.

There are some people in the executive branch who do not understand the sort of relationship that should exist between the Congress and its relevant committees and the people downtown. I think I understand that relationship, and as far as I am concerned it has been a very harmonious and productive relationship. Congress serves a vital function.

Mr. GROSS. I say, again, that I want to give management the proper tools, but I also want to protect the employees of the Federal Government. I can tell you here and now that this bill in its present form is not acceptable to me, because I do not think it would do this.

Mr. WALKER. I regret that, sir; I respectfully disagree. I think when you get back to the basic fundamentals, that all of us in this city, wherever we are working on a payroll, are servants of the people, and we have to serve them better it seems to me.

Mr. GROSS. Thank you, Mr. Chairman, and thank you, Mr. Walker.

Mr. HENDERSON. Dr. Walker, would it be fair to say that basically what you and others have said with regard to the Federal Executive Service is that one of the objectives is to put a greater responsibility on those executives who go into the service and under the contract arrangement, or other arrangements if we did not have contracts, to attain a higher degree of performance than ordinarily we would require of the civil service employees up in the grades of GS-13, 14, and 15.

Once they make the decision that they become executives, there is going to be less tolerance of mediocrity; that they really have to perform in the specific job that they contract for?

Mr. WALKER. I think that would probably be the Government-wide result, and I do not want to engage in any invidious comparisons, but we think in Treasury we do get that sort of performance now.

One of the problems is when you are not getting that sort of performance it just takes a dickens of a lot of time and effort to work things out. This would facilitate getting it.

Mr. HENDERSON. I want to come back to one response you made to Mr. Gross with regard to appropriations, considering possible overall Government budget limitations.

I recall the one that we had in the legislation that was a joint effort by the Ways and Means Committee and the Appropriations Committee. I believe it was in 1966, in which not only did we have budget limitations, but we had manpower ceiling limitations.

For years before that and since then I have become even more convinced that what the American taxpayer really wants is budget management where we try to get it through ceiling limitations.

We do not always control the budget side. It can complicate and make it possible for departments and agencies to spend more money,

and stay within the manpower ceilings. I would hope that you would join me in those efforts as they develop in the Appropriations Subcommittee to put the emphasis on controlling the dollars. This is really what we are trying to do. I think it would be helpful if agency heads had greater flexibility, so long as they had to control their dollars. Then how they manage their people is not so important to that objective, it seems to me.

Mr. WALKER. If you control dollars, you control people, because you cannot have people without dollars.

Mr. HENDERSON. But we see clear illustrations where you try to control people and do not have control on dollars at more expensive operations.

Mr. WALKER. Consultants, overtime.

Mr. HENDERSON. Contracting.

Mr. WALKER. Contracting, yes sir; I could not agree with you more.

Mr. GROSS. Will the gentleman yield.

Mr. HENDERSON. Yes, sir.

Mr. GROSS. I am sure my friend from North Carolina remembers not too many years ago, in the late 1960's, when Congress made a deal with the executive branch of Government to increase the taxes by, I believe it was, 10 percent in exchange for a cut in spending of some \$5-\$10 billion. The tax increase went into effect, but we sure never got the savings in the executive branch.

Mr. WALKER. It was full of loopholes. That was in another administration.

Mr. GROSS. You know, that offer was just as honest as was the treaty between Germany and Russia prior to World War II. It was just that honest.

Mr. WALKER. I cannot speak to that, I was not here then, but the ceiling that we have proposed has absolutely no loopholes.

Let us suppose that completely beyond the control of the administration some items such as interest on the public debt or veterans benefits or something of this type went up, and the spending ceiling was, as we suggested, \$246 billion.

If interest on the public debt rose \$1 billion above the projected amount, the President would have to cut from the budget somewhere a billion dollars to offset that, in contrast to the ceiling in 1968, which had a number of exempt items and an opportunity to kind of shift things around, as you know.

Mr. GROSS. If you will indulge me just one quick comment, I have this argument with another Texan by the name of Mr. Mahon of Texas, a very estimable gentleman, about these uncontrollables.

There is no such thing, Mr. Walker, as an uncontrollable, because Congress can control the purse strings if it wants to control the purse strings.

Mr. WALKER. That is right.

Mr. GROSS. The mistake with respect to uncontrollables is that we enact the legislation that eventually requires the expenditure.

Mr. WALKER. That is correct.

Mr. GROSS. Let us just say the simple facts of life. There is no such thing as being uncontrollable if we want to control it.

Mr. WALKER. That is what our spending recognizes—

Mr. GROSS. It does not recognize it, and the proof is we are \$45 billion in debt.

Mr. WALKER. We have not had the ceiling. We are asking for it.

Mr. HENDERSON. Dr. Walker, and Mr. Gross, I would respond by saying that from the experience of my own State where we have a constitutional requirement on our executive and legislative, they cannot spend more money than they tax for.

Many of us in my delegation—and I am one of them—stand ready to propose, and I think it would meet the point you made about the American people wanting more things and not being willing to pay for them—I would support a constitutional amendment that would provide that the Federal Government could not spend more money than it taxes.

You have to have a balanced budget. I think that it may even take a constitutional amendment, and I think that the American people are wise enough that some day they are going to find if they do not do that, that the country is in bankruptcy, as so many, such as Mr. Gross, predict for our future.

I commend the efforts to get this done at the present time, but I certainly get frustrated, as Mr. Gross did, in the instance he spoke of, when we take the device of saying, "First thing we are going to do is save money or save it in the limitation, cut arbitrarily our very fine civil service employees, but you agency heads go ahead and take your money and throw it in other directions to provide manpower for our Government to operate."

It is very frustrating to me.

Mr. Secretary, you have been very responsive to the subcommittee this morning, and I appreciate your appearance. It has been our pleasure to have you before us.

Mr. WALKER. It is my pleasure. It has been a privilege.

Mr. HENDERSON. Our next witness is Mr. Clyde Webber, executive vice president of the American Federation of Government Employees. Mr. Webber, it is a pleasure to welcome you this morning before the subcommittee. We are glad to have your associates with you this morning, too, sir.

**STATEMENT OF CLYDE M. WEBBER, EXECUTIVE VICE PRESIDENT,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; ACCOMPANIED BY CARL K. SADLER, LEGISLATIVE REPRESENTATIVE;
AND STEPHEN A. KOCZAK, DIRECTOR OF RESEARCH**

Mr. WEBBER. For the record, I can introduce Mr. Sadler, our director of legislation, and Mr. Koczak, our director of research.

Mr. HENDERSON. We are familiar with both of your associates. We have day-to-day contact with Mr. Sadler, and it is always a pleasure to see him officially or unofficially.

Mr. SADLER. Thank you.

Mr. WEBBER. I have a statement here of Mr. Griner. Mr. Griner had a longstanding commitment for this date, and he was unable to be here, and he asked me to convey his regrets, and asked me to present the testimony.

Mr. HENDERSON. You may proceed any way you like, sir.

Mr. WEBBER. On behalf of the American Federation of Government Employees, I am grateful for this opportunity to appear before you today in opposition to H.R. 3807, a bill to establish the so-called Federal Executive Service.

We are opposed to this proposal on several grounds. As a union of Federal employees, we are, of course, opposed most of all to the threat this bill contains to the competitive career merit civil service for which we have fought so long. As citizens, we are equally opposed to the impact this bill will have on the ability of Congress and its committees to carry out legislative oversight of congressional programs. Our experience has been that whenever access to facts is denied Congress, directly or indirectly, we suffer both as a union of Federal employees and as citizens.

THE ASSAULT ON THE FES CONCEPT ON THE CLASSIFIED COMPETITIVE SERVICE

The FES system incorporated in H.R. 3807 constitutes a major assault on the principles evolved over many years by Congress in establishing a civilian competitive classified merit career system. An indication of the extent of this assault is revealed by the fact that the provisions in H.R. 3807 undermine even the principles which the Civil Service Commission itself had been using heretofore in the executive assignment system established by Executive Order 11315 of November 17, 1966. The Executive order was still bound, of course, by existing statutes governing the criteria for a merit classified career system which the Civil Service Commission had to observe, at least in letter. H.R. 3807, on the other hand, proposes to repeal existing statutes and to eliminate some of the most important safeguards Federal employees of all grades have to assure them equal opportunity to advance to the top.

Under the executive assignment system, career employees of a Federal department had at least some assurance that they themselves had a right to be considered for an executive position in their own departments. This was a motivation to dedicated service and an assurance that distinguished and loyal service in the department opened the doors to permit promotion.

In contrast to the EAS, the FES program would place almost the entire initiative and the final power of choice into the hands of the top political managers of the executive departments and agencies. Moreover, it would empower the top political managers to assign career employees to noncareer or political jobs, involving them in serious conflicts of interest as to their duties; and it would permit political or noncareer employees to fill positions which today are considered by everyone to be career. The exchange or intermingling of political and nonpolitical duties between career and noncareer employees violates one of the long-held tenets of the Federal merit system—that there should be a clear line of demarcation.

Mr. HENDERSON. Let me ask you a question right here, Mr. Webber. Do you not think by eliminating the distinction between the career and noncareer positions, as the bill does, there would be a wider field of opportunity for the career employee?

Mr. WEBBER. As I go forward here in the next couple of paragraphs in the statement, I explain that we feel that it places possible political

coloring to the work which the career employees are doing, which does not exist today; and certainly as far as the noncareer employee taking over these career responsibilities, there is no question about the coloring which would come into the performance of those duties.

The assignment of political duties has obvious disadvantages for the career employee—yet he has no choice in the matter. The assignment of duties traditionally belonging within the career service to a noncareer employee can have two undesirable effects. It can color their duties with a political mantle. It can deny deserving career employees the opportunity to serve in a career line of the highest order. It must also be kept in mind that the noncareer employee has had no impartial evaluation of his qualifications at any time. Agency heads have exclusive authority to bring noncareer employees into the service on their own terms.

We fear the adoption of the proposed Federal Executive Service could have a corrupting influence on the rest of the career service, which in turn could adversely affect efficient operations of Federal programs.

I do not intend to speak to the trappings of detail and rhetoric blanketing the proposal and its supporting arguments. When these are stripped away we find, in my opinion, not a new system but rather a carefully contrived means to give top political executives in the executive branch complete authority to manipulate the entire upper career civil service.

This includes the right to hire practically anyone they choose, to change duties regardless of qualifications and proven competence, to pay at disparate rates within a broad range of thousands of dollars irrespective of comparative responsibilities and to oust employees from the system at will after 3 years of exemplary service.

Mr. GROSS. May I interrupt you at that point. You have left out one, and that is the ability to move them at will anywhere in the country. This can be just as devastating in some instances as any other you have mentioned.

Mr. WEBBER. Clearly, yes; I agree, sir. Let me be more specific.

The key factor upon which much of the proposal is built is the flexible assignment concept eliminating any kind of job classification system at these upper levels. This neatly avoids, for top political management, any structure requiring comparative pay or adherence to generally accepted qualifications or job evaluation standards.

Once an employee is on board the nature, extent, responsibility level, and location of his assignment may be changed substantially so long as the change falls within the broad level above GS-15. The obstacle of meeting any stated qualification requirements no longer exists.

Pay does not have to have a direct relationship to duties, or to comparable duties within the agency or other agencies. The rights of an employee for equitable redress in assignment or pay is avoided. He has signed away these rights in his employment agreement.

AMBIGUITY—OR MANIPULATION OF THE SYSTEM BY A PLAY ON WORDS

A cardinal principle of every career merit system is the classification of all positions in clearly defined terms. The FES system violates this clear principle of classifications at all levels. First, the Civil Service

Commission will not have any role at all in the classification of executive positions. This will be left entirely to the whim of each department. Job descriptions will not be governed by any centralized or universal standard. What may be a GS-16 job in one agency can easily be a GS-18 job in another, without any central standard.

In his statement of April 18 to your committee, Chairman Hampton said the following:

It is our judgment that there exists today an undesirable degree of position orientation at the executive levels. Therefore, we have abolished central position classification in the FES. Instead we have provided that an individual may be assigned within the agency to any appropriate executive duties where his services are needed. We expect this provision to result in less attachment of individuals to specific position.

Second, career employees can be obligated to fill so-called non-career jobs. These are, of course, really political jobs. Moreover, non-career employees, that is political appointees never appearing before the qualifications boards, can be appointed to traditionally career positions. I should like to quote to you Chairman Hampton's own phraseology as to how this would work.

We have, therefore, had to question seriously whether our present system of identifying positions as career or noncareer continues to serve a useful purpose. After careful study, we have concluded that it does not. The FES would eliminate this procedure.

The FES eliminates formally established positions and the designations of positions as career and noncareer. As a logical consequence, it also provides that executives, career and noncareer alike, can be used in any assignment in which they can contribute most effectively to program goals. Under the FES there would be no bar to assigning a noncareer scientist on leave of absence from a university to be head of a Government laboratory. Nor would a long-term career employee have to give up his career rights to accept a position as special assistant to a Presidential appointee who needs his program and agency expertise.

Chairman Hampton did not employ the term "rank-in-man" in his current testimony before your committee. One year earlier, however, when testifying in favor of the FES program before the Senate Civil Service Policies and Practices Subcommittee, he stated the following: "Under the FES we recommend a combination of rank-in-man and position structure."

The rank-in-man concept is, of course, relatively easy to understand. This concept assigns a personal hierarchical role to the individual entirely apart from the job he performs. Its basis is an elitist definition of classification because the "rank" is carried about with the person, as an administrative title, entirely apart from his actual duties and responsibilities. The rank-in-man concept denies, of course, the fundamental principle of equal pay for equal work. Like those discriminations which are based on sex, color, religion, age, national origin, the rank-in-man concept discriminates by alleging that a genuine distinction should be made between two employees not on the basis of actual work performed but rather on such personal considerations as education, class, amiability or confidential relationship to their superiors.

Chairman Hampton also used the term, "position structure."

This term is more obscure than rank-in-man. However, some insight can be obtained from Chairman Hampton's earlier testimony that position structure in any agency could be based on an organizational structure approach, a program function approach, on an individual

assignment approach depending on the agency's program, clientele and workforce.

In short, position structure can be anything management wants it to be. Since there will be no central position classification carried out by the Civil Service Commission, there can be no means of challenging the approach taken or the definition which in fact is employed.

It is thus evident from an analysis of the bill and from statements made in its support by the administration that the basic innovations in it are the introduction of two criteria which have been rejected for the classified career civil service in the past; political influence and rank-in-man. Both these principles violate the notion of a classified, nonpolitical civil career service based on equal pay for equal work where positions are classified on the basis of job descriptions of actual work performed and not on the basis of some personal or subjective qualification allegedly inhering in the individual.

Mr. HENDERSON. Mr. Webber, may I stop you right here. I thought I had sort of agreed to restrict myself on this point today since I was in it so much yesterday, but yesterday Mr. Gladieux said:

It is common knowledge in the Federal community that a rigid political clearance process is now operated by White House staff, extending not only to presidential appointees, for whom such requirements of political loyalty are wholly acceptable but applying as well to supergrade appointees and at time even reaching down into lower levels of the civil service.

Before you leave this point I wanted to ask you, we are not completely without some political influence in clearance under the so-called merit system today, are we?

Mr. WEBBER. As long as I have been associated with the Government service, I have never seen the day that it was not helpful to have a Congressman or Senator, someone of that nature, interested in your appointment, although you might have the necessary qualifications, and be on the appointment register. The concern of people high in Government never hurt any applicant.

Mr. HENDERSON. I have had the experience at lower levels at least that I thought it was almost a kiss of death to have a letter in the file from a Member of Congress, but the point I wanted to make, I did not want your testimony this morning to leave the impression that while the Federal Executive Service may provide greater opportunity for political influence, we have a lot of it now, have we not?

Mr. WEBBER. There is a substantial amount; yes, sir.

Mr. HENDERSON. When I say now, we have it, too, in the past as well.

Mr. WEBBER. Up to the present, except for hiring consultants or persons who would fill temporary positions, it has been the practice not to contract for services in the career service. Employees were appointed on the basis of their qualifications and they maintained their careers on the basis of procedures which applied equally to all. These procedures involved mechanisms for promotion, assignment, demotion, dismissal. They also involved bumping rights in the event of reductions-in-force.

In the FES, these traditional statutory career safeguards are either eliminated altogether or largely vitiated. Under H.R. 3807, members within the FES cannot effectively invoke these rights, so long as they remain in the FES, against other career members of that Service or against management. They can invoke these rights only at the point

where they have been selected out of the FES and acquired a new career within the classified civil service as GS-15 employees.

And at that stage they will be acquiring these rights at the cost of the same rights of other civilian employees already in the GS-15 positions who had not previously been in the same competitive career service with these executives. While FES executives cannot bump other FES executives, they will be able to take jobs at the GS-15 level and thus close off the promotion of qualified employees, many of whom had given long periods of loyal service not only to their Government but to their chosen departments and agencies.

This system of privilege presents a clear challenge to the standards now existing in the entire classified competitive civil service in the matter of equity and justice. It not only raises a serious issue of conflict of career standards, which might have to be resolved finally in the courts. It also raises the question as to whether the GS-15 grade will not become the dumping ground in many departments and agencies for allegedly mediocre executives in the FES.

Some critics might even ask: If these FES executives are mediocre at GS-16, might they not be mediocre at GS-15? How is their claim to a specific GS-15 position to be reconciled with the claim of a GS-15 incumbent who is admittedly highly qualified?

The stated purpose for the enactment of H.R. 3807 is to "ensure that executive leadership is of the highest quality and is responsive to the needs, policies and goals of the Nation it serves."

To achieve this end, H.R. 3807 would authorize all kinds of extraordinary departures from proven standards of good career service. Supposedly, these should assure that very few mediocre career executives would ever enter the Federal Executive Service.

Yet a major portion of H.R. 3807 deals with selecting out mediocre executives. It is indeed a fundamental question as to how and why such highly skilled executives could become mediocre within a short period of time.

We believe that the key lies perhaps in the fact that this bill explicitly intermingles within one service two different and basically conflicting goals, which should be kept distinct. It encompasses within one system positions based on merit and those based on politics; the bill claims to relate these by defining one as career and the other as noncareer.

But behind this facade, what the bill really permits is a mechanism under which political appointees could be inducted into the career system simply by holding office long enough in the noncareer category to qualify for conversion to the career category. This influx of political executives, of course, will load the career side eventually, and the only way that they can be unloaded by a new administration is to be selected out as mediocre executives.

This weeding out will probably precipitate a large number of reductions in force in the classified civil service in grades GS-15, GS-14, GS-13. With each change of administration the weeding out will bring confusion and chaos at the levels of middle level management and among the top professional positions being overloaded by mediocre executives.

I should like to quote to you Chairman Hampton's own words:

Under the present system, once an individual becomes a career executive, he may remain a supergrade until he chooses to quit. Very few are basically incompetent to the degree that discharge action is warranted.

Accordingly, we are proposing under the FES a periodic review of each career executive's contribution. We will do this by means of an employment agreement. We recognize that this is a sensitive area.

I should like to invite your especial attention to the use of the pronoun, "we." You will find that that "we" is the political management authority which originally appointed the career executive. It is the same political management authority who assigned him, in some cases, to basically political positions. In short, that "we" is not some impartial body or review board which can examine the merits of the allegation of mediocrity, to whom the executive can appeal in the event he finds his contract is not being renewed because he insisted on discharging his duties in terms of his own oath of office to uphold the laws of the land.

It is our unhappy experience that such weeding out authority is used for reprisals against conscientious employees and executives as often as it is used against genuine mediocrity. Another term for this type of action is "selection out." The press has been recently filled with the abuses which have arisen in the State Department and the Foreign Service in selection out. There the result of this system, allegedly designed to assure high quality, has been the appearance of conformity, timidity, the stifling of creative and independent thought. Too often selection out had been used to weed out the truly competent, dedicated employees who have felt obliged out of commitment to their oaths of office and statutory responsibilities to differ with positions or verbal policies of supervisors based on expediency; or they have otherwise incurred the displeasure of those superiors. Though selection out would be authorized by Congress solely to eliminate the less competent, it can easily be abused unless a strong appeals mechanism exists to assure that these decisions are based on fact.

No such mechanism exists in H.R. 3807. The contract provision therefore, can be used arbitrarily without any guarantee of merit, due process or equity. Our organization is unalterably opposed to such a scheme.

ABDICATION OF RESPONSIBILITY BY THE CIVIL SERVICE COMMISSION

I have already indicated to you how the FES program would erode the standards and fragment the unity of the civilian competitive merit career service which Congress has been legislating.

It would also permit the Civil Service Commission to abdicate those duties which it now has to Congress to assure that the top career executives of the Federal service are appointed by the same standards of impartially as employees in other grades.

You have heard Chairman Hampton himself state that the Civil Service Commission would not enforce any central position classification. You have heard him say that there would be no distinction between career and noncareer positions in the FES.

This abdication of responsibility and duty would place unprecedented powerful tools in the hands of the political administrators of the executive branch to act without any type of statutory controls. We fear that, if Congress permits this set of principles to come into existence, we will have an executive service indistinguishable from the spoils system. Our organization dreads the prospect that such tools should ever be forged by law.

We fear that if such a system is allowed to exist at the top of the general schedule, it will not be confined there for long. The tendrils of the FES already would be allowed to penetrate down to the GS-15 level; its impact would touch GS-14 and GS-13 employees almost immediately by the denial to them of opportunities for promotions upward.

If the FES is enacted, we fear that it is only a matter of time before similar systems will be inaugurated throughout other parts of the Federal service.

In this regard, I should like to quote to you also from the communication of Elmer B. Staats, Comptroller General of the United States, to the chairman of the full committee, Mr. Dulski, regarding various aspects of the FES proposal:

There is no provision in the bill which would prevent an agency from arbitrarily refusing to renew an employment agreement.

Also, while the authority to assign executives to whatever duties are required and to pay them at any salary rates deemed appropriate (within the authorized range) may be advantageous to management, such flexibility could be the subject of abuse resulting in meaningless distinctions in pay and duties among executives.

In general, we believe the authorities provided by subchapter II of chapter 53, title 5, United States Code, for establishment of executive level positions, together with that provided by subchapter I of chapter 33, title 5, *supra*, for excepting positions from the competitive service (schedule C) provide a flexibility in the selection and appointment of high level employees that dilutes the need for the proposed Federal Executive Service.

Moreover, it is possible that establishment of the Federal Executive Service might tend to diminish rather than enhance the Government's attraction as an employer of high level personnel. The relatively secure tenure of Government employment which allows talented employees to achieve high levels of responsibility is, we believe, a major factor in inducing such persons to accept Government employment and remain in it in preference to work in private industry where earnings may be much higher. The Federal Executive Service concept could lessen this attraction to Government employment and defeat its purpose of attracting and retaining the best qualified employees.

IMPAIRING THE RIGHT OF CONGRESS TO CARRY OUT LEGISLATIVE OVERSIGHT

My previous comments were largely addressed to the harmful impact of the FES program on the efficiency of the executive branch and on the rights of Federal employees to continue to have the protections of a civilian merit competitive career service.

Our organization is also concerned about the serious obstacles this FES program would place in the path of Congress and its committees to have access to information needed in the exercise of legislative oversight.

If the executive branch can assign at will noncareer political appointees to carry out programs, such as head a Government laboratory, what are the mechanisms that Congress can employ to obtain testimony

from them? If that noncareer employee is pressed too hard, the executive branch can simply assign him to some other career or some other noncareer position having nothing to do with that Government laboratory. And his successor could claim, probably honestly, that he was too new on the job to be able to comment authoritatively.

I ask you to consider also the pressures under which a career FES executive would be placed if he were assigned to a noncareer—that is, a political—position where his confidential relationship precluded his answering a congressional inquiry without a conflict of interest. If he answered honestly to the discomfort of his superior, his contract would be terminated. If he avoided what he considered an honest answer, he would be in conflict with his own conscience.

We believe that the FES program ignores that essential part of our American way of life which accepts the political separation of powers and distinguishes between the role of the political management of the Federal agencies and the nonpartisan execution of policy.

We believe that the political heads of Federal departments and agencies should answer for their political decisions and policies. We do not agree that they should involve in these disputes the lives and careers of Federal civilian career employees.

We do not believe that Federal career employees should be placed in situations where they are called upon to withhold information from Congress, or where they are subject to reprisal, by termination of contract, for answering congressional inquiries in a straightforward manner.

The FES program could create situations which seriously endanger the ability of Federal employees to discharge their obligations to both the executive branch and to Congress.

There is one area in which there exists considerable agreement. That concerns the proliferation of special agency authorizations for supergrades. Both the chairman of the full committee and the chairman of this subcommittee have already expressed personal concern about this development. I note that Chairman Hampton indicated that the Commission also has great sympathy with their viewpoint.

Our organization also views with concern these special authorities for supergrades. First, they are too rigid and can be used by an agency only for the specific program named by statute. Moreover, they can be abolished only by legislation. Consequently, many of them remain in existence regardless of the current program needs of the agency.

There is a further serious problem with these special authorities. Because the agencies often wish to avoid any outside review or comparison of the standards which should apply for the various supergrade levels, they ask that these special authorities be exempted from the civil service classification and qualification laws.

Removing positions from under civil service places them beyond effective personnel review and control. Moreover, this exemption also means that the Post Office and Civil Service Committees of the House and Senate are impeded in their legislative oversight of these positions. We feel that anything which impedes such a legislative oversight can lead to fragmentation and to erosion of the competitive merit career service.

CONCLUSION

In summary and conclusion, I should like to express once again appreciation for the opportunity which your subcommittee has afforded our organization to comment on H.R. 3807. As our testimony has indicated, we are opposed to most of its provisions because they lead to the fragmentation, erosion, and politicalization of the merit civil service competitive career system and ultimately would impede even congressional legislative oversight. We do perceive one serious defect in the current situation where many supergrades have been established by specific legislative authorities which have not been referred to the House and Senate Post Office and Civil Service Committees. We urge corrective action in this one area so that the House and Senate Post Office and Civil Service Committees are able to exercise appropriate legislative oversight to assure that the merit system applies also to these supergrades.

I shall be most happy to answer any questions which your subcommittee may wish to ask.

MR. HENDERSON. Mr. Webber, let me say that I think you have presented an excellent position paper. Your testimony is very well taken, recognizing that your organization probably has very few supergrades of number. I think you certainly have given an unusual amount of attention to this proposal, and to the consequences that you see that not only would affect the few supergrades that are numbered, but your other members on down into the classified structure.

Your comments with regard to your observation of oversight of the Congress and problems that our committee and subcommittee faced with present supergrade oversight efforts are very well done, and I commend you. I do not believe I have any questions. I certainly want to yield to Mr. Mills.

MR. MILLS. Thank you, Mr. Chairman.

I join the chairman in commending Mr. Webber. I think you call attention to some points that are certainly well taken.

How do we get some control over the top-level Government positions that would insure good government and fair treatment to employees but would also give us the needed flexibility? Do you have an answer, Mr. Webber?

MR. WEBBER. The one recommendation that we made here to bring all of these supergrade positions under the control in a single pool where priorities could be established, assignments could be made, I believe would probably go a long way toward satisfying the needs that you are talking about.

I do feel, as I indicated in the paper, very strongly that there should be a distinction in pay and classifications between the various hierarchical levels in management.

Some of the things which we pointed out here can happen at the present time under the statutory assignments of supergrades where people in a general policy may be working at a different level than people working in the statutory systems.

But if they were all there together and if priorities were established and the supergrade positions were assigned on the basis of need among the respective agencies of Government, this would seem to go a long way in the right direction.

Mr. MILLS. Do you think that the present system has enough teeth in it to allow the various secretaries and various agencies to really set policy, or do you think they are hampered because in the present system it is extremely difficult to deal with supergrade personnel in problems such as this?

Mr. WEBBER. I think today they probably get "no" more often than they like; that is probably the reason they are up here, to get the thing changed. But I also feel that a great many of these supergrade employees are well versed in the legislation which authorized the program that they are administering. They know what the congressional intent was. They know what the law and the regulations are.

When someone asks them on the basis of political expediency to change the direction of the program or to do things contrary to either the statute or the regulations that were issued, they tell their bosses, "no," and their bosses simply don't like it.

Mr. MILLS. But you will concede that there has to be a policy level, and that in order to effect a given policy there must be a willingness on the part of the people in the responsible positions to assist in setting that policy?

Mr. WEBBER. I agree with that.

Mr. MILLS. If we get too rigid there becomes no policy and no opportunity to change.

Mr. WEBBER. At the present time I believe we have five executive levels. They are all policy people. There are some 25 percent of the people who are currently in the supergrade structure who are outside of the career service. All of these people functioning should be able to give the direction that they want to the program from a political standpoint, and the career people, as I say, are conversant with the statute, legislative intent, regulations, history of the program.

They advise and counsel their political associates as to what the requirements are, and they seek to move in the direction that their political superiors desire. Of course, they cannot move as quickly as they might if they simply said, "yes," and omitted expressing those statements which they feel they are required to make to uphold their oaths of office and to discharge honestly the responsibilities they have.

Mr. HENDERSON. Thank you very much for your appearance this morning. I think it has been very helpful to us, and I would ask that you express to Mr. Griner our appreciation of the position the American Federation of Government Employees presented this morning.

Mr. WEBBER. Thank you.

Mr. HENDERSON. Mr. Hill, I would like to ask you, inasmuch as it seems apparent to me now that we probably would not be able to complete our questions and your testimony, would you prefer to get started and let us see if we can?

I think we could stay here until about 11:15. That would give us about 20 minutes.

The reason it is so imperative that we go to the floor, the legislation that will be first is out of our committee, and I am sure that Mr. Mills and I both feel a real obligation to be on the floor at that time.

Mr. HILL. 20 minutes will be ample, sir.

Mr. HENDERSON. Fine, Mr. Hill.

It is my pleasure to welcome you this morning. Mr. Hill is executive director of the National Federation of Professional Organizations.

Certainly we want to afford you, as spokesman for that fine organization, every opportunity to present your testimony, sir.

**STATEMENT OF JAMES D. HILL, EXECUTIVE DIRECTOR, NATIONAL
FEDERATION OF PROFESSIONAL ORGANIZATIONS; ACCOMPANIED
BY ROY OLSON, PRESIDENT**

Mr. HILL. We are a federation of 12 Federal professional societies. Professionals form relatively a small percentage in the total civil service, but they are the persons from whom the supergrades come, and we think we have an unusual interest in this measure.

You said something to Mr. Webber of AFGE to the effect that you appreciated his testimony in view of the fact that there might not be many supergrades in the units represented by his union. I think that is true. I think AFGE has performed a disinterested and commendable public service in appearing here this morning. Our group has a personal interest.

Mr. HENDERSON. I would guess practically all of your membership are in the supergrade category.

Mr. HILL. They are or they hope to be some day. They are not all now.

We have, together with all of the other witnesses and the members of the committee tried to focus on what we think is the single most important part of this legislation, the provision which would remove 75 percent of present career supergrades from the protection of the merit system once every 3 years.

Mr. Hampton said 25 percent of the present supergrades were in noncareer schedule C positions. As we understand the bill, that would continue; these 25 percent would not have permanent status, and could be discharged at will. We point out to the committee that no legislation is needed to accomplish that. That is the way it is now. The non-career supergrades are in schedule C. They do not have any rights. The administration does not need legislation to achieve that.

What this legislation seeks to achieve is to remove the remaining 75 percent from the merit system, and this we think would be a terrible step backward. We cannot understand why it is necessary to remove this 75 percent of career executives from the career service.

Mr. Hampton advanced what he said is the reason; that priorities shift, and what is an important program today may not be an important program next year. That certainly is true, but the Civil Service Commission already has the authority to deal with that. It can abolish an unnecessary position any time it wants, and subject the incumbent to his reduction-in-force bumping or retreat rights. The Commission does not need to take all these 7,000 people from the merit system just to cope with that problem.

The gentleman from OMB, I noticed, in his statement avoided this primary purpose of the bill like the plague. He did not even mention it. I thought that Mr. Walker this morning was rather frank. He said, "Oh, this will enable us to remove the less competent person from an executive position more easily." He added: "We can do it now, and that he did not want to give the impression that an agency cannot, but that it takes time." I suggest that the administration of justice

always takes time, but that is no reason to deny people their adverse action rights. If a man is incompetent he can be removed today, and there is not the slightest reason for having a sort of an open season on these people, the pride of the civil service, once every 3 years, just to get at a few alleged incompetents. I think what Mr. Walker really means is that he wants to get rid of them without having to prove that they are incompetent, and this we think is wrongful.

Mr. Hampton also said, "This will maintain the quality of executives in the Federal Service." That was a quote. I think it is the worst thing that could be done for the quality of executives in the civil service. Why do we have outstanding men in the civil service today? It certainly is not the pay. I was a grade 18 in the civil service at a time when the pay was \$18,500, but general counsel in outside corporations in a job that was equivalent were making \$50,000.

Today a GS-18 agency general counsel will make \$36,000 but his counterpart in an airline, or a railroad, or other corporation of equivalent size will make \$75,000 or more. That is not true just as to lawyers; it is true as to every kind of Federal executive.

The Federal executive does not stay because of the pay. He is getting about half—in spite of the Comparability Act—of what his counterpart in private industry is getting. He stays because in most cases the work is more interesting and because he has tenure—because he has job security. If he did not have that, he would not stay.

We think that this proposed return to a patronage system is the most backward thing that could possibly be done, and that it would destroy the upper level civil service, and that it is not necessary.

A famous general—I think it was Napoleon—said that the failure or success of an army depends on its sergeants. We think that is true of the civil service. It does not depend on the administrators, no matter how able or not able they may be. It depends on those career executives who stay, though governments and administrations come and go.

That is what the success of the civil service depends on. If the career scientists, professionals and middle-level managers are good, we will have good government. If they are the dregs of the lot, after private industry has taken all the good ones, we will not have good government. We ought to do everything we can to try to get and to keep this scarce, important, talented group. The Congress has done much over the years to try to attract the best people—such as the Veterans' Preference Act, the Lloyd-LaFollette Act—to insure that employees should not be discharged except for cause. More recently, the Pay Comparability Acts, in order to attempt to make Federal pay comparable with private industry.

The preamble to the first Pay Comparability Act, back in 1962, says that its purpose is to enable the civil service to attract and keep the best people. This proposed legislation violates that purpose. The Government would simply drive away the best people.

I could not agree more with Mr. Staats when he said, "The relatively secure tenure of Government employment which allows talented employees to achieve high levels of responsibility is, we believe, a major factor in inducing such persons to accept Government employment and remain in it in preference to work in private industry where earnings may be much higher."

And so, to conclude on this point, we think this proposal to strip the supergrade class of tenure is the greatest step backward which could be taken in the Federal civil service, and we see no reason to justify it.

Now, there have been articles in the newspapers that this provision does not meet the favor of this committee, and that the committee may consider the bill without this one feature. We doubt that the administration would have any remaining interest in the bill if this one provision were out of it. We suspect this was the only reason that the administration forwarded this bill to the Congress in the first place. If there is any serious intent to consider the remainder of this bill, we would like to say that in our view the remaining features do not recommend themselves either, and should not be favorably considered.

For example, one of the provisions is that an agency head may determine which job will be career jobs and which are not. That is not true today. An agency head cannot determine for himself who is going to be in schedule C. He has to submit it to the Civil Service Commission and get an approval from the Civil Service Commission placing a particular job in schedule C. It is done on a Government-wide basis. It has a uniform national standard. But this would be abolished if this bill were to become law. Each agency head would determine for his agency which jobs were political and which jobs were career. A supergrade in one agency might be political; his counterpart across the street, doing exactly the same kind of work, might be career. We really do not think that this would advance the cause of the civil service.

At the present time there is a statute that requires the grading of positions from 1 through 18, 5 U.S.C. section 5401, and this statute provides uniform, clear differentiation between all grades from GS-1 to 18. It requires the Civil Service Commission to establish position classification standards for each grade.

An agency head cannot determine, today, which job is going to be a grade 18 in his agency, while another agency head determines that the same type of position is going to be a grade 15 in his agency. Today, this has to be determined by the Civil Service Commission according to one uniform Government pattern as required by law. The administration wants to repeal that law, and let every agency head determine for himself what he will pay a supergrade, and again we would have the situation where a man could be at the highest pay level in one agency, and the same type of man with the same skills and abilities, and the same kind of job, in an agency across the street could be at the lowest pay level. We cannot see this as an advancement for the Federal Government, and we do not think it ought to be favored by this committee.

The proposed legislation would also have agencies select candidates for FES positions, and present them to qualification boards which evidently will consider them in a vacuum, because the candidates are not going to be tied to any position description, and the agency head is not going to be bound to use them in any particular job.

Today, if an agency wants to appoint a supergrade, it has to have that position approved at a particular grade, and then it has to have a man approved to be put in it, by the Civil Service Commission.

Under this new bill the agency will send a name to the qualifications board for lawyers, for example, and the man's record will show that he is an expert patent attorney, but the qualifications board will not know what the department intends to use him for.

Perhaps they want to use him in the Criminal Division, and he has never tried a criminal case in his life. Perhaps the department wants to put him in some position which requires managerial expertise, and not any particular professional expertise. This proposal seems to be a resurrection of the Board of Legal Examiners which the Congress abolished at the end of World War II.

In any event, how the Commission approves the qualifications of a supergrade candidate is its own business. It passes on qualifications now. If it wants to change to some other procedure for this function, it can do it without legislation. It does not need legislation to establish qualifications boards if it wants to do so.

These are just some of the things which we think are wrong with the bill. We regret having to say this. Everybody ought to be interested in the search for more effective Government. We regret that we cannot find anything which will contribute to that end in this bill.

It appears to us that what the administration is chiefly complaining about, what it wants to rectify, is the audacity of Congress to want to retain some residue of authority over the subject.

The Chairman of the Civil Service Commission complained that 1,100 of the 7,000 positions are directly allocated to agencies by statute. He said that there is nothing we can do about these positions.

The Administration objects to the position classification system required by law. They do not want to have to obey that law. They object to the pay schedules established by the Congress, and they want to be free to set pay without congressional interference.

They say if the Congress will just abdicate its responsibility, if you will just go home and leave the whole thing to us, then, to quote Mr. Hampton, "The Civil Service Commission will for the first time have the authority necessary to establish coherent management over executive manpower in the Federal Government."

Mr. Gross asked the question this morning of Mr. Walker—I am sure with tongue in cheek, "Do you think we ought to just abolish the Congress?" That is the question that occurred to me from reading the presentation of the Government witnesses.

I do not know why it is that an administrator is so subject to being seduced by the philosophy: If you will just give me all the authority of government, and then go away and do not bother me, all our problems will disappear, and we will have perfect government.

Caesar thought he could rule better without the Senate. Napoleon thought he could rule better as emperor. Hitler said to the Reichstag, "And now, gentlemen, I have no further need of you."

We in the civil service think we do need the Congress. We look to the Congress as the originator, the author, the protector of our rights, and we hope you will not abdicate to the executive.

Thank you very much, Mr. Chairman.

Mr. HENDERSON. Mr. Hill, I will ask unanimous consent that your prepared statement be entered in the record in its entirety.

Mr. HILL. Thank you, sir.

Mr. HENDERSON. I have a question I would like to ask. Do you feel that changes should be made in the handling of the top-level jobs in the Government today? Is the present system wholly satisfactory to you and your members?

Mr. HILL. Yes. If anything, we think the executive branch has even more authority than it actually really needs. There have to be some jobs which are not in the permanent civil service, such as levels 1 to 5 of the executive schedule. Certainly they ought to be political appointees; there is no question about it. We can also see there are some confidential policymaking positions in the supergrades that ought to be in schedule C. There are probably too many of them. I was interested to note that Mr. Hampton said of these 25 percent in schedule C, that half of them were really career employees that were raised from the ranks. This suggests that too many supergrade positions have been placed in schedule C. But, generally, we think the situation is as it should be. We really have nothing to suggest to improve the present system.

Mr. HENDERSON. What about the lack of congressional control over the statutory career positions?

Mr. HILL. These are certainly not political positions. They are not going to be filled with the Administrator's brother-in-law or someone like that. They have to be scientists, and I do not think—although Congress does not have total control over it—that it is apt to be abused.

Mr. HENDERSON. Mr. Mills?

Mr. MILLS. Thank you, Mr. Chairman.

Do you think, Mr. Hill, the present system is as it should be, and that you can offer no suggestions for improvement?

Mr. HILL. Yes, sir. We really think there is no major problem in the supergrade system today that needs change.

Mr. MILLS. Then obviously you think the various Secretaries do have the ability to make policy and have that policy carried out by your entire supergrade staff?

Mr. HILL. Yes, sir, 25 percent of them of course are subject to their absolute appointment, and dismissal, by their whim, and the remainder are truly career jobs. These are people like a doctor working on cancer research at NIH. No Secretary in any administration is going to have a problem with that fellow. He does not do his work according to any political philosophy.

Mr. MILLS. I think yours was a good statement, and we thank you.

Mr. HENDERSON. Thank you very much, Mr. Hill, and because of this time limitation if you have anything else you would like to present for the record, I am sure that Mr. Bray will be glad to work with you. We appreciate your attendance very much.

The subcommittee will adjourn now until Tuesday, May 2, at which time we will hear from several witnesses, including Mr. Staats.

Mr. HILL. Thank you, sir.

(Whereupon at 11:15 a.m., the subcommittee adjourned.)

(The prepared statement submitted by Mr. Hill is as follows:)

PREPARED STATEMENT OF JAMES D. HILL, EXECUTIVE DIRECTOR, NATIONAL
FEDERATION OF PROFESSIONAL ORGANIZATIONS

Mr. Chairman and members of the committee, we are a Federation of twelve Federal professional societies having a total membership of approximately

36,000 Federal professionals. Some of our members are now in supergrade positions and the remainder aspire to be in supergrade positions at some time in the future. Although professionals are relatively a small group in the total Civil Service they are an important group.

"Parties and governments may come and go, but the experts stay on forever, because without them, the system does not work."¹

Professionals find nothing of value in the scheme described in H.R. 3807, and much that is harmful.

The single most important object of the proposed legislation, both to the Administration which proposes it, and the professionals who will be effected by it, is the proposal that in the future the tenure of all supergrades shall be limited to a three-year contract. The Chairman of the Civil Service Commission described this as "maintaining the quality of executives", but to us it is the greatest threat to the quality of the senior Civil Service which has arisen since the supergrade system was created.

At present, a Federal civil servant may not be discharged except for such cause as will promote the efficiency of the Service—that is, for incompetence or misconduct. This does not apply to the purely executive positions which are in the five pay levels of the Executive Schedule, nor to those supergrade positions which the Civil Service Commission has placed in Schedule C, as confidential or policy-determining position, and which are described as "excepted" positions, not in the classified, or competitive, Civil Service. The Chairman of the Civil Service Commission has estimated that approximately 25 percent of the 7000 supergrade positions which would be covered by this legislation are in these "non-career" Schedule C positions outside the Civil Service, although he added the interesting fact that, "from a third to a half of the Schedule C Non-career Executive Assignment positions are occupied by former career employees," who gave up their career protection when promoted to a non-career position.

H.R. 3807 would continue the non-career status—or lack of status—of employees occupying the 25 percent of positions in the expected service. The bill provides that their positions shall not be in the competitive service, that the incumbents shall not acquire competitive status, that they shall not have a fixed tenure, and that they shall serve at the will of the appointing authority. But this is nothing new, and no legislation is needed to give such authority to the Executive Branch; that is the way it is now. That has already been accomplished by the Commission by administrative action, in creating the concept of Schedule C. Further, the Commission's intent, that such employees should have no tenure rights, despite the Veterans Preference Act and the Lloyd-LaFollette Act, was upheld by the Court of Appeals in *Leonard vs. Douglas*, 321 2nd 749, 166 App. D.C. 136 (1903).

The importance of H.R. 3807 lies in its intent to remove from the merit system the remaining 75 percent of supergrade positions, by providing that they shall serve under three-year contracts, and that they may be removed from their position at the end of three years, simply by nonaction of the head of the agency, in declining to renew their contracts. During that three-year period the Act provides that they may not be removed except for such cause as will promote the efficiency of the service. But career supergrades have that right now, and without the limitation that once each three years they shall lose that right and shall be the object of an open hunting season.

What is the purpose of this extraordinary proposal to remove all merit system rights from senior civil servants once each three years? We note that the period is three years, not five or ten, thus insuring that every Administration will have a chance to "clean house" of all top career employees at least once. This causes our members to believe that the sole purpose of this measure is to provide 7,000 additional political patronage positions for each Administration. We have examined the testimony of Administration witnesses in support of the measure, in search of some valid justification for stripping the senior civil service of the protection of the merit system and can find only one weak reason advanced—that the needs of the Government change, and in time some programs become less important. It is, no doubt, true that as time passes some Federal programs become less important, and new programs are created, and that the program priorities of the Administration, and of the Congress, shift. But no one knows better than the Civil Service Commission that it already has the power to abolish unnecessary positions and to remit the incumbents to their bumping or retreat rights under the reduction-in-force regulations. The Commission already has

¹ Theodore Roszak, discussing technology in "The Making of a Counter Culture."

ample authority to cope with the sole problem which is advanced in justification of this proposal.

We invite to the attention of the Committee the obvious fact that this proposal runs directly contrary to modern trends of thinking in the field of public administration. All of the trends are in the direction of giving employees more due process and more job security. The Lloyd-LaFollette Act and the Veterans Preference Act are evidence of this. A more recent example is in the field of pay comparability. One of the main arguments which has always been made for pay comparability is that it is necessary in order that the Government may retain experienced people, and not be subject to continual raiding by private industry. Indeed, the preamble to the original 1962 Act which first announced the policy that, "Federal pay rates be comparable with private enterprise pay rates for the same levels of work" states that its purpose is, "to fix salary rates for the services rendered by Federal employees so as to make possible the employment of persons well qualified to conduct the Government's programs."² Now all of this is to be swept aside by a proposal that the best qualified and most valuable employees shall be removed from the merit system, and subject to termination by an agency head every three years, for no reason whatever.

In the Federal service, as well as in the Civil Service of states and municipalities, the trend has continually been for the extension of a merit civil service system. Today, in the Federal service, there remain only a few small pockets of employees not covered by the merit system—temporary employees, contract employees, those in the Executive Schedule, and supergrades in Schedule C. The present proposal to remove from the merit system 7,000 positions now occupied by the most valuable, talented, able and scarce persons in the country and to turn them into political patronage jobs, subject to being vacated and refilled every three years, by every agency head, with some personal friend or political supporter, would constitute the greatest blow ever struck, and the most backward step ever taken, in the search for better Government.

Although the removal of Federal executives from the merit system is obviously the principal purpose of this proposed legislation and, without it, we would think that the Administration would lose all interest in the measure, it is possible that this objectionable feature might be removed and the balance of the bill considered for enactment. In our view, the remaining features of this measure are also objectionable and should not receive the approval of this Committee. To specify some of them:

At the present time the Civil Service Commission determines whether a supergrade position is to be placed in Schedule C. It does so according to objective standards. H.R. 3807 would change this to provide that, "the head of an agency may appoint an executive by either a career or non-career appointment. The decision as to whether an appointment will be career or non-career is exclusively that of the head of the agency. Obviously, under such a system, some agency heads may determine to make a particular position a non-career position, while exactly the same kind of position in another agency will be a career position. The proposed legislation will strip the Civil Service Commission of any authority to rectify this inequity. Such capricious variations will accomplish no worthwhile purpose and can serve only to lessen the morale of the most important class of civil servants. The determination whether supergrade positions shall be career or non-career should remain under the control of one central authority which should have full power to assure uniform application throughout the Government.

Present law, 5 U.S.C. Section 5401, et seq., provides a statutory basis for grading all positions from GS-1 through GS-18. The statute spells out a differentiation in the expertise, difficulty and responsibility required by each grade level. The Civil Service Commission is required to issue standards for the classification of positions in accordance with this law. If agencies do not follow the position classification standards of the Civil Service Commission, the Commission may revoke the agency's authority to grade individual positions.

The Commission is authorized to conduct investigations of agency actions, to determine whether individual positions have been placed in their appropriate class and grade, in accordance with the standards. The proposed bill would do away with all of this with respect to supergrade positions, and would permit each agency head to pay an executive any rate of annual pay he determines to be appropriate, between a minimum of the sixth step of a GS-15 and a maximum of level V of the Executive Schedule.

² Federal Salary Reform Act of 1962, Public Law 87-793, Oct. 11, 1962, 76 Stat. 841.

The purpose of this proposed abdication of authority on the part of the Commission is perplexing. Ordinarily, the Commission has stoutly resisted all suggestions that it delegate classification authority to agencies, on the ground that it is essential that all similar positions, in all agencies of the Government, have uniform classification. That is, a secretary should not be a GS-4 in one agency, a GS-5 in another and GS-6 in still another. If this were permitted, it is obvious which agency would ultimately have all the best secretaries. And, just as obviously, the same would be true with supergrades. Under the proposed system if any agency head wanted to raid another agency of a promising supergrade, he could simply offer him more money for, under the proposed measure, he would be empowered to pay any rate he wished, subject to no review by any authority.

It appears to us that no good, and much harm, inheres in a proposal that executives in the Federal service shall receive whatever pay their particular agency head wishes to give them, subject to no central authority or uniform practice. It certainly would create wholesale departures from the Congressional mandate of "equal pay for equal work," 5 U.S.C., § 5301.

The Chairman of the Civil Service Commission testified that this freedom from uniform classification standards "will enable an agency to pay individuals in accordance with their contribution." To us, that is what each agency is now doing, if the Commission has been faithful to its position classification responsibility. The proposed legislation would remove that obligation, and would authorize an agency to pay an employee any amount that suits the uncontrolled whim of the agency head.

Chairman Hampton pointed out that, overall, each agency's average total supergrade pay under the bill could not exceed a Government-wide average. But it occurs to us that some agencies may require a higher quality of expertise than others, and this enforced common level may not meet the needs of the Government. The present system, in which each agency receives the level of supergrade which its functions justify, seems to be better management.

Under the proposed legislation career appointees would be selected from all qualified persons, in an out of Government. The testimony of the Civil Service Commission makes clear that it is the intent of the legislation to require that a search be made of qualified persons outside the Government. Indeed, before obtaining approval of its choice the agency must prove to the Civil Service Commission the extent of the search which it has made. This appears to us to be a deliberate attempt to eradicate the principal of promotion from within.

The Commission's desire to achieve this situation is surprising, for it reverses the Commission's past position on this subject. Within the last several years the Commission has established a "Federal Merit Promotion Policy" contained in Chapter 335, Federal Personnel Manual. This requires agencies to establish standard "Merit Promotion Plan" procedures for the selection of personnel to fill vacancies. They must conform to the Commission's standards, prescribed in its Federal Merit Promotion Policy.

The basic principle of the Commission's Policy is that vacancies must be filled by selecting the best qualified candidate for promotion from within the agency. Persons from without the agency may not be considered, except former displaced employees who are on a re-employment priority list, or who are otherwise eligible for reinstatement, or when no qualified candidate can be located within the agency, even after the area of consideration has been extended to the entire agency. The Commission has stated that its Federal Merit Promotion Policy has the objective "to assure that employees have an opportunity to develop and advance to their full potential according to their capabilities" ch. 335, FPM. Federal employees generally applauded the Commission's issuance of its Federal Merit Promotion Policy.

Naturally, the employees of any organization favor promotion from within. But enlightened management also favors the concept of promotion from within, for efficiency and effectiveness cannot exist if an agency's employees are continually passed over in favor of outsiders. We respectfully suggest to the Committee that the policy expressed in Section 3136 of the proposed measure is wrong and should be replaced by a Congressional mandate that appointment to career supergrade positions must be by a merit promotion policy, unless no qualified candidate exists within the agency—in accord with the Commission's existing Federal Merit Promotion Policy.

The proposed legislation would provide that when an agency head selects a candidate for career executive appointment, he shall submit it to a Qualification

Board, to be established by the Civil Service Commission and which shall review the qualifications of the agency's candidate. At the present time an agency which wishes to fill a supergrade position must submit the qualifications of its nominee to the Civil Service Commission for its approval. The new proposal is only a change in the Commission's internal procedure for passing on the nominee.

We doubt that it is an improvement. The bill establishes no standards as to how the Commission shall select a Qualification Board, does not establish standards which the Board shall follow, and contains no provision for a rejected candidate to review the decision of the Qualification Board. Interestingly, in the Commission's merit promotion program an unsuccessful candidate for selection to a general schedule position is entitled to obtain information from the agency selecting official with respect to his failure of selection.

We further note that the Qualification Board will evidently examine the qualifications of the agency nominee in a vacuum, without relationship to the position that the employee is to fill, as the bill does not contemplate position descriptions for executive positions, or that the agency head will utilize the executive in any particular position. The Qualification Board for attorneys, for example, will examine the qualifications of a candidate as an expert patent attorney, but without any knowledge as to the type of legal position that the agency intends him to fill, what specialty of the law is required in this position, or, indeed, whether the position requires legal skills or managerial skills.

Our Federation has no particular interest in the procedure by which the Civil Service Commission determines the qualifications of an agency nominee for a supergrade position, although it is our recollection that Qualification Boards have been in disfavor since the Congress abolished the old Board of Legal Examiners during World War II. The principal point we wish to make against this proposal is that the Commission is free now to determine the qualifications of agency nominees for supergrade positions by any system it chooses to utilize, and does not need legislation to establish Qualification Boards, if this is the procedure the Commission wishes to use.

The proposed legislation would provide that when an executive's three-year employment contract is not renewed "the agency shall offer the executive a continuing position in the competitive service in GS-15 for which he is qualified and which may be filled without the displacement or reduction in grade of any employee in the agency serving in GS-15." This is ambiguous.

Does it mean that the employee must be given a GS-15 position but that no existing GS-15 may be "bumped," or does it mean that the agency is only required to offer the employee a grade 15 position, if there is a vacant one at the time? If it means that the latter, that the agency has no obligation to the employee unless it happens to have a vacancy at GS-15 at the moment, the provision is obviously inadequate to protect the rights of a displaced supergrade, for few agencies have vacant GS-15 positions at any particular time.

If the provision means the former, that the agency must either offer the employee a vacant GS-15, or create a new one for him so that no existing GS-15 incumbent will be displaced, the provision is unenforceable. Conceivably, three years after the law is enacted, the executive departments could suddenly have 7,000 additional GS-15's, for which they have no use. Three years later, in another administration, they could have 7,000 more. There would be nothing to prevent an agency from waiting for a decent interval and then conducting a reduction in force because of the surplus GS-15 positions which it has no use for, and no appropriation for. Indeed, it would be a necessity. And, under the reduction in force regulations, those who are displaced would not necessarily be the supergrades—they would be whatever employees are at the bottom of the retention register. So, indirectly, some existing GS-15's would be displaced by supergrades, whose contracts are not renewed.

In conclusion, Mr. Chairman and members of the committee, we realize that everyone should be concerned with increasing the effectiveness of the Federal service. We regret that, in our view, this proposed legislation does not contribute to that purpose. Principally, the complaint of the Executive Branch against the existing order of things, which is alleged to justify this legislation, seems to be that the Congress has retained a residue of authority in the premises. It complains that of the 7,000 supergrade positions, 1,100 are allocated to agencies by direct legislation.

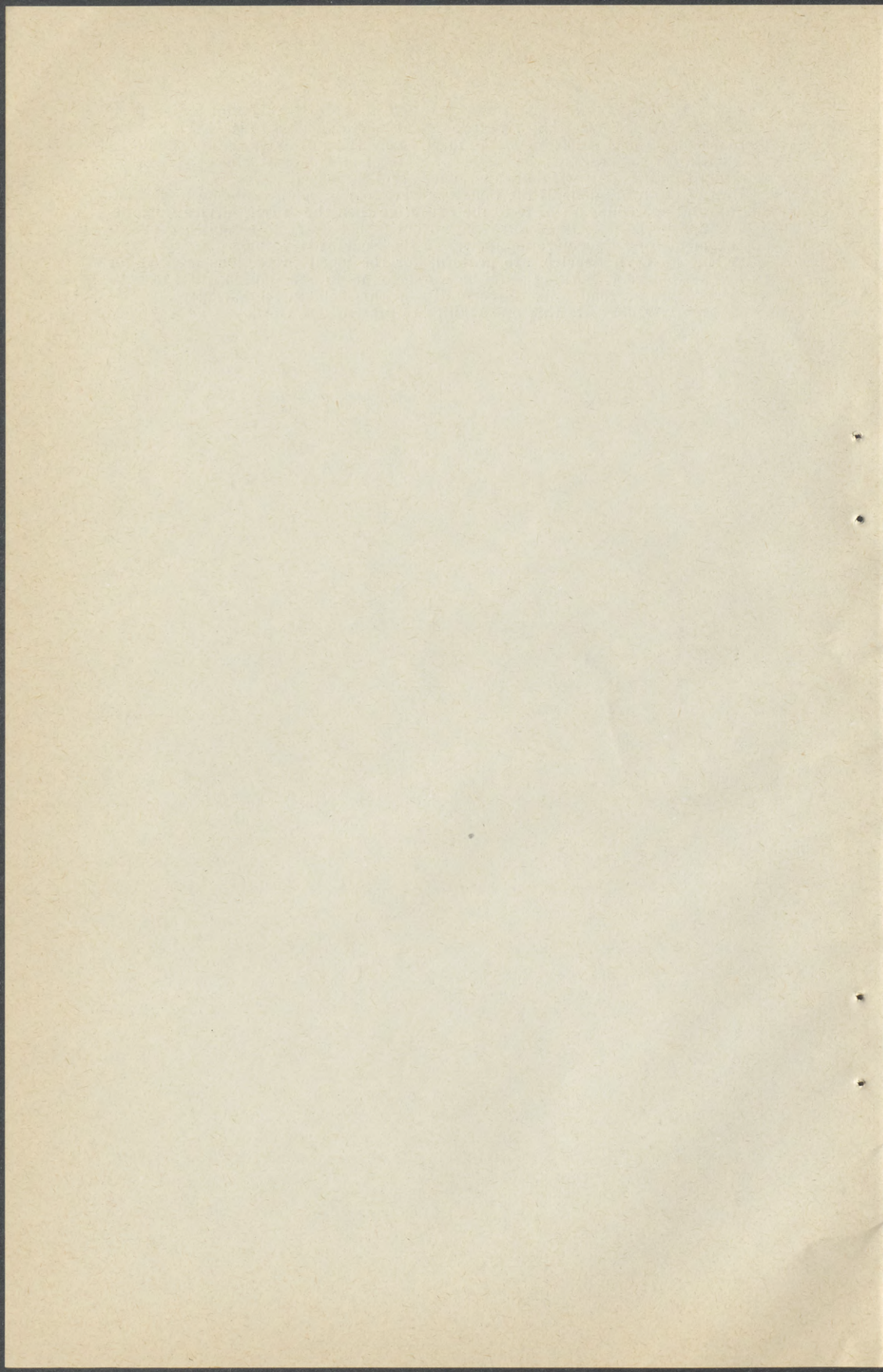
It argues that agencies should be freed of the position classification standards now required by 5 U.S.C., § 5104, and should have complete authority over execu-

tive pay. It asserts that control over the percentage of GS-17 and GS-18 positions, now imposed by 5 U.S.C. § 5108, should be transferred to the Civil Service Commission. It urges that all of the merit protections of existing law should be abolished, for supergrades, in favor of a total, 100-percent executive branch selection-out authority, without cause, once every three years.

If all of this were done, if the Congress were to completely abdicate its responsibility and surrender all of it to the executive then the "Civil Service Commission will, for the first time, have the authority necessary to establish coherent management over Executive manpower in the Federal Government."

We, in the Civil Service, are grateful for the merit protections created for us by the Congress. Nothing could be worse for us in our opinion, than to have the legislature surrender its responsibility in this field to the executive.

We greatly appreciate this opportunity to present our views.



THE FEDERAL EXECUTIVE SERVICE

TUESDAY, MAY 2, 1972

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

The subcommittee met, pursuant to notice, at 9:40 a.m. in room B-374C, Rayburn House Office Building, Hon. David N. Henderson (chairman) presiding.

Mr. HENDERSON. The subcommittee will come to order.

We are today continuing our hearings relative to the establishment of a Federal Executive Service, as provided in H.R. 3807 and H.R. 6772.

To date, the subcommittee has taken testimony from several spokesmen for this administration proposal. Witnesses have included the Chairman of the Civil Service Commission, the Secretary of the Department of Health, Education, and Welfare and the Under Secretary of the Treasury Department.

Other witnesses, who have testified in varying degrees of endorsement and/or criticism of the proposed Federal Executive Service, were representatives of the Federal Professional Association, National Federation of Federal Employees, the American Federation of Government Employees, and the National Civil Service League.

As we conclude our hearings today, I am most happy not only to welcome General Staats and his staff but to welcome Mrs. Andrews to our committee and subcommittee. We have been politicking a little bit in this direction and we are just delighted to have you with the subcommittee, Mrs. Andrews, and to take this opportunity to tell you that we think we have a good and competent staff. They certainly are most helpful to us, and I would invite you to call on them at any time.

Mrs. ANDREWS. Thank you.

Mr. HENDERSON. At your convenience I am sure they will be glad to brief you in depth, and it certainly will be my pleasure to assist you in any way that I can.

Mrs. ANDREWS. Thank you.

Mr. HENDERSON. In that connection, and as I welcome General Staats, Mrs. Andrews, the work of this subcommittee could not have been accomplished through these years without the specific assistance that the General Accounting Office has given our subcommittee by the assignment of their personnel and by their response to our specific requests to conduct investigations and audits that we think have accomplished much for the better utilization of the manpower, better civil service rules and regulations, and law.

I certainly would not miss this opportunity, General Staats, to tell you that the continuing cooperation between your office and the sub-

committee and your staff is outstanding, and I am not only most appreciative of your appearance today but am very interested to know what you think about the proposed Federal Executive Service.

Let me welcome you and Mr. Barclay and Mr. Morris. It is a real pleasure.

STATEMENT OF HON. ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES, ACCOMPANIED BY HON. THOMAS MORRIS, ASSISTANT COMPTROLLER GENERAL; AND HENRY BARCLAY, ASSOCIATE GENERAL COUNSEL

General STAATS. Thank you very much, Mr. Chairman. We have always had the most productive and profitable relationships with the committee as a whole and particularly with this subcommittee and we look forward to continuing to work with you and the other members of the committee.

We appreciate your inviting us here this morning. I have with me Mr. Thomas Morris, Assistant Comptroller General, on my right, and Mr. Barclay, Associate General Counsel of the GAO, to my left.

If I may, I would like to read my statement and then be prepared to answer your questions. I hope you will feel free to interrupt as I go along, if you so desire.

Mr. HENDERSON. Thank you, sir.

General STAATS. We have been asked, Mr. Chairman, to comment not only on the bill itself but also on how we think the bill might affect the General Accounting Office.

In my brief letter of April 13, 1972, to Chairman Dulski, I addressed several points of concern to the General Accounting Office. Hence, I welcome this additional opportunity to discuss our views at greater length. In preparing this statement, we have had an opportunity to study the statement submitted to you by Chairman Hampton on April 18, 1972, and to review the transcript of that hearing.

I would like, first, to comment on the principal features of the proposed Federal Executive Service as outlined in Chairman Hampton's statement; and then to discuss how we believe the FES might affect our own operations.

As we understand the proposal, the numerous authorities which govern the 7,000 supergrade and equivalent positions included in the general schedule and Public Law 313-type positions, would be eliminated and supplanted by an annual reevaluation of executive manpower requirements. This annual reevaluation, with certain exceptions discussed later, would be prepared by the agencies, each of which would determine the number of executive positions required for the coming fiscal year, and present their requirements with accompanying justifications to the Civil Service Commission.

The Commission, in collaboration with the Office of Management and Budget, would then review and validate these requirements, and submit them in the form of a stewardship report to the Congress by April 1 of each year. This would provide Congress 90 days in which to review and modify the requirements, following which they would become effective on July 1. During the course of a fiscal year, the Commission could increase the number of executive appointments by

up to 1 percent for emergency purposes. That is 1 percent for the Government as a whole. There would be no positions as such, established and classified centrally. Instead, each agency would use the method of position management which best meets its individual needs.

We note, Mr. Chairman, that the bill is not clear as to how the Congress would act in its review of the plans submitted. It seems to be silent on this point and we believe the bill should indicate the method by which the Congress should proceed. There are several different approaches which we would be glad to discuss with you later if you wish, but we think this is a very serious omission.

Subject to the above, it is my opinion that this approach to identifying and justifying the executive manpower requirements of the Federal Government would be a major improvement in authorizing positions at these levels. The present fragmented system of supergrade allocations is inefficient and inequitable, particularly in view of the numerous special authorities which presently exist. GAO's reviews of agencies are revealing the increasing complexity of governmental programs and operations, and the need for timely and comprehensive procedures for keeping agency management structures and executive staffing in balance with program responsibilities.

The proposal would place an important responsibility upon the Civil Service Commission and the Office of Management and Budget to have staffs qualified to examine agency organization and executive staffing plans, as well as to assist agencies in their forward planning. Your committee may wish to give particular attention to this requirement. Also, if it would be useful to the Congress, the General Accounting Office could make periodic evaluations of the procedures for developing and justifying executive manpower requirements.

Excluded from the Federal Executive Service are about 4,000 positions, including those in the Foreign Service, the legislative branch, the FBI, hearing examiners, and a number of specially exempt agencies, and I will just cite a few of them here—Postal Service, TVA, CIA, AEC, and the GAO and others. However, these agencies are directed or encouraged to adopt such features of the FES as conditions of good administration warrant. Such agencies would make separate direct arrangements with the Congress.

We understand that the plan would authorize each agency to establish its executive pay structure within a prescribed minimum and maximum salary range, that is, the sixth step of GS-15 which is just under \$30,000 at the present time to level V, which is \$36,000.

As Chairman Hampton's statement points out, this is not a new or untried proposal. For over 20 years, hundreds of high-level professional personnel have been compensated under public law systems which have embodied this degree of flexibility. This practice is also similar to that in the private sector.

To control the administration of such a flexible system, each agency would include its compensation plan in its annual report to the Commission, and would be required to obtain special approval to exceed the annual executive pay average established by the Civil Service Commission in collaboration with OMB.

Here again, the Civil Service Commission must have capable staff to exercise this important oversight responsibility. In our letter of

April 13, we pointed out that, "such flexibility could be the subject of abuse resulting in meaningless distinctions in pay and duties among executives." This is obviously a difficult problem, and was not necessarily intended to be a recommendation against the adoption of this feature of the plan. We do wish to emphasize the importance of assuring the Congress that the Commission and the OMB would be prepared to provide skillful surveillance and guidance to agencies. I think you read between the lines here that we feel the question should be raised as to whether they have the depth of staffing required at the present time.

As we understand it, one objective of the proposed legislation would be to eliminate the distinction between career and noncareer positions. It would be possible for executive jobs to be filled, interchangeable, by incumbents with career or noncareer status. However, two controls would be applied.

First, the number of jobs to be filled by noncareer incumbents would be subject to a Government-wide limitation of 25 percent, although individual agencies could request lower or higher percentages from year to year in the plans and justifications submitted to the Civil Service Commission. We are concerned with the basis used in setting the 25 percent noncareer limitations. The Commission points out that this has been the approximate ratio of noncareer positions at the supergrade levels for a number of years. But in arriving at this conclusion, the Commission included not only noncareer executive assignments—the so-called NEA positions—but also positions in schedule A, schedule B, the public law positions assigned to NASA, and certain other exempt positions. NEA positions now account for only 8.5 percent of the 7,000 positions proposed for coverage in the FES.

Thus, it would appear that by reallocating schedule A, schedule B, and certain other positions from the noncareer to the career service, an agency could significantly increase the number of its NEA-type appointments—that is those which are clearly of a political policy character. Also, new schedule A-type appointments—attorneys, for example—could be treated as career appointees in one agency and enjoy all the rights and privileges of career status; while those in another agency could be noncareer appointees, with no retention benefits, although performing similar duties.

If the executive branch needs more policy positions filled from non-career ranks. I would frankly prefer to see the number of positions at the executive level increased or extended.

Second, for incumbents having the status and privileges of career executives, a more rigorous qualifications review procedure would be adopted, using qualifications boards. In the GAO, a committee of our top managers now reviews proposed appointments, transfers, and promotions in grades GS-14 and above. In other words, this objective of the proposal could be achieved without legislation.

In addition to the rigorous qualifications review process, the FES plan requires a periodic review of each career executive's continuing contribution, to be implemented through a 3-year employment agreement. While the objective of ensuring executive leadership of the highest excellent and ingenuity is endorsed, I seriously question the particular technique which is being proposed.

I fear an adverse impact on the recruitment of promising young people whom we would wish to retain for a full career. The limiting of tenure in positions above the GS-15 level to 3-year contracts creates a needless disincentive, and might invite abuses, particularly during changes of administrations.

More important is the danger that adoption of the contract feature of the Federal Executive Service would tend to diminish rather than enhance the Government's attractiveness as an employer. The present concept of a career service which allows talented employees to achieve high levels of responsibility is, we believe, a major factor in inducing such persons to accept Government employment and remain in it in preference to work in private industry where earnings are usually higher for comparable responsibility.

The Federal Executive Service concept of a 3-year contract could lessen this attraction to Government employment and defeat one of its declared purposes of attracting and retaining the best qualified employees.

As Comptroller General, I have an important responsibility to the Congress to recommend ways in which Government operations can be carried out more economically and more effectively. We are increasingly impressed with the growing complexity of Government operations requiring the highest level of dedication, professional achievement and managerial capability of senior Federal executives and professional staff.

The adoption of a principle that individuals possessing these capabilities might be denied the opportunity to progress above the level of GS-15, would, in my opinion, be unwise. It would fail to recognize the principle adopted in private industry where younger and more talented individuals are offered an opportunity to move to the top of their organizations. I recognize that in Government positions at the very top must be subject to change with a new administration. These positions are now provided for in the executive level series.

As suggested in my letter of April 13, should the Congress decide to accept the contract principle in H.R. 3807, it could limit its application to positions in GS-18 for a reasonable test period. However, I urge that the employment agreement feature of the bill be dropped, and that the Civil Service Commission, with the advice and assistance of a panel of eminent advisers, examine a wide range of ideas for keeping executive positions manned by the most effective incumbents, while offering to executives in their less vigorous years of service, alternative opportunities to contribute while retaining executive level status.

An example of one approach to the problem is the practice of certain large public accounting firms which require that their partners vacate line management positions in the firm upon attainment of a specified age. Thereafter, the partner can continue his service with the firm for many more years in a wide variety of capacities where he can contribute to the growth and professional development of the firm. This allows the younger executives to succeed to the top management posts at a much earlier age, while offering the older executive group other opportunities to make valuable contributions during their remaining years of service. I do not necessarily endorse this practice for general

application in the Federal service; this is simply one illustration of an imaginative approach which might be studied for possible application in appropriate circumstances.

Enactment of H.R. 3807 would repeal GAO's current allocation of 90 positions in grades 16, 17, and 18. While GAO is excluded from the Federal Executive Service by section 3132(1), we are directed by subsection 3143(a) to establish by regulation an executive management program as nearly like the Federal Executive Service as conditions of good administration would warrant.

Our current thinking would be to utilize the annual reporting and justification procedures to the Congress, setting out the numbers of executive positions which we desire to fill, and the salary structure which we propose to use. We believe we would adopt a three- or four-level pay schedule but without fixed ingrade steps at the outset. We would study the practices of other agencies in this respect, including particularly those who have had public law compensation systems.

We would utilize our senior Committee on Staff Development to pass on the qualifications of all candidates for positions in our executive system; and we would work with the Commission in exploring ways of improving our systems of evaluating the effectiveness and improving the utilization of our executive group. However, we would definitely not adopt the employment agreement provision since we do not believe it meets the test of good administration.

Mr. HENDERSON. Thank you very much, General Staats. It is an excellent statement. I have only one possible area of concern or disagreement with your statement and your letter in the suggestion that we perhaps could try this at the GS-18 level on an experimental basis.

Realizing that most of the GS-18 positions are now occupied by noncareer persons, it would seem to me that the evaluation or experiment limited to GS-18 personnel might not be determinative of the value and/or problems that would exist if we were extending it to the GS-16 or GS-17 levels. But certainly the other problems that you raise, the suggestions that you make will be most helpful to us.

General STAATS. If I may, Mr. Chairman, respond on that point. We want to make it very clear that we are not recommending the test period for the 18's. We are recommending that provision be dropped from the bill. However, if the Congress were to include the contract arrangement, we would still, I think, feel a case could be made for limiting it to the grade 18 level.

I am aware of Chairman Hampton's statement on this point and testimony before the committee, but I am not certain that I agree with his conclusions. As of June 30, 1971, there were 471 supergrades in GS-18; 186 of these in schedule C, and 285 in the career service. That does not take into account the portion of the 1,244 Public Law 313-type positions which are the equivalent of GS-18.

We do not have the breakout, but I believe that would be, percentage-wise, as high as those in the supergrades, and possibly higher since they are in the professional and scientific area.

If you applied the same percentage, which is around 12 percent, you would get a sizable additional group in the grade 18 category.

However, I repeat that we are not offering this as a recommendation. We are offering it only as an alternative in the event that you did

not accept our recommendation, which would be to drop that provision from the bill.

Mr. HENDERSON. I wonder if you have given sufficient attention and thought to what you would recommend to our committee, if we could proceed a moment on the assumption that the proposed Federal Executive Service or anything similar would not be enacted. What would be your recommendation with regard to improving the present method we have, particularly as it relates to the congressional oversight in these positions?

I am sure that you share our concern that through the years while we have made great effort to control supergrades, we have really been operating in a fairly limited area. We do not have good control, if that would be wise, over the total spectrum of these high positions in the Government.

General STAATS. Mr. Chairman, I know exactly what you are talking about, and this has been a problem ever since we have had supergrades authorized over many years.

We are inclined to feel that the proposal here which requires each agency to come annually before the Congress with its plan for supergrade positions would give this committee better control than it has now. We could be wrong on this but we think the fact that they have to come annually and present a justification, would give this committee more control than it now has.

You now have individual legislation going through different committees to authorize positions at these levels. I do not know that this bill would guarantee this would not happen, but I think it would strengthen this committee's hand in looking at these on an annual basis. If legislation did go through which required authorizations, you could modify the proposals—you could increase or decrease them—on a year-to-year basis.

Part of this will come down of course to the question of how the Congress would exercise its oversight. There are at least three approaches to this. One would be to handle it as you have under the reorganization plans which would say either House, by majority vote, could overturn a recommendation.

A second alternative, of course, would be legislation which could be very cumbersome.

A third would be to have the matter referred to the committee in which you could call on the Civil Service Commission and the OMB to justify this program, and then call on agencies on an agency by agency basis if you chose.

This particular feature of the proposal we think could be very useful. As it now stands, as you know, the fact that you do not have a review each year rather invites agencies to appear on their own and get special authority. Thus we are inclined to think that this bill would be a step forward, but we do think the bill needs to clear up the question of how the Congress is going to exercise its oversight responsibility. The bill is silent on that.

Mr. HENDERSON. With regard to the third possible alternative of committee approval, would you envision this would be positive approval by both the House and Senate Civil Service Committees?

General STAATS. I had not really thought that through too far. I should think this would probably have to be the way it would work.

Mr. HENDERSON. As I understand, what you are suggesting as a possible improvement would be to remove the principle limitations on supergrades and in that legislation include all of the top positions under the new procedure of the Office of Management and Budget together with the Civil Service Commission through both the budget process and specific reporting or request to the Congress or in the third alternative to the two committees, as a way of oversight.

While we will be giving them greater flexibility, removing a number of restrictions, we would provide a better system for insuring their stewardship and ensuring that their actions were not completely out of keeping with the responsibility, the functions, the authority, and the budget of the particular agency.

General STAATS. I think we would give the committee actually more control on how these supergrades are allocated than it has today in that you would be looking at every one of these jobs that are paid above the level of grade 15.

A number of these authorities now exist where agencies are given a quota that is on their own. In other cases the Civil Service Commission is making the judgment as to what is required. I should think that this particular feature of the bill would give the committee greater control over how many each individual agency has made a case for on a year-to-year basis.

I think it would be very important that the committee assure itself that the Commission and the OMB really look hard at their requirements—that this just cannot be done on the basis of a once over lightly and pass on the buck to you.

I think there has to be an obligation on their part to really look at these in a hard way, and I think the committee ought, in the first instance, to hold OMB and the Commission accountable for what they have recommended.

Mr. HENDERSON. As I understand, you also suggest that if the legislation or Congress indicated its desire otherwise, the General Accounting Office could review whether or not those procedures in OMB and the Civil Service Commission were the most effective and working.

General STAATS. If you wish us to do so, right.

Mr. HENDERSON. If the members will bear with me on just one other question, I would like to get your views into the record. It seems that the major feature of the Federal Executive Service as we have heard from the administration witnesses other than in the areas we have specifically been talking about has been their ability to move or reassign and to change personnel.

What is your concern in this area, or do you see problems or if there are problems, do you see what we could do legislatively that might tend to meet those problems?

General STAATS. Mr. Chairman, as you can tell, I am much opposed to this employment contract feature.

Mr. HENDERSON. Suppose we did not have that or were going in the direction that you and I just earlier discussed. Do you know of any way that we could improve the present system?

As I understand, what they have been saying is that they often find that they have persons in these positions that perhaps have lost some

of their enthusiasm for their work or are not as efficient as they might be and that with the greater reassignment and flexibility they could be assigned to positions where they would do a better job than they are doing at the present time.

I do not quite understand why it cannot be done today but I realize we have a rigid system.

General STAATS. There has been an executive order since 1966, calling for an executive assignment system which is to inventory all the people holding jobs above 15 level, their backgrounds and what areas they might possibly be considered for in other agencies.

The Commission feels that this has not gone far enough to improve the management of executive resources. I do not see any feature in the new plan which is going to make that assignment system work any better. The agencies will still have the responsibility for making the selection of people at these levels.

I do not say that the present arrangement is not without some problems. The Government is in no different situation here than any private company where people have been with the company a long time. Some of them age faster than others. We would like to see the problem addressed in those terms.

Mr. HENDERSON. So you understand, as I think I do, that really what they were talking about in the contract technique at the end of the 3-year period, the employee, if he had not performed to the agency heads satisfactorily, would either retire out or first not have his contract renewed, retire out or go back to GS-15. This would be used far more than to reassign the employee to different positions and functions.

General STAATS. I realize that Chairman Hampton's position is that people at these levels ought to be willing to take these risks, and I think a great many people will take that risk. But you also are going to have a great many people who are highly capable who will not be willing to take that risk, and they will either decide not to come into the service at all or they will decide along the way that they will take a job when a good offer comes along and not run that risk.

I can argue just as strongly on the other side that a person who meets the qualifications to be a supergrade ought not to be told, "You are on a trial period. You have been good enough for a supergrade. Now we do not know whether you are going to be good enough to keep you more than 3 years." I think that is what you are really telling the person. I think you are really saying "You are on a trial basis and maybe you ought to be looking for a job somewhere else."

I am not saying this would be the reaction of everybody, but my concern is that this would be a reaction of some people that the effectiveness of the service is going to be damaged.

Mr. HENDERSON. Thank you, very much, General Staats.

General STAATS. I think I should add one other point. This 25-percent figure is a misleading figure. There are now about 81½ percent of the people at these levels in schedule C. The net effect, if this legislation were enacted, would be to increase schedule C from 81½ to as high as 25 percent of all people at the supergrade level. I think this point should be made.

Mr. HENDERSON. Mr. Mills?

Mr. MILLS. Thank you, Mr. Chairman.

General STAATS, do you have any problems as to the top-level positions in GAO?

General STAATS. You mean today?

Mr. MILLS. Today.

General STAATS. I do not think we are in any different position than any other agency. There are times when you would like more flexibility, but you have to trade that against what you would lose if you had the insecurity that will go with the contract system being proposed in this legislation. I, as between these two—and I have been in the Government for quite a long while; having worked in the Budget Bureau and in the General Accounting Office—all across the board in Government—as between these two choices I would elect to keep the present system, because while it is not a perfect system, it is still, I think, far better than what is being suggested.

Mr. MILLS. Do you have any top-level slots in GAO?

General STAATS. The Congress increased the number in the last legislation. We have 90 today. Yes, we could use some more, but we are not asking for any more.

Mr. MILLS. Do you have any problems getting men to fill these top-level slots?

General STAATS. We have promoted mostly from within—not entirely but mostly from within, which is in support of the point that I am making here. If we had to tell our people that we are hiring—whether we are hiring right out of college or whether we are hiring them at some other level—when you get to be above grade 15 you are going to be on a contract basis, or that you will be put into schedule C, I think we would have a lot more trouble than we are having today.

Mr. MILLS. Of course you have the security feature in that they can always return to the GS-15 as a guarantee. You do not believe this would be an incentive?

General STAATS. I think the person who is the kind of man I want at these levels would lose self-respect if they did that. Rather than taking a grade 15 job he would quit. We do not have a man at these top levels that could not go out and earn more money than we are paying him.

Mr. MILLS. You feel that you presently have sufficient leverage to remove an inefficient employee, or an employee who has lost his zip?

General STAATS. I think so. I would not say that we have not had problems. I think any organization has problems in this respect. I would like to see the whole matter given further study, as we have suggested here. I have cited the experience of some of the public accounting firms. Private industry has really been more innovative than the Government has been on how you treat people. When they have reached the age where some of them are not as productive as others are. People do age differently, and one man may be terribly good at age 70 and another man may have peaked out at 55 or 60. I would like to see this whole area given further study, but I do not see what the Commission has proposed here as being an answer.

Mr. MILLS. Thank you, General. Thank you, Mr. Chairman.

Mr. HENDERSON. Mr. Chappell.

Mr. CHAPPELL. General Staats, a spokesman from the National Civil Service League last week indicated to the subcommittee that in his

opinion most all applicants for supergrade jobs, career and noncareer, must be cleared at the White House.

Do you have any information on that or any opinion?

General STAATS. I am not in the executive branch, as you know, and I am really not in a position to say whether that statement is correct or not. I do know that there is a rather widely expressed feeling that a lot of these jobs are selected on political rather than meritorious grounds.

I have been around the Executive Office of the President for my whole career before I came to the General Accounting Office, and I am familiar with the problem here and the pressures that exist, and in my opinion what is being proposed here would open up the door for far greater pressures than we now have.

I think I am correct in my statement that when the executive branch proposed that the executive level series be established—and I appeared before this committee for the administration at that time in support of executive level positions—one of the things we had in mind was to try to separate out more clearly—more sharply—the career and the non-career service. The executive level positions were established in part to provide for policy level positions that would be available to any administration when it comes into office so as to be able to control policy.

What I am concerned is happening is that we are now eroding the principle that I thought we were establishing then that schedule C jobs would be limited to those clearly of a confidential personal relationship to a top executive.

Mr. HENDERSON. Mr. Chappell.

Mr. CHAPPELL. Does that relate to the 8½ percent you are talking about?

General STAATS. Yes, and this bill of course might extend it as high as 25 percent.

Mr. CHAPPELL. I know it is in the explanation of the bill that relates to one of the sections on page 49 of the bill, it is provided that at the end of the 3-year contract period if the person is to be renewed in his employment, he has to be given an increase or at least he cannot be decreased in pay.

General STAATS. For 2 years, excuse me.

Mr. CHAPPELL. As I understand the explanation given by the Civil Service Commission, so long as he remains in the employment, he can never be reduced in pay, which seems to put us in a somewhat bad position. You might have an employee who may be perfectly capable of doing a \$30,000 job in one capacity but might not in another. So that under the provisions of this bill though, if you found you wanted to retain him but he was not doing the job in the \$30,000 position but might in another, even with his concurrence under this law as explained by the Civil Service Commission, you could not retain him.

You either have to let him go or pay him the same or an increased salary. Does that seem right to you?

General STAATS. No. That would be for an individual who has taken a contract.

Mr. CHAPPELL. I am not saying that you could not swing back into the grade 15, but so long as he remains in the Federal Executive Service, under this proposal, you simply could not reduce him.

General STAATS. That is right.

Mr. CHAPPELL. Does that make sense to you?

General STAATS. I suppose the theory here—I would like to ask my colleague.

Mr. BARCLAY. If they are noncareer, and that group could be increased from 8½ percent to 25 percent in any given agency, the agency could reduce their compensation. Their pay is not set whereas the career employee's pay is set. You cannot reduce the pay of one in the career category. You can change the pay of the noncareer within the upper and lower limits.

Mr. CHAPPELL. According to the explanation given by the Civil Service Commission, it touches the noncareer people. You simply could not reduce the salary if you extended his contract, so long as he remains in the employment.

Mr. BARCLAY. You cannot reduce it below the appropriate step in grade 15.

Mr. CHAPPELL. No; contract salary is what the bill is.

General STAATS. For those under employment contracts, you are quite correct. They could not be reduced. I really cannot answer the other question.

Mr. CHAPPELL. I think I may have misstated my question here. It applies to the career, not the noncareer. I had it backward.

Mr. BARCLAY. That is correct because the noncareer do not have a contract.

Mr. CHAPPELL. As it applies to the career, but the question still stands. Does this make sense to you at all?

General STAATS. I suppose I would like to consider your question a little further before I respond, but my understanding is that the theory behind this is, it is an arrangement between the employee and the Government. The Government, on its side, would guarantee that his pay would not be reduced during that 3-year period. But once the contract period is up, then if the Government decides not to renew his contract, he goes back to a grade 15. He retains his previous pay for a 2-year period.

Mr. CHAPPELL. I assume that one of the problems that all of us admit to is the fact that the procedure through which we establish positions is kind of patchwork, it is hodgepodge. Just addressing ourselves strictly to that, how could we improve the present system without going to some kind of structure as outlined in the bill before us?

General STAATS. We are supporting here today the control of the number of positions in a manner in which the bill proposes—that is, to have an annual review by the Congress, agency by agency, looking at the total number of positions required for that next fiscal year. We think this is a good idea.

We also support the principle of having more flexibility in determining levels of pay above the grade 15 level. We think this is in line with the best practices in private industry. Instead of having to move a man all the way from a grade 16 to a grade 17 to grade 18, we think you can differentiate levels of achievement, you can give more promotions, give him more incentive to perform, if you have smaller increments of pay rather than the way we have three levels today. It may mean that a fellow gives up. He is there—and there are just so many grade 17 jobs or 18 jobs. So we like both features of the bill.

Our concern about this bill has to do with the contract arrangement, and with the idea of expanding the schedule C group.

Mr. CHAPPELL. Mr. Staats, I understand that you seem to lean toward the committee oversight rather than the procedure which was established in this bill. Am I correct on that?

General STAATS. The bill has nothing in it on congressional oversight. It is the Congress but it does not say how the Congress will exercise it.

Mr. CHAPPELL. Except if follows the organizational procedure we have used from time to time which I personally disagree with and simply provides inaction. The Congress approves this?

General STAATS. That is the way we read it. If Congress does not act on July 1, it goes into effect. We would like to see something more positive.

Mr. CHAPPELL. I concur with you. Let us get to some of the alternatives on that. Would you suggest that the proposal be submitted as of a certain time and have the law provide that it be placed upon the agenda of a committee, say, this committee, or would you say on the agenda of the House at a particular time?

General STAATS. We have no real strong feelings about this but I think our preference would be to have it by the committee. This committee is very familiar with this problem. You have dealt with it for many, many years, and by looking on an agency-by-agency basis, I think the committee can retain better control than if it goes through the whole legislative process.

Mr. CHAPPELL. What you are saying is that you would require positive action of the committee and you would not let it become automatic by either inaction of the committee or the Congress as a whole.

General STAATS. Yes.

Mr. CHAPPELL. I certainly concur with that. Presumably by this you would still retain the provisions which would require the reports of the Commission to be made for itself and the agencies by a certain time?

General STAATS. Yes.

Mr. CHAPPELL. Then it is up to the Congress if the committee does not take action on it, it still does not become automatically the law.

General STAATS. That is right. The time schedule suggested in the bill seems like a reasonable time schedule because it would enable the Commission and OMB to have enough time after the budget comes up to make their recommendations and it would still allow it to go into effect with the new budget you see, so that the numbers can be adjusted up or down depending upon the budget that is before the Congress and presumably acted upon at the beginning of the fiscal year.

Mr. CHAPPELL. In other words, it would become final upon the approval of the two committees of the Congress, that is the Post Office and Civil Service in both the House and Senate.

General STAATS. That is our preference.

Mr. HENDERSON. On that point, would you envision there would have to be positive action by the two legislative committees before the Appropriations Committee could act on money requests in excess of what they had for those positions in the previous year. In that sense it would be authorization of numbers on our side that would lead to their action either to or not to grant the money.

The reason I raise this question I do not want to get the Appropriations Committee locked into the position where they would feel that they were not able to carry out their responsibilities. Certainly we are not suggesting that even though there are a certain number of positions authorized by that system, that the Appropriations Committee does not have the full authority to cut down the budget and might do that by limiting the number of positions, are we?

General STAATS. One of the reasons I favor some positive action by Congress is that if you knew, for example, that a major increase was being considered in the Congress on the budget for a given agency, you could make part of your approval contingent upon whatever Congress decided with respect to that program. I do not see any problem of binding the Appropriations Committee or vice versa. I think this would come down to the question on the manner in which you acted, you see.

If the appropriations bill had already gone through, no problem at all. If the level of the appropriations is about the same as the previous year, again probably no problem. But if there were a major change up or down in a given agency budget, then your action might well be contingent upon whatever Congress decided with respect to the level of that program.

Mr. HENDERSON. Mr. Gross?

Mr. GROSS. Thank you Mr. Chairman.

Let me at the outset, Mr. Staats, commend you most highly for your presentation here this morning. I am unalterably opposed to a 3-year contract as you apparently are in your statement.

General STAATS. Yes.

Mr. GROSS. I see too much danger in this—the destruction of incentive and all that goes with it. I would never support the 3-year contract for top-level people.

Some of us have given a small amount of thought and discussion to the very thing you suggest this morning. That is, congressional oversight and for more reasons than one I think that we need to retain congressional oversight if for no other reason than the problem of pay increases. Turn this over to the various agencies and you have built-in pay increases if they want to exercise their power in that way, it seems to me. I may be wrong. I would be glad to have you correct me if I am wrong.

It is very important that Congress retain control and I know of no way that it can be done without some meaningful oversight. I am sure Mr. Henderson would be the first to agree that we have had real difficulty to the point of, in some cases, losing control of the number of supergrades. We badly need to do something and do it without loss of time.

Does your proposal mean that Congress annually authorizes the total number of top-level positions? Would you say that would be implicit in what you suggest by way of congressional oversight?

General STAATS. Yes. And including all the special authorities which now exist like the Public Law 313 positions, which are for the scientific area, and do it on an agency basis.

Mr. GROSS. In other words, I think Mr. Chappell and Mr. Henderson suggested we might ask for reports at a given time of all agencies

and departments of the Government as to the number of supergrades and the top level positions, the increase in the past year—all factors essential to a determination of what they have been doing and the use they have been making of their personnel.

General STAATS. That is correct. I believe those agency requests should be reviewed by the Civil Service Commission and Office of Management and Budget before they come to the Congress. We would urge strongly that the committee asks OMB, and the Commission in the first instance to justify what they have proposed. Then the committee could follow up and hold hearings with individual agencies as it so wished.

Mr. GROSS. But obtain at the same time information from each agency and department as to what they have done?

General STAATS. Right.

Mr. GROSS. In the event Congress enacted this broad oversight authority would you suggest bringing in those departments and agencies which were excepted under this present bill?

General STAATS. The Commission's proposal does not. We have some difficulty understanding that philosophy. If this is good for Agriculture it seems to us just as good for the VA or any other agency, to have an annual review of its requirements.

Mr. GROSS. Including the CIA and NSA, right?

General STAATS. We don't see quite the basis for differentiation if the purpose of the review is to look at the number of positions required at these levels above the grade 15 pay level.

Mr. GROSS. I have been on this particular subcommittee since it was organized. I suggest I am the oldest member of the subcommittee on the House Post Office and Civil Service Committee, and probably in point of age the oldest member of the committee, I do not know. But I can remember when we at one time asked the CIA for the number of supergrades they had, and they in effect told us to go jump in the lake. They were not about to tell us how many supergrades they had. I believe Mr. Bray was on this committee and we promptly adjourned the subcommittee under the chairmanship of the great Judge Davis of Georgia, and told them we had not asked for job identification or what these people were doing—we simply wanted to know the numbers—how many warm bodies they had in those cages.

When they got ready to tell us we would be glad to do business with them again and we promptly adjourned the meeting. In a few hours they were ready to talk.

I think at least, up to that point, they ought to be brought under congressional oversight. We ought to know what they offer in the CIA, as well as NSA, or any other agency that is regarded with a great deal of sensitivity.

Mr. HENDERSON. Will the gentleman yield on that point?

Mr. GROSS. Yes.

Mr. HENDERSON. First let me say that I could not agree more with the point Mr. Gross just made but I do have some concern as to whether for example, General Accounting Office ought to go to the Office of Management and Budget and through that process or perhaps the CIA that the gentleman mentioned. I do not know about CIA but take FBI as another agency, whether or not they ought to

have the full legislative oversight of the executive when we do have, we ought to have, a congressional review of all of them.

General STAATS. Let me break my answer down in two parts on that. First I do not think that the judicial branch or the legislative branch should go through the OMB or Civil Service Commission review. They do not review our budget today.

I do think, though, that we should come before the committee in the same way that any agency does in support of what we think our requirements are. I do not think there should be an exception in that respect but I do not think it would be appropriate for the judicial branch or legislative branch to go through the OMB and Civil Service review.

The other part of my answer to your question would be this. The committee could still differentiate how it acted with respect to the FBI or CIA, or any other agencies that have their own merit system, but I still would think you would want the opportunity to review it, to see how what they are doing relates as to what you would act on positively. You would want to know whether it was in line with, or out of line with, what is being requested for other agencies. You would not necessarily have to go through a positive approval on those agencies but that would be up to you.

Mr. HENDERSON. Let us come to the FBI. Do you feel that the FBI should be handled under the Justice Department so we would not be able to tell how many of Justice positions were allocated to the Bureau?

Do you know of any specific agencies that ought to have their own budget and allocation in this report? I may be a little confused about how exactly it would come out but let me point out NSA—National Security Agency—where we have from time to time reviewed their specific supergrade requests, as the gentleman knows, and we found there are good reasons, we think, for NSA. I would hate for this to get lost in the entire Pentagon budget procedure. I am sure Mr. Morris might come in on this. But I think we would want to know, be sure that the Office of Management and Budget and the Civil Service requirement did not put undue restrictions on agencies that might need separate attention at that level and at the congressional level.

General STAATS. When I referred to positive action I meant either to increase or decrease or approve as submitted. I do not understand this to mean you could not exceed for FBI, or any other agency, what has been recommended. You do now approve the number of supergrade positions for the FBI.

Mr. HENDERSON. As a practical matter if NSA has to go through the Pentagon process, if they have gotten whacked down in that process it would be very difficult, it seems to me, Mr. Gross, for us to exceed the executive request and yet there are certain identifiable agencies like that that we might want to be selected out so that when they report or the overall executive request came to us, we could see what was specifically done within the particular agency.

I think we would feel very strongly in the Congress. We would want to be able to identify the strength and the efficiency of the FBI or the NSA within the Pentagon because of the peculiar problems as we understand them.

Mr. MORRIS. From a defense point of view, Mr. Chairman, I am sure that is correct, and it is true that the three military departments have

their separately identified quotas now. Some of these large agencies like NSA might also be separately displayed for your review.

Mr. HENDERSON. Thank you for yielding.

Mr. GROSS. Just on other question if I may, Mr. Chairman.

Mr. Staats, what do you think of the appointment of qualifications boards on which persons serve from outside the Government to pass on the qualifications of Government employees?

General STAATS. I would be very doubtful about this arrangement. Qualifications boards set up internally, I think, are fine. I do not really quite understand the value of a board, particularly a board formally established, having on it non-Government people. The military does not do that today, nor does the Foreign Service as you know. They do it inhouse. They do it with their own people.

I have some difficulty in understanding what they could contribute.

Now if on an ad-hoc basis, if you want the views of somebody on the outside in some scientific field—or in some highly specialized area, where a man has developed a good research project or something of that kind—you can always do that. But you do not need to go outside to have outsiders permanent members of that board. I would not want them. We do have an inside board.

Mr. GROSS. Does GAO have any information with respect to the postmaster appointments in the new Postal Service, there being 4,000 to 5,000 vacancies being filled by qualifications boards or selection boards. Have you inquired into that?

General STAATS. No, I do not believe we have, Mr. Gross.

Mr. GROSS. I agree with you that there must be some people at the top level in Government changing with each administration from the standpoint of policy. Our problem is to minimize the political appointments, it seems to me, under any administration. I do not care whether it is Democrat or Republican. I think the suggestion that you have made with respect to this proposed legislation is far better than the proposal made by the administration. I thank you again, Mr. Staats.

Mr. HENDERSON. Gentlemen, to pass back the other way, on the point that you made about the examining boards this certainly is a great concern of mine. It seems to me that the way to get the best qualified people in executive services is that the agency head or the management people are going to have to live with mistakes, are going to have to be more careful than some ad-hoc or outside board because I am sure that from what I understand, you do not let the personnel offices in just a process provide you with your supergrades.

You and your committee look at them very carefully and if you get a bad egg you have to live with it now and I want to know how you would get along with some outside board passing along a bad egg to you. I do not think they would be quite as careful as you are. I think this point has been well made.

Mrs. Andrews?

Mrs. ANDREWS. Mr. Gross said he is the oldest member; I am the youngest one, as everybody knows, and so I do not know a lot about committee work. But I do know about human nature. I like Mr. Staats's statement about not jumping all the way from one level to the next, but having an inquiry board that would decide the qualifications and

give a man the encouragement by gradual raises. It seems to me that would be much more encouraging and would tend to give us more efficient people.

General STAATS. We would like very much to have this authority for ours. We think we can give a man more encouragement by smaller increments in pay increases than if he has to wait for one of these supergrade jobs to open up.

Frankly, the present automatic within-grade system does not in our opinion provide that kind of incentive because time runs on and he figures on the time schedule he deserves that, and he does not really have to earn it, so that we think the discretionary increases above the grade GS-15 level would be a distinct improvement.

Mrs. ANDREWS. I think so. I think you can see that down at the lower levels, that there is not much pride today in a man's job as we have had in the past. If he is doing a good job and he is recognized, then naturally he is going to try harder. That is all I have, Mr. Chairman.

Mr. HENDERSON. Gentlemen, we have taken more time than perhaps I had anticipated and your responses have been most helpful. I cannot let you get away without touching on two things of real significance and one for the benefit of the members of the committee. It has been a real pleasure to work with the Honorable Tom Morris both in and out of Government and now into the General Accounting Office. I would hope that in the very near future the subcommittee members would be as determined as I am that we invite you over, sir, to tell us some of the new things you are taking on with the support and direction of General Staats. I know they are exciting. I hear a lot about them and I feel that you really are getting capability to do some things in the manpower area that we have been talking about for years. I take this occasion to commend you, General Staats, and certainly to assure Tom Morris that he has our best wishes and backing and we would be delighted to hear from you at a time when I know we have more time.

Lastly, again we find with efforts all around to try to economize and to cut, with the OMB and the administration's order of reduction of 5 percent in civilian employees coming up that we see now contracting going all over for our personnel service.

Just within the last few hours we have been advised that overtime at Norfolk and North Ireland Naval Air Stations is running as high as 30 percent. We have seen it time and time again. I am sure that you would concur with the thinking that we have had in the past that we are again in that period where we are attempting to control dollars by controlling manpower ceilings and it is not every effective.

I hope that with your efforts and increased activity we can get better control, not only over the top executive service but that we can do a better job of convincing the executive and the Congress that the American taxpayers are not so interested in GS-16, 17, 18, or how many we have but interested in all these dollars that we say are lying around over the country to such an extent that that may be the real cause of the smog in certain area.

General STAATS. Mr. Chairman, before we leave if I may, you are aware I am sure but not all of the members of the committee may be aware that just a month ago we established a separate division within the General Accounting Office which is concerned with Government

personnel matters on an overall Government-wide basis; military personnel, civilian personnel, retirement systems across the board. This is one of the four divisions that will be reporting to Mr. Morris. This will be a distinct improvement and will enable us to be of greater assistance to the committee and to the Congress.

Mr. HENDERSON. Mr. Gross and General, I think it is fair to say that the activities of this subcommittee over the years probably have contributed a great deal to that effort. It stimulated you because we requested you time and again to look at these things, and every time you have looked at them I think you have gotten a greater concern for the need of beefing up the General Accounting Office. I just commend you for this and find it very rewarding for what sometimes, Mrs. Andrews, becomes a very laboring work on this subcommittee.

It is this kind of an improvement that we see that is very helpful to us.

General STAATS. Thank you for having us, Mr. Chairman.

Mr. HENDERSON. Our next witness is Mr. Paul H. Robbins, executive director of the National Society of Professional Engineers.

(Mr. Chappell assumed the Chair.)

Mr. CHAPPELL. Next we have the privilege of hearing from Mr. Paul Robbins, executive director of the National Society of Professional Engineers. Whom do you have with you, Mr. Robbins?

Mr. ROBBINS. Mr. Gayle Wright of our staff who has studied this bill and works with our engineers in the Government Division. I would like to have him with me if I may, please.

Mr. CHAPPELL. Yes, sir; you may proceed.

**STATEMENT OF PAUL H. ROBBINS, EXECUTIVE DIRECTOR,
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS, ACCOMPANIED BY
GAYLE WRIGHT, STAFF DIRECTOR, PROFESSIONAL ENGINEERS IN
GOVERNMENT PRACTICE SECTION**

Mr. ROBBINS. The National Society of Professional Engineers, a nonprofit organization headquartered in Washington, D.C., and consisting of nearly 70,000 individual members who are engaged in virtually every aspect of engineering practice, appreciates this opportunity to present engineering views on H.R. 3807 to provide for creation of the Federal Executive Service.

My name is Paul H. Robbins. I am a professional engineer, and executive director of the National Society of Professional Engineers.

We are aware of the need to provide for an orderly coordination of Government positions, both in the interest of good management and of any administration's ability to execute its policies with the support of a responsive executive group.

We therefore favor establishment of an executive service to the extent that it would consolidate the presently scattered system and provide for more efficient executive manpower planning and control. We think the concept of H.R. 3807 has merit, but we do not support the proposal in its current form. It has, in our judgment, fundamental deficiencies which more than offset the benefits sought to be derived. Our testimony today will touch on several of the more important fea-

tures of the measure. The first of these is the 3-year renewable contract under which future FES members would be employed.

Its supporters argue that agencies can be relied upon to use good judgment in determining whether particular contracts should or should not be renewed. This position is apparently founded on the assumption that politically appointed and motivated agency heads will, in all circumstances, evaluate executive employees on the sole basis of observed performance. But engineers are not convinced that abuses will be, or even can be, avoided.

Political appointees are simply not in the best position to judge experiences under prior, especially politically opposite, administrations. Nor can they be wholly relied upon to exercise all but performance criteria from their mental processes. This is particularly true during initial organizational periods when the pressures for governmental appointments are greatest from the ranks of party workers.

Engineers, in addition, are particularly concerned with the potential effects of political judgments as they might operate in the technical field, and as they might influence the renewal of contracts. There exists something of a unique situation in cases where the engineer or scientist executive is to be judged on performance by those lacking in technical training or expertise.

Such judgments most likely would be formed not on the proper basis of sound technical professionalism, but rather only on those nontechnical factors available to the judge. Where sound professional judgment demands rendition of unpopular opinions or answers, the professional's judgment would be in danger of compromise in order to please the supervisor-judge. The best interests of the employer—the Government in the final analysis—would not be well served.

It would appear, therefore, that the engineer and other technical specialist supergrades are in need of more, not less, protection against the possible arbitrariness of dismissal.

Engineers are also concerned with the effects of the renewable contract feature on the ability of agencies to obtain the best talent available. In testimony recently given to this subcommittee, the Civil Service Commission indicated that qualified individuals would be attracted. The General Accounting Office, as Mr. Staats has just indicated, on the other hand, expressed belief that they would be repelled. Job security loss seems to be at the heart of this dispute.

Our judgment is that the more promising, and younger potential FES appointee would be reluctant to accept the vagaries of a renewable 3-year career when other employment fields offer similar or better contract terms without the implicit threat of a definite 3-year limit. We believe that we are therefore in accord with Mr. Staats' presentation on this subject. It is true that the average industrial executive may find his employment terminated at any time, but he does not begin employment saddled with the sure knowledge that he faces the positive prospect of termination at the end of a specific period of time.

Supporters of the contract concept can argue that this negative aspect is offset by the certain knowledge that if terminated, the employee may retreat to a GS-15 position. This possibility may have some appeal to the older employee, especially those on the verge of retirement, but the younger executive can hardly find such a prospect entic-

ing. Furthermore, he is not likely to look forward to the prospect of being labeled as "rejected."

The bill provides for continuing GS-15 positions in cases of contract nonrenewal. Engineers are not sure exactly what responsibility this places on an agency. In the event a particular agency has no opening at this level, the question arises as to whether it would automatically be empowered to create one—or to create 10 or 20 or more—if openings are needed to accommodate those whose contracts are not renewed.

Another question which presents itself is whether the nonrenewed executive is to be given preference over the particular agency's incumbent GS-14, who naturally aspires for advancement to available GS-15 positions.

Obviously, if such preference is intended, promotion possibilities and morale throughout the entire governmental structure would be seriously affected in a most adverse manner. Additional demoralization can also be expected on down through the ranks. Similar, if indeed not more serious, internal problems occur if the legislation intends that reductions in force at the GS-15 level must be accomplished whenever it becomes necessary to accommodate a nonrenewed executive within nonexpansionary organization tables.

Another major feature of this legislation which gives pause for concern is the elimination of defined "positions" in favor of the assignment of individuals to whatever duties an agency might feel most appropriate at any given time. While this concept has some appealing aspects, at least to the extent that executives should be regarded as interchangeable, the question arises as to whether they are, in fact, so easily convertible from one position to another.

With respect to technical functions, engineers are firmly convinced of the need for tying individual qualifications to specific duties. Professional technical activities must be carried out under the direction of those appropriately qualified by education and experience in the particular field. Engineers have learned from experience that even under the present system there does exist pressure to bend professional standards in many cases.

As the grade level increases, so does this type of pressure. In the proposed FES, various program and personnel shifts may often require positions to be found for individuals with skills for which there is no immediate need, and it can reasonably be expected that compromises in the interest of accommodating these individuals will be made.

The match of individual qualifications and duties will inevitably suffer in our opinion. The long-run disastrous effects on technical organization structure and performance are predictable.

Engineers, therefore, oppose the wholesale elimination of classification standards. Functions and duties requiring specific professional, technical, or specialty skills must be identified, and appointments to these positions must be restricted to those who meet specified qualification standards.

In Civil Service testimony, it was indicated that some 15 to 20 qualification boards would be established, appointed by and responsible to the Civil Service Commission, and constituted in such a way as to make possible an adequate evaluation of every individual proposed for appointment to the FES.

In our view, however, the organization, constitution, and function of these boards have not been spelled out in sufficient detail to dispel doubts concerning their adequacy. Whether 15 or 20 such boards, unless structured on the basis of occupational specialty rather than region or agency, could effectively evaluate the broad range of personnel likely to be involved, is in our opinion questionable. Even if so restructured, the question remains.

It has been indicated that the individual would be evaluated by the boards in order to insure that merit standards are followed in making a selection, and that the nominee possess the personal characteristics and attainment level in his own field for continuing achievement and contribution to the Government. But the agencies, meanwhile, would retain responsibility for furnishing the boards with evidence on which to base particular nominee judgments.

The agencies would also be required to submit advice regarding the qualifications being sought, the details of the search they undertook to find an individual with such qualifications, and others they have actively considered. Obviously, agencies would thus be subjected to strong temptations to support their own choice. It is questionable whether, under these circumstances, qualifications boards would enjoy as much functional authority in the approval process as is intended by the bill.

The term "merit standards" in these circumstances would appear largely to be window dressing, whereas, in reality, the agencies would most likely decide who they want to appoint and that would be the end of it.

In closing, we reiterate our support for the concept of this legislation. We think it has merit. And we recommend that further consideration and study be given to the possibility of devising an approach without the dangers and weaknesses of the plan proposed in H.R. 3807. We thank you for the opportunity to express our views on this important and far-reaching legislation.

Mr. CHAPPELL. Mr. Mills?

Mr. MILLS. Thank you, Mr. Chairman. I think it is an excellent statement, Mr. Robbins. Do you feel the Federal Executive Service would affect the Government materially in obtaining top engineers?

Mr. ROBBINS. Perhaps more in retaining. The problems of the advancement, the problems of the morale and insensitivities that would be existing for the higher grades, we feel would be seriously affected by the FES.

Mr. MILLS. Your statement included comments to the adverse effect of the contractual arrangement. Do you think there are some favorable points to a contractual arrangement where an engineer would feel secure for a 3-year period?

Mr. ROBBINS. I think there is merit in particular expertise desired for a period of time. This is now available to the Government and can be accomplished without the FES.

The security of the 3-year contract for the employee is not as extensive as the career service now available or as even the political appointee in many cases, where the expertise is much more directly connected with the job to be done.

Mr. MILLS. Do you feel the top level policy of the various agencies in Government now has the means available to get ride of ineffective, inefficient employees?

Mr. ROBBINS. The whole system of the civil service has this dilemma of course at all levels, not only the top level.

The current system at the top level I would not suggest has any greater or less problem of the inefficient, burned-out individual than does any other place in the Federal Civil Service. It is a question of the merit system versus the appointive system.

Mr. MILLS. Thank you, Mr. Chairman.

Mr. CHAPPELL. Mrs. Andrews?

Mrs. ANDREWS. I think the gentleman has made an excellent statement. I do not believe I have any questions.

Mr. CHAPPELL. Mr. Robbins, let me ask you two or three questions. As I understand it, you support the concept of the legislation. Does that mean that if the contract idea were stricken from this proposal, that you would favor the Federal Executive Service?

Mr. ROBBINS. I think it strikes us that the contract portion of it is so fundamental in the basic FES concept that it would be difficult to have that kind of thing without it.

What we favor is the very thing that Mr. Staats was referring to. We are all concerned about the hodgepodge of appointments in these upper operations and the inability of really evaluating except on a very laborious system the necessity and the administration of the various agencies of Government. We think that needs to be looked at. We think there needs to be a recodification or some legislative oversight in the total picture.

I doubt that I could add nearly as effective a presentation as Mr. Staats did on this particular point and I can only say that we endorse that concept of need for that kind of legislative oversight, that kind of coordination in manpower planning at the supergrade. In that context, we think the thrust of the bill has merit. The details of how it is proposed we question as having certain disadvantages which outweigh that concern.

Mr. CHAPPELL. Do you have any information that applicants for top engineering jobs in the Government have to be cleared by the White House?

Mr. ROBBINS. No; we do not.

Mr. CHAPPELL. Are there any other questions anyone would like to ask? [No response.]

I believe that is all, Mr. Robbins. Thank you very much.

Mr. ROBBINS. Thank you very much. We appreciate the opportunity.

Mr. CHAPPELL. Mr. Philip Ryther?

Mr. Ryther, we are pleased to have you before the committee today.

STATEMENT OF PHILIP I. RYTHER, McLEAN, VA.

Mr. RYTHER. Good morning, Mr. Chairman. I am pleased to be here.

Mr. Chairman and members of the subcommittee, I am Philip I. Ryther of McLean, Va. Prior to my retirement from Federal service

in December 1970, I was the Chief of the Evaluation Division of the Federal Aviation Administration—a subordinate agency of the Department of Transportation. In that position I was responsible for the evaluation of all aspects of civil aviation in the United States which are vested in the FAA by the Federal Aviation Act of 1958 and other statutes. I was a grade GS-16 and had a small but highly competent staff of aviation experts assigned to my division.

During my 26 years of Federal service I worked 2 years for the Veterans' Administration, 12 years for the Department of Defense as well as 12 years for FAA. Before and during breaks in my Government service I also held executive and other responsible jobs in three large U.S. corporations.

Mr. Chairman, I come before your subcommittee not as a particular expert on the merits or shortcomings of the high-sounding principles embodied in the Nixon administration-sponsored bill H.R. 3807, but more as an exhibit of how things work in the real life we live in. High-level administration witnesses have bombarded the subcommittee with all of the right and pretty words. They have said it will permit the executive department to streamline, to modernize, greater flexibility, provide the individual with greater incentive. Who in the world can quarrel with these American-as-apple-pie pleadings? I, for one, however, have great trouble distinguishing between their apple pie and their Madison Avenue tactics.

As a boy on the farm in Minnesota I remember clearly listening to the radio and hearing the voice of the late Gov. Alfred E. Smith of New York and his repeated urging of Americans to "look at the record." Here is the record of my last months in the Federal service.

In late 1969 the Deputy Administrator of FAA directed me and my staff of five experts to make a searching evaluation of safety regulations and practices related to all phases of civil aviation in the Nation. He said he wanted us to cover aircraft manufacturing, maintenance practices, operations, crew proficiency and training as well as the regulatory role of the Government. He asked me if I could do the job by March 31, 1970. I told him I thought we could. We completed the work 2 days ahead of schedule. The man that gave us the job was a Lyndon Johnson appointee and unfortunately, before we finished our work, he was gone. An executive from the aviation industry had replaced him. The report described many extremely serious safety problems, and included recommendations for the elimination of many operating and regulatory hazardous practices.

Months passed, and no effective action was taken on our recommendations. In fact the report was buried and I was told to discuss it with no one and if I did I would be subject to severe disciplinary action. After several hundred more lives had been lost in aviation accidents—and I will say here there are about 125 people lost each month in this Nation in civil aviation accidents, about 1,500–1,600 per year. I asked the Administrator of FAA if I might discuss the matter with him. He declined to see me or discuss the subject. However, the new Deputy Administrator called me in and gave me hell for attempting to discuss the matter with the Administrator. The Deputy even wrote me a letter and said he did not consider the matter urgent enough to push it as I had and that I better never do such a thing again.

Several of our recommendations dealt directly with serious hazards involved with charter flight operations. About 3 months after the new Deputy Administrator wrote me that he was not impressed with the urgency of our recommendations, a charter flight crashed in Colorado killing 31, including many members of the Wichita State University football team. About 6 weeks later—another charter crashed in West Virginia killing 75, including nearly the entire Marshall University football team. Approximately 3,000 have been killed in civil aviation accidents since I submitted my report. Incidentally, that is the same report that was characterized by this new Deputy Administrator as not being urgent enough to handle as I was doing.

I am told that only last month there was a failure of vital traffic control equipment on the busy New York to Miami airway. I have been informed the traffic controllers had previously pleaded with FAA management that they not be forced to use the equipment. In this incident there was an airways blackout lasting 61½ minutes with dozens of passenger and other aircraft involved. After this harrowing experience I am told the traffic controllers have now declined to use the inferior equipment and are improvising in some other way to move the traffic. I am told that in that 61½-minute harrowing time, there were three near crashes involving midair traffic.

Shortly after I received the Deputy's no-urgency letter, I was called in by the Associate Administrator for Manpower of FAA and told I ought to retire and enjoy life. Incidentally, I was 55 years old at that time. He also said he understood I had some outside income and asked me if that was true. I told him I would prefer not to discuss my personal affairs. He then told me not to play games with him because for a phone call he could have access to my personal income tax returns. I did not challenge him because I knew that only a few months before he had been an Assistant Commissioner of the Internal Revenue Service. I did however decline his retirement suggestion.

A few days later I was called in again by the same man and told I was being given one more chance to retire. I was not eligible for an annuity, so again I declined and in the same meeting I was presented with 11 pages of charges against me. The charges stated that I would be removed from Government service at the end of 15 days.

I will not include the 11 pages of charges in this statement but will be glad to furnish a copy to the subcommittee if you desire. Near the end of the 15 days the same man called me in again and asked my permission for him to withdraw the charges because he had found a way to get my annuity approved, and that I would be spared having to defend myself against the charges. Incidentally, he counseled with me about what an expensive affair that would be for me. Counsel costs would be exorbitant, he told me. He presented me with a retirement request letter to sign which included a false statement to the effect that no charges were pending or contemplated against me. I took the letter, unsigned, to the Director of the Bureau of Retirement of the Civil Service Commission. He was aware of my case and had tentatively approved my retirement but had at no time been told anything by FAA officials about the charges. Incidentally, when the Associate Administrator for Manpower of FAA requested me to return the charge letter to him, he asked me to be certain that all copies were gathered together and asked my assurance that I retain no copy. I

showed the Director of the Bureau of Retirement a copy of the 11 pages whereupon he said all bets were off with respect to his previous agreement with FAA to approve my early retirement. This man had never heard of the charges.

For reasons best known to the officials of FAA, all charges against me were dropped. It has always seemed strange to me that a fellow could be 11 pages bad one day and no pages bad the next.

I believe that subcommittee will understand that by this time I had been through quite a bit, so after repeated urgings by my doctor because I had developed high blood pressure from this episode, I voluntarily retired in December 1970.

Mr. Chairman, this is a very brief review of my experience as it may be relevant to the matter before the subcommittee at this time. Doubleday Publishing Co. of New York will issue a comprehensive report this summer dealing with aviation safety in the United States and the management of the Federal Aviation Administration. Incidentally, the Civil Service Commission reviewed the handling of my case by FAA, and 6 months after I was retired directed the FAA to retroactively increase my salary during the last year of my service, increased my annuity accordingly and raised my Government life insurance for the benefit of my family. I can assure you it was a pleasure to get FAA's check.

The other day one member of this subcommittee, I believe it was you, Mr. Mills, asked an administration witness what a career Government executive has for protection since H.R. 3807 provides for little or no appeal rights. The witness stated that each executive would be dependent upon the ethics and integrity of department and agency appointing officials. I suppose my statement to the subcommittee today reflects the level of my confidence in the subject of ethics and integrity as worthy guarantees of fairplay.

Last November, almost a year after I retired, a high official on the President's staff invited me to the White House for a conference. The man worked in the office of H. R. Haldermann, assistant to the President. He told me the purpose of the meeting was to talk this whole thing through. I did not understand what that meant but I did accept. For an hour and a half I listened to a lot of beautiful rhetoric about "looking to the future" and how "everyone was interested in improving aviation safety." He volunteered that I would hear further from him.

Having heard no more, I wrote Mr. Haldermann a note on January 7 and asked how they were making out. On January 22 I received a reply from Mr. John Dean, III, counsel to the President, stating I would hear from the Department of Transportation in the near future. More than 3 months have passed and I have heard nothing. Frankly, Mr. Chairman, I do not really know what they thought it was that they were going to communicate to me. I had asked them for nothing and what it was they were going to tell me, to this day I do not know, but they kept stating that they were going to communicate with me.

Mr. Chairman, we hear a constant din these days from many segments of our population to the effect that they have lost confidence—not in our form of Government—but in the lack of candor and forthrightness with which the Government is being managed. In my opinion, passage of the bill before this subcommittee will add fuel to the fire of lost confidence. I urge that H.R. 3807 be rejected.

I will try to answer any questions the subcommittee may have.

Mr. HENDERSON. Mr. Mills?

Mr. MILLS. It is an interesting statement, Mr. Chairman.

I am not sure I understand, however. If H.R. 3807 had been in effect at the time of your difficulty and you had been under contract, theoretically you would still be at FAA, is that correct?

Mr. RYTHER. No, I would not have stayed.

Mr. MILLS. Oh, you voluntarily would have left?

Mr. RYTHER. Of course I would.

Mr. MILLS. What happened to the report that your group worked out? Do you know?

Mr. RYTHER. I know that Members of the Congress and members of the press have from time to time asked for copies of it. FAA has declined to provide it except on a couple of occasions they have to particular committee chairmen.

Reports I get—and I think I get very good ones from inside of FAA—some more window dressing, very little going to the heart of the real significant safety problems that were embraced in that report.

Mr. MILLS. Is the article that you refer to by Doubleday a result of your approaching a company to sell them information?

Mr. RYTHER. It is not.

Mr. MILLS. Thank you, sir.

Mr. HENDERSON. Mrs. Andrews?

Mrs. ANDREWS. I wonder what kind of recommendation you have to avoid such a situation arising? Should there be some carryover from one administration? As I understand it, the man who gave you this assignment was no longer in Government because of change of administration. If there were some sort of carryover to take care of a situation like this from one administration to another, could such a situation be avoided? What do you have to suggest that could avoid it?

Mr. RYTHER. I think bringing focus onto this kind of carryings on in our Government to the eyes and ears of the people will cause the public to show their concern with these kinds of things. I am merely one exhibit. I can name a dozen others in other departments. FAA has no monopoly on this kind of unacceptable management.

It is my belief that we are going to have to demand a higher level of performance from these people who are doing the judging of the performance of others. I cannot believe that our population wants people in high office dealing in this way. I think they want them to deal forthrightly and candidly, not only with the individual but with the subject matter. What in the world has been done about the subject matter of our report—safety?

Mr. CHAPPELL. Mr. Ryther, just getting a little aside from the bill itself, did your report have to do with recommendations which you felt would have saved the lives of those lost in the charter flights that you have talked about here?

Mr. RYTHER. Yes, sir.

Mr. CHAPPELL. Did that have to do with pilot qualifications or equipment inspection or procedures?

Mr. RYTHER. All three.

Mr. CHAPPELL. In other words, you felt then, and apparently still do, that the qualifications procedure for charter pilots was not imbedded with enough safety factors?

Mr. RYTHUR. That is correct.

Mr. CHAPPELL. You felt, too, that the procedures for inspecting charter equipment were not sufficient to guarantee against the kinds of loss which were sustained in those flights?

Mr. RYTHUR. That is correct. I would enlarge by saying the very regulations involved with the operation of charter flights in this Nation are totally inadequate, vague, and obsolete.

Mr. CHAPPELL. Was it determined that the charter pilots on that occasion were following FAA regulations at the time they crashed?

Mr. RYTHUR. It is my belief that there was no one in violation of any existing regulations. The void was in the regulations themselves.

Mr. CHAPPELL. I see. So you could not just attribute it to pilot error. It was something aside from that?

Mr. RYTHUR. They should not have been permitted to be operating as they were.

Mr. CHAPPELL. That is just an aside.

Now let us come back to specifics of the bill. Are you saying here that the method of selection of the person who became your superior was inadequate?

Mr. RYTHUR. The method of selection was one of the administration placing a nominee before the Senate for confirmation. That is as old as our Nation. I see no need to challenge that. I would strongly urge that when we put names before the Senate for confirmation, we be a little more careful and make a searching review with respect to their capacity and will to do the kind of job that is required.

Mr. CHAPPELL. So you are saying what this amounted to was an error in judgment on the part of the nominating official and on the part of the confirming authority which was the U.S. Senate?

Mr. RYTHUR. I think there are wrong people sitting in those FAA offices.

Mr. CHAPPELL. If that is the problem, how do you get at it?

Mr. RYTHUR. It is as big a subject as the whole philosophy of our Government. That is a big statement and I recognize it. I know of nothing else except that the people insist on a better job and that we get better help both in the appointive and the career service of our Government.

Mr. CHAPPELL. You are saying this would have happened to you under either system except that it would possibly have been accelerated and worse under the proposed legislation.

Mr. RYTHUR. I suppose it would have been. The result would not have been much different because I would not have stayed under the conditions that prevailed there, and those conditions still exist. I would say this, we hear so much of getting rid of that guy who is sitting around sleeping. I, the career guy, was not twiddling my thumbs; I was breaking my neck trying to get some of those fellows who were responsible for the conditions we found to act. I can see their reluctance to say that, "I did poorly yesterday and I shall do right today" but they did not have the courage to stand up and take corrective action when they should have.

Mr. CHAPPELL. It seems to me, had there not been this noncareer person in the procedure, this situation would probably not have happened? Is that what you are saying?

Mr. RYTHER. It is very difficult for me to say if a career man instead of the man who was, and is there, had been sitting in that position, he would have acted like a knight in shining armor.

Mr. CHAPPELL. So what you are getting back to is the errors of human judgment and as far as this legislation is concerned, we are not going to be able to do very much about that, is that correct?

Mr. RYTHER. I would say so, except that had I been a career person that had been determined to stay on for another 10 years and had I been operating under a 3-year contract and my contract had shortly been up for renewal, I do not believe I have to indicate what my prospects for renewal would have been. I am very proud of what I did. I am not backing up 1 inch for the action I took on such a serious subject. But, had I been up for renewal of a contract in the period of 1970, my chances for renewal would have been zero.

Mr. CHAPPELL. Under the procedure which we face now and under the one to which you were subjected, it was necessary to have formal charges made against you before dismissal. Is that correct?

Mr. RYTHER. Yes.

Mr. CHAPPELL. Under the proposal here, in at least the 16, 17 and 18 grades, it would not have been a matter of charges being made but whether or not you had performed under the contract?

Mr. RYTHER. That is correct.

Mr. CHAPPELL. Would not you have been better protected under the present system than under the contract proposal?

Mr. RYTHER. No question about it.

Mr. CHAPPELL. Do you have any other questions, Mr. Mills?

Mr. MILLS. No.

Mr. CHAPPELL. Mrs. Andrews?

Mrs. ANDREWS. No.

Mr. CHAPPELL. Thank you very much for being here. We stand adjourned subject to the call of the Chair.

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

92D CONGRESS
1ST SESSION

H. R. 3807

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1971

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

A BILL

To amend title 5, United States Code, to establish and govern
the Federal Executive Service, 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 title 5, United States Code, is amended as follows:

4 (1) Section 1305 is amended by inserting "3143 (c),"
5 immediately after "3105,".

6 (2) Section 1308 is amended by inserting the following
7 new subsection after subsection (e) :

8 "(f) (1) The Commission shall make an annual steward-
9 ship report to Congress on the Federal Executive Service.
10 The stewardship report shall be submitted before April 1 of
11 each year and shall include comprehensive information for

1 each agency in which members of the Federal Executive
2 Service are serving and for the Government-wide operation of
3 the Service showing—

4 “(A) the current authorized number of appoint-
5 ments in the Federal Executive Service and the pro-
6 jected number of executive appointments to be author-
7 ized in the next fiscal year;

8 “(B) the current authorized ratios of career to non-
9 career appointments in the Federal Executive Service
10 and the projected ratios to be authorized in the next fiscal
11 year;

12 “(C) any adjustment in the number of executive
13 appointments or the ratios made under section 3134 (e)
14 of this title with the reasons therefor; and

15 “(D) the current executive pay average estab-
16 lished under section 3139 (c) of this title, any exceptions
17 to the executive pay average approved by the Com-
18 mission under section 3139 (b) of this title with the
19 reasons therefor, and the projected executive pay average
20 to be authorized for the next fiscal year.

21 In addition, the stewardship report shall include such other
22 information on the overall program for the management of
23 the Federal Executive Service as will enable Congress to
24 maintain an adequate oversight of the Federal Executive
25 Service.

1 “(2) The projected number of executive appointments,
2 the projected ratios of career to noncareer appointments, and
3 the projected executive pay average reported under para-
4 graph (1) of this subsection are effective ninety calendar
5 days after the submission of the stewardship report.”

6 (3) Chapter 31 is amended—

7 (A) by amending the chapter analysis to read as
8 follows:

9 **“Chapter 31—Authority for Employment**

“SUBCHAPTER I—EMPLOYMENT AUTHORITIES

 “Sec.

 “3101. General authority to employ.

 “3102. Employment of readers for blind employees.

 “3103. Employment at seat of Government only for services rendered.

 “3104. [Repealed.]

 “3105. Appointment of hearing examiners.

 “3106. Employment of attorneys; restrictions.

 “3107. Employment of publicity experts; restrictions.

 “3108. Employment of detective agencies; restrictions.

 “3109. Employment of experts and consultants; temporary or inter-
 mittent.

 “3110. Employment of relatives; restrictions.

“SUBCHAPTER II—THE FEDERAL EXECUTIVE SERVICE

 “3131. Purpose.

 “3132. Definitions.

 “3133. The Federal Executive Service.

 “3134. Authorization of executive appointments and ratios.

 “3135. General authority to appoint executives; characteristics of career
 and noncareer appointments.

 “3136. Career appointments.

 “3137. Employment agreements.

 “3138. Qualifications Boards.

 “3139. Pay.

 “3140. Continued employment guarantees; separation benefits.

 “3141. Report to Congress.

 “3142. Regulations.

 “3143. Executive management outside the Federal Executive Service.”

10 (B) by inserting the following immediately before
11 section 3101:

1 "SUBCHAPTER I—EMPLOYMENT AUTHORITIES"

2 (C) by striking out section 3104.

3 (D) by amending section 3109 by striking out
4 "5332" and inserting "3139" in place thereof.

5 (E) by inserting the following new subchapter
6 immediately after section 3110:

7 "SUBCHAPTER II—THE FEDERAL EXECUTIVE
8 SERVICE

9 "§ 3131. Purpose

10 "It is the purpose of this subchapter to establish and
11 provide for the administration of the Federal Executive
12 Service. The Federal Executive Service is established to
13 ensure that executive leadership is of the highest quality
14 and is responsive to the needs, policies, and goals of the
15 Nation it serves. The Federal Executive Service shall be
16 administered to accomplish the following purposes—

17 "(1) to attract, recruit, and provide for the selection
18 of the best executive talent available with assurances of
19 prestige and recognition to encourage continuity of
20 service;

21 "(2) to authorize each agency head to fix the pay
22 and duty assignments of the executives in his agency as
23 will best advance the program responsibilities of that
24 agency;

25 "(3) to train, develop the careers of, and motivate

1 the members of the Federal Executive Service so as to
2 maintain the high degree of qualification essential for
3 executive leadership;

4 “(4) to make effective a separate merit system for
5 career executives with practices and procedures which,
6 while interrelated with the regular competitive service,
7 are expressly attuned to the development and utiliza-
8 tion of executive leadership;

9 “(5) to ensure the continuous quality of executive
10 service essential to carry out the policies of Congress,
11 the President, and the heads of agencies, by open and
12 public review of the qualifications of each career execu-
13 tive and the periodic reevaluation of his qualifications for
14 retention in the Federal Executive Service; and

15 “(6) to recognize the need for a limited number of
16 noncareer executives whose selection and retention by
17 an agency head or key political official is based on po-
18 litical agreement, program philosophy, or personal con-
19 fidence, or whose tenure is of a noncareer nature.

20 **“§ 3132. Definitions**

21 “For the purpose of this subchapter, except section
22 3143—

23 “(1) ‘agency’ means—

24 “(A) an Executive agency; and

1 “(B) a military department;

2 but does not include—

3 “(i) the General Accounting Office;

4 “(ii) the Peace Corps;

5 “(iii) the Atomic Energy Commission;

6 “(iv) the Central Intelligence Agency;

7 “(v) the Tennessee Valley Authority;

8 “(vi) the National Science Foundation;

9 “(vii) the Council of Economic Advisers;

10 “(viii) the Federal Deposit Insurance Corpo-
11 ration;

12 “(ix) the Federal Reserve System;

13 “(x) the United States Postal Service;

14 “(xi) the Panama Canal Company;

15 “(xii) the Canal Zone Government;

16 “(xiii) the Office of the Comptroller of the Cur-
17 rency or the Office of the Assistant Secretary (In-
18 ternational Affairs), Department of the Treasury;
19 or

20 “(xiv) the Federal Bureau of Investigation,
21 Department of Justice; and

22 “(2) ‘executive’ means an employee of an agency
23 whose pay is fixed under section 3139 of this title and
24 not under the General Schedule in section 5532 (a)
25 of this title nor under the Executive Schedule in sub-

1 chapter II of chapter 53 of this title, but does not
2 include—

3 “(A) a United States Attorney or Assistant
4 United States Attorney in the Department of
5 Justice;

6 “(B) an employee paid from—

7 “(i) appropriations for the Executive
8 Office of the President under the heading
9 ‘Special Projects’; or

10 “(ii) funds appropriated to the President
11 under the heading ‘Emergency Fund for the
12 President’ by the Treasury, Post Office, and
13 Executive Office Appropriation Act, 1971, or a
14 later statute making appropriations for the same
15 purpose;

16 “(C) a Foreign Service information officer in
17 the United States Information Agency;

18 “(D) a hearing examiner appointed under
19 section 3105 of this title;

20 “(E) an employee in the Foreign Service of
21 the United States paid under chapter 41 of title 22;

22 “(F) a physician, dentist, nurse, or other
23 employee in the Department of Medicine and
24 Surgery, Veterans Administration, paid under
25 chapter 73 of title 38;

1 “(G) an expert or consultant employed tem-
2 porarily or intermittently under section 3109 of
3 this title; or

4 “(H) such other employee or group of em-
5 ployees as may be excluded by regulations of
6 the President in the interest of national security
7 or foreign relations, or on the basis of a finding that
8 the duties of the employee or group involve the per-
9 formance of unique functions not readily adaptable
10 to the purposes of this subchapter.

11 **“§ 3133. The Federal Executive Service**

12 “The Federal Executive Service consists of the execu-
13 tives the Civil Service Commission authorizes agencies to
14 appoint under section 3134 of this title. The executives the
15 Commission authorizes agencies to appoint under section
16 3134 are members of the Federal Executive Service.

17 **“§ 3134. Authorization of executive appointments and**
18 **ratios**

19 “(a) Each agency shall examine its executive man-
20 power needs and submit to the Civil Service Commission, in
21 accordance with regulations prescribed by the Office of Man-
22 agement and Budget and the Civil Service Commission, a
23 written request for authority to appoint a specific number of
24 executives in the agency. A request shall be based on the
25 following factors:

1 “(1) the current level of budget and program ac-
2 tivity in the agency;

3 “(2) the current level of executive staffing in the
4 agency;

5 “(3) the anticipated agency program activity and
6 agency budget requests;

7 “(4) pending legislation;

8 “(5) the level of work to be done in the agency;
9 and

10 “(6) such other factors as may be prescribed from
11 time to time by the Office of Management and Budget
12 and the Civil Service Commission.

13 “(b) The request required by subsection (a) of this
14 section shall state the number of executives requested which
15 the agency desires to appoint by career appointments and by
16 noncareer appointments. Within the entire Federal Execu-
17 tive Service there is a ratio of not less than seventy-five
18 career executives to not more than twenty-five noncareer
19 executives. However, within a single agency, and subject to
20 the Government-wide restrictions, the Commission may au-
21 thorize a ratio of career to noncareer executives as is most
22 appropriate to the needs of the agency.

23 “(c) The request required by subsection (a) of this sec-
24 tion shall be submitted annually at such time and in such
25 form as the Commission prescribes.

1 “(d) The Commission, after collaboration with the
2 Office of Management and Budget in review of the request
3 of each agency and subject to sections 1308 (f) and 3141 of
4 this title, shall authorize—

5 “(1) the appointment of a specific number of
6 executives in the agency; and

7 “(2) a specific ratio of career executives to non-
8 career executives in the agency.

9 “(e) The number of executive appointments and the
10 ratios authorized under subsection (d) of this section may be
11 adjusted by the Commission after collaboration with the
12 Office of Management and Budget during the fiscal year in
13 which they are effective only for emergency purposes that
14 were not anticipated when they were authorized. An adjust-
15 ment in the number of executive appointments under this
16 subsection may not enlarge the Federal Executive Service
17 by more than 1 per centum in a fiscal year. If an adjustment
18 is made under this subsection, the Commission shall include
19 information concerning the adjustment in the next annual
20 stewardship report required under section 1308 (f) (1) of
21 this title.

22 “§ 3135. General authority to appoint executives; charac-
23 teristics of career and noncareer appointments

24 “(a) Within the ratio established by the Civil Service
25 Commission for his agency, the head of an agency may

1 appoint an executive by either a career or a noncareer
2 appointment. The decision as to whether an appointment
3 will be career or noncareer is exclusively that of the head
4 of the agency based on the following considerations:

5 “(1) A career appointment is made on the basis of
6 merit and fitness under section 3136 of this title and is
7 appropriate for the executive whose tenure is fixed and
8 whose future service is Government oriented.

9 “(2) A noncareer appointment is (A) made on
10 the basis of political agreement, program philosophy, or
11 personal confidence, or (B) made for project service
12 that does not entail a long-term career commitment.

13 “(b) An executive given a career appointment under
14 section 3136 of this title does not serve a probationary or
15 trial period. An executive given a career appointment—

16 “(1) is in the competitive service;

17 “(2) acquires a competitive status by that appoint-
18 ment; and

19 “(3) if he is a preference eligible as defined by
20 section 2108 (3) of this title, is entitled to the benefits
21 of subchapter II of chapter 75 and section 7701 of this
22 title without the completion of a probationary or trial
23 period.

24 “(c) An executive given a noncareer appointment does
25 not serve under an employment agreement and the head of

1 the agency has exclusive authority to determine his quali-
2 fications for the noncareer appointment. An executive given a
3 noncareer appointment—

4 “(1) is not in the competitive service;

5 “(2) does not acquire a competitive status by that
6 appointment;

7 “(3) does not have a fixed tenure; and

8 “(4) serves at the will of the appointing authority
9 without a continued employment guarantee.

10 **“§ 3136. Career appointments**

11 “(a) Each agency shall recruit and select candidates
12 for career appointments in the Federal Executive Service
13 on the basis of merit, capacity, and fitness. The Civil Service
14 Commission shall assist each agency in recruiting and se-
15 lecting candidates for career appointments to ensure—

16 “(1) that quality candidates having the best talent
17 available are considered; and

18 “(2) that recruitment is carried out on as broad
19 a base as is reasonable and, as nearly as conditions of
20 good administration warrant, extends to qualified in-
21 dividuals both within and outside the civil service as
22 defined by section 2101 (1) of this title.

23 “(b) When an agency selects a candidate for career
24 appointment, the name of the candidate together with docu-
25 mentation of his qualifications and of the recruitment effort

1 made shall be submitted to a Qualifications Board established
2 under section 3138 of this title. Except as provided in sub-
3 section (d) of this section, an agency may make a career
4 appointment in the Federal Executive Service only with
5 the prior approval of a Qualifications Board.

6 “(c) An agency may make a career appointment in the
7 Federal Executive Service only by entering into an em-
8 ployment agreement under section 3137 of this title with the
9 executive.

10 “(d) An agency may make a career appointment in
11 the Federal Executive Service without the prior approval
12 of a Qualifications Board when the appointment—

13 “(1) is by transfer from another career appoint-
14 ment in the Federal Executive Service; or

15 “(2) is by a renewal employment agreement made
16 not more than one year after the expiration of, or the
17 separation of an executive from, a previous employ-
18 ment agreement.

19 **“§ 3137. Employment agreements**

20 “(a) The employment agreement under which an ex-
21 ecutive first enters the Federal Executive Service is an initial
22 employment agreement. Each employment agreement after
23 the initial employment agreement is a renewal employment
24 agreement.

1 “(b) An initial employment agreement is for an em-
2 ployment period of three years or such shorter period as is
3 required by the mandatory separation of the executive
4 under section 8335 of this title.

5 “(c) A renewal employment agreement is for an em-
6 ployment period of three years or such shorter period as is
7 required by the mandatory separation of the executive under
8 section 8335 of this title, except when made by reason of
9 transfer from an initial employment agreement in which case
10 it may run only to the date the initial employment agree-
11 ment would have ended.

12 “(d) An initial or renewal employment agreement
13 shall require the agency to agree—

14 “(1) to assign the executive only to duties and re-
15 sponsibilities properly within the scope and purpose of
16 the Federal Executive Service;

17 “(2) to provide the executive with such training
18 and career development activities as will enhance the
19 proficiency of the executive and promote the program
20 needs of the agency;

21 “(3) not to reduce the pay of the executive during
22 the employment period;

23 “(4) not to separate the executive during the em-
24 ployment period, except for such cause as will promote
25 the efficiency of the service or on the basis of a finding

1 by the Civil Service Commission under section 8337
2 of this title that he has become disabled;

3 “(5) that the executive, at any time, may resign
4 from the agency, transfer to employment not within
5 the Federal Executive Service, transfer to another ap-
6 pointment in the Federal Executive Service in another
7 agency, or make application for optional retirement
8 under section 8336 of this title or disability retirement
9 under section 8337 and, if eligible therefor, be sepa-
10 rated; and

11 “(6) that on the expiration of the employment
12 period, the agency shall enter into a renewal employ-
13 ment agreement with the executive, provide him with
14 continued employment under section 3140 (b) of this
15 title, or separate him for retirement purposes under sec-
16 tion 3140 (a) of this title.

17 “(e) An initial or a renewal employment agreement
18 shall require the executive to agree—

19 “(1) To accept any assignment of duties and re-
20 sponsibilities, at any geographical location, that is prop-
21 erly within the scope, and consistent with the purposes,
22 of the Federal Executive Service. However, if the re-
23 assignment of an executive to a different geographical
24 location would result in undue personal hardship and
25 the agency has no further need for his services as an

1 executive at the place of employment, the agency shall
2 offer him a GS-15 position at the place of employment
3 under the same conditions set out in section 3140 (b),
4 (c) of this title and if the executive declines that offer
5 he is, if otherwise eligible, entitled to a discontinued-
6 service annuity or severance pay as provided in section
7 3140 (d) of this title.

8 “(2) To participate in such training and career
9 development activities as the agency determines will
10 enhance his proficiency and promote the program needs
11 of the agency.

12 **“§ 3138. Qualifications Boards**

13 “(a) The Civil Service Commission shall establish
14 Qualifications Boards which, acting as agents of the Commis-
15 sion, shall review the qualifications of candidates for career
16 appointment in the Federal Executive Service and the scope
- 17 and nature of the recruitment effort made to locate the can-
18 didates. A Qualifications Board may approve a candidate for
19 career appointment only when the Board determines that the
20 recruitment effort was consistent with the principles in sec-
21 tion 3136 (a) of this title, and that the candidate is one of the
22 most highly qualified candidates considered.

23 “(b) Each Qualifications Board shall be composed of
24 highly qualified experts with the ability to judge the quali-
25 cations of the candidates reviewed. The Commission may ap-

1 point the members of a Qualifications Board from individuals
2 both within and outside the civil service as defined by section
3 2101 (1) of this title. A member who is an employee of an
4 Executive agency other than the Commission may serve on
5 a reimbursable detail under section 686 of title 31. A member
6 selected from a State or territory or political subdivision
7 thereof, or from the private sector, serves as an expert or
8 consultant and his service may be obtained under section
9 3109 of this title at a rate of pay not in excess of the daily
10 equivalent of the maximum rate of pay that may be paid an
11 executive under section 3139 of this title. The Commission
12 may reimburse the government of the District of Columbia
13 for the services of a member employed by that government.

14 **“§ 3139. Pay**

15 “(a) Subject to subsection (c) of this section, an agency
16 may pay an executive any rate of annual pay it determines
17 to be appropriate that is not less than the sixth rate of
18 GS-15 nor more than the rate for level V of the Executive
19 Schedule.

20 “(b) An agency shall establish the initial rate of pay
21 for each executive, and adjust that rate to a higher rate at
22 any time, in accordance with such factors as—

23 “(1) the value of the executive to the agency;

24 “(2) the duties and responsibilities of the execu-
25 tive; and

1 “(3) the performance of the executive.

2 However, the average rate of pay of all executives within
3 an agency may not exceed the executive pay average au-
4 thorized by the Civil Service Commission in collaboration
5 with the Office of Management and Budget under subsection
6 (c) of this section, except with the prior approval of the
7 Commission and when the Commission and the Office of Man-
8 agement and Budget determine that special executive staff-
9 ing circumstances justify a higher average rate of pay for
10 that agency.

11 “(c) (1) The Commission shall require each agency
12 to report the rates of pay for each executive in the agency.
13 The Commission shall establish the dollar point which, sub-
14 ject to sections 1308 (f) and 3141 of this title, shall be au-
15 thorized as the executive pay average for the next fiscal
16 year.

17 “(2) The rate of pay established by an agency for an
18 executive shall be increased automatically by the same per-
19 cent of any increase in the sixth rate of GS-15 provided
20 by or under statute that does not result in the pay of an
21 executive being more than the rate for level V of the Ex-
22 ecutive Schedule.

23 **“§ 3140. Continued employment guarantees; separation**
24 **benefits**

25 “(a) When an employment agreement expires and an

1 agency does not offer the executive a renewal employment
2 agreement, or makes such an offer and it is declined by the
3 executive, the agency may separate the executive from the
4 service if he has completed thirty years of service as de-
5 fined by section 8331 (12) of this title and is otherwise
6 eligible for an annuity under section 8336 of this title.

7 “(b) When an employment agreement expires and the
8 agency does not offer the executive a renewal employment
9 agreement, or makes such an offer and it is declined by the
10 executive, and the executive is not separated under subsec-
11 tion (a) of this section, the agency shall offer the executive
12 a continuing position in the competitive service in GS-15
13 for which he is qualified and which may be filled without
14 the displacement or reduction in grade of any employee in
15 the agency serving in GS-15.

16 “(c) (1) When an executive accepts the offer required
17 by subsection (b) of this section, previous service in GS-15
18 not used for step increase purposes and all service as a mem-
19 ber of the Federal Executive Service is creditable service
20 and shall be used in determining the step of GS-15 into which
21 he is entitled to be placed. However, if the rate of annual
22 pay he was receiving immediately before his employment
23 agreement expired is greater than the basic pay the agency
24 is required to pay him in GS-15 under this paragraph, he is
25 entitled to basic pay in GS-15 at the rate of annual pay he

1 was receiving immediately before his employment agreement
2 expired (including any increase equivalent to any statutory
3 increase in the minimum rate of pay provided by section
4 3139 (a) of this title) for a period of two years from the
5 effective date of his appointment at grade GS-15, so long
6 as he—

7 “(A) continues in the same agency without a
8 break in service of one workday or more;

9 “(B) is not entitled to a higher rate of basic pay
10 by operation of subchapter III of chapter 53 of this
11 title; and

12 “(C) is not demoted or reassigned (i) for personal
13 cause, (ii) at his request, or (iii) in a reduction in
14 force to lack of funds or curtailment of work.

15 “(2) When the period of saved pay required by para-
16 graph (1) of this subsection expires, the former executive is
17 entitled to:

18 “(A) service credit for periodic step increase pur-
19 poses under section 5335 of this title for previous service
20 in GS-15 not used for step increase purposes and for all
21 service as a member of the Federal Executive Service;
22 and

23 “(B) placement in the appropriate rate and step
24 of GS-15 on the basis of the total creditable service cal-
25 culated under subparagraph (A) of this paragraph

1 unless he is given a higher rate and step under sub-
2 chapter III of chapter 53 of this title and the regulations
3 of the Civil Service Commission prescribed pursuant
4 thereto.

5 “(3) For the purpose of this subsection and section
6 5335 (a) of this title, the work of a former executive while a
7 member of the Federal Executive Service is deemed to have
8 been of an acceptable level of competence, and any increase
9 in pay received on entering the Federal Executive Service,
10 or while in the Service, is not an equivalent increase in pay.

11 “(d) When an employment agreement expires and an
12 agency does not offer the executive a renewal employment
13 agreement, an executive who declines the offer required by
14 subsection (b) of this section is entitled to:

15 “(1) A discontinued service annuity under section
16 8336 (d) of this title if he meets all requirements for title
17 to such an annuity. Such an executive who is separated
18 after he declines the offer required by subsection (b) of
19 this section is deemed ‘involuntarily separated from the
20 service’ for the purpose of section 8336 (d) of this title.

21 “(2) Severance pay if he meets all requirements
22 for severance pay under section 5595 of this title. Such
23 an executive who is separated after his declination of the
24 offer required by subsection (b) of this section is deemed

1 'involuntarily separated from the service' for the purpose
2 of section 5595 (b) (2) of this title.

3 "(e) When an employment agreement expires and an
4 agency offers the executive a renewal employment agree-
5 ment which he declines and, in addition, he declines the offer
6 of a continuing position in the competitive service in GS-15,
7 the separation of the executive from the agency is not 'in-
8 voluntary' for the purpose of severance pay under section
9 5595 (b) (1) of this title or a discontinued service annuity
10 under section 8336 (d) of this title.

11 **"§ 3141. Report to Congress**

12 "The Civil Service Commission shall report the projected
13 number of appointments, the ratios, and the executive pay
14 average to be authorized, together with a full explanation
15 thereof, to Congress in the report required by section
16 1308 (f) of this title. The projected authorizations are effec-
17 tive ninety calendar days after the report is submitted to
18 Congress.

19 **"§ 3142. Regulations**

20 "The Civil Service Commission may prescribe regula-
21 tions necessary to carry out the purposes of this subchapter,
22 except section 3143.

23 **"§ 3143. Executive management outside the Federal Ex-**
24 **ecutive Service**

25 "(a) The government of the District of Columbia and
26 each agency in the judicial or legislative branch in which

1 there are positions the basic pay for which is at an annual
2 rate that is not less than the sixth rate of GS-15 nor more
3 than the rate for level V of the Executive Schedule, and
4 which is not fixed under the General Schedule in section
5 5532 (a) of this title nor under the Executive Schedule in
6 subchapter II of chapter 53 of this title, shall prescribe
7 regulations which establish within the government and the
8 agency a program of executive management as nearly like
9 the program prescribed under this subchapter for the Fed-
10 eral Executive Service as conditions of good administration
11 warrant.

12 “(b) The Civil Service Commission, on request, shall
13 give advice and assistance to the government of the District
14 of Columbia and to each agency which establishes a pro-
15 gram of executive management under subsection (a) of
16 this section. The assistance given by the Commission under
17 this subsection may include the use of a Qualifications Board
18 established under section 3138 of this title and the use of
19 the Executive Inventory maintained in the Commission.

20 “(c) (1) Each hearing examiner appointed under sec-
21 tion 3105 of this title to a position not under the General
22 Schedule in section 5332 of this title is entitled to pay pre-
23 scribed by the Civil Service Commission independently of
24 agency recommendations or ratings in accordance with this
25 subsection.

1 “(2) The Civil Service Commission shall fix the pay of
2 a hearing examiner paid under this subsection at a rate that
3 is not less than the sixth rate for GS-15 nor more than the
4 rate for level V of the Executive Schedule.

5 “(3) The Civil Service Commission shall prescribe
6 regulations necessary to carry out this subsection which shall
7 include—

8 “(A) the bases for determining the rate of pay for
9 each hearing examiner position based on the difficulty
10 and responsibility of work in keeping with the purpose
11 expressed in section 5101 of this title; and

12 “(B) provisions governing the rate for new ap-
13 pointments, the rate on change in position or type of ap-
14 pointment, periodic increases, and pay saving which
15 shall be consistent with sections 5105, 5106, 5333,
16 5334, 5335, and 5337 of this title.

17 “(d) Each agency excluded by section 3132 (1) of this
18 title or which has employees excluded by section 3132 (2) of
19 this title—

20 “(1) is encouraged to adopt such features of the
21 program prescribed under this subchapter as conditions
22 of good administration warrant; and

23 “(2) is entitled, on request, to receive advice and
24 assistance from the Civil Service Commission under sub-
25 section (b) of this section.”

1 (4) Chapter 33 is amended—

2 (A) by amending section 3302—

3 (i) by striking out “and” at the end of para-
4 graph (1) ;

5 (ii) by striking out the period at the end of
6 paragraph (2) and inserting “; and” in place there-
7 of; and

8 (iii) by inserting the following new paragraph
9 after paragraph (2) :

10 “(3) necessary exceptions from sections 2951,
11 3304, 3305, 3306, 3308, 3309, 3311, 3313, 3314,
12 3315, 3315a, 3316, 3317, 3318, 3320, 3321, 3322,
13 3341, and 3361 to carry out subchapter II of chapter 31
14 of this title.”;

15 (B) by striking out sections 3324 and 3325; and

16 (C) by amending items 3324 and 3325 in the
17 analysis to read as follows:

“3324. [Repealed.]

“3325. [Repealed.]”.

18 (5) Section 4301 (2) is amended—

19 (A) by striking “or” after subparagraph (D) ;

20 (B) by striking the period after subparagraph (E)

21 and inserting “; or” in place thereof; and

22 (C) by inserting the following new subparagraph
23 after subparagraph (E) :

24 “(F) a member of the Federal Executive Service

1 or an employee under an agency program of executive
2 management established under section 3143 (a) of this
3 title.”.

4 (6) Chapter 51 is amended—

5 (A) by amending section 5102 (c) (25) to read as
6 follows:

7 “(25) positions for which rates of basic pay are in-
8 dividually fixed, or expressly authorized to be fixed, by
9 a statute other than this chapter, at or in excess of the
10 maximum rate for GS-15;”;

11 (B) by amending section 5104—

12 (i) by striking out “18” immediately before
13 the words “grades of difficulty” and inserting “15”
14 in place thereof; and

15 (ii) by striking out paragraphs (16), (17),
16 and (18);

17 (C) by striking out section 5108;

18 (D) by amending section 5109—

19 (i) by striking out the subsection designation
20 “(a)”;

21 (ii) by striking out subsection (b);

22 (E) by striking out section 5114;

23 (F) by amending items 5108 and 5114 in the
24 analysis to read as follows:

“5108. [Repealed].

“5114. [Repealed.]”;

1 (G) by amending section 5115 by striking out
2 "sections 5109 and 5114" and inserting "section 5109"
3 in place thereof.

4 (7) Chapter 53 is amended—

5 (A) by amending section 5304 by striking out
6 "chapter 51 of this title " and inserting "chapter 51 and
7 subchapter II of chapter 31 of this title" in place thereof;

8 (B) by amending section 5332 by striking out the
9 references therein to GS-16, 17, and 18 and the annual
10 rates for those grades;

11 (C) by striking out section 5361;

12 (D) by amending section 5362 by inserting "to
13 positions paid under the General Schedule in section
14 5332 of this title" immediately after "3105 of this title";

15 (E) by amending section 5363 by striking out "for
16 GS-18" and inserting "that may be paid under section
17 3139 of this title" in place thereof;

18 (F) by amending section 5364 by striking out
19 "equal to the pay rate of a grade and step of the General
20 Schedule set forth in section 5332 of this title" and in-
21 serting "that is not more than the maximum rate that
22 may be paid under section 3139 of this title" in place
23 thereof; and

24 (G) by amending item 5361 in the analysis to read
25 as follows:

"5361. [Repealed.]".

1 (8) Section 5595 (a) (2) is amended—

2 (A) by amending clause (i) by striking out “or is
3 in excess of the maximum rate for GS-18” and inserting
4 “or is equal to or in excess of the maximum rate that
5 may be paid under section 3139 of this title” in place
6 thereof; and

7 (B) by amending clause (ii) by inserting “or a
8 member of the Federal Executive Service” immediately
9 before the semicolon.

10 (9) Section 7154 is amended by—

11 (A) inserting “subchapter II of chapter 31,” im-
12 mediately after “In the administration of”; and

13 (B) striking out “sections 305 and 3324” and in-
14 serting “section 305” in place thereof.

15 (10) (A) Chapter 77 is amended by inserting the fol-
16 lowing new section after section 7701:

17 **“§ 7702. Appeals of members of the Federal Executive**
18 **Service and others**

19 “(a) A member of the Federal Executive Service
20 given a career appointment under section 3136 of this title,
21 and an employee under a regulatory program of executive
22 management established under section 3143 (a) of this title
23 who has a tenure equivalent to a career executive appointed
24 under section 3136 of this title, is entitled to appeal to the
25 Civil Service Commission if he believes his employing agency

1 or the government of the District of Columbia has vio-
2 lated the employment agreement under which he is serving.
3 The executive or employee shall submit the appeal in writ-
4 ing within a reasonable time after the alleged violation of the
5 employment agreement occurs, and is entitled to appeal
6 personally or through a representative under regulations
7 prescribed by the Commission. The Commission, after in-
8 vestigation and consideration of the evidence submitted, shall
9 submit its findings and recommendations to the employing
10 agency or the government of the District of Columbia and
11 shall send copies thereof to the executive or employee and
12 his representative. The agency or the government shall take
13 the corrective action that the Commission finally recommends.
14 “(b) The Civil Service Commission may prescribe regu-
15 lations necessary to carry out this section.”.

16 (B) The analysis of chapter 77 is amended by inserting
17 the following new item after item 7701:

“7702. Appeals of members of the Federal Executive Service and others.”.

18 SEC. 2. (a) (1) An employee who immediately before
19 the effective date of this Act was serving under a career or
20 career-conditional appointment in a position in the competi-
21 tive service in GS-16, 17, or 18, or who was paid at a rate
22 of GS-16, 17, or 18, or whose pay was fixed by administra-
23 tive action at a rate between the first rate of GS-16 and the
24 rate for GS-18, and who is not excluded from subchapter II

1 of chapter 31 of title 5, United States Code, by section 3132
2 of that title, is, at his election, entitled to either—

3 (A) enter into an initial employment agreement
4 under section 3137 of title 5, United States Code, with,
5 and receive a career appointment in the Federal Execu-
6 tive Service in, his employing agency without a review
7 of his qualifications, or the approval of his career ap-
8 pointment, by a Qualifications Board; or

9 (B) continue under the appointment held im-
10 mediately before the effective date of this Act.

11 (2) (A) An employee who immediately before the ef-
12 fective date of this Act was serving in GS-16, 17, or 18
13 under an excepted appointment in a position in schedule C
14 of subpart C of part 213 of title 5 of the Code of Federal
15 Regulations or in a position filled by noncareer executive as-
16 signment under subpart F of part 305 of title 5 of the Code of
17 Federal Regulations, and who is not excluded from sub-
18 chapter II of chapter 31 of title 5, United States Code, by
19 section 3132 of that title, is entitled to a noncareer appoint-
20 ment.

21 (B) An excepted employee, other than one covered by
22 subparagraph (A) of this paragraph, who immediately
23 before the effective date of this Act, was serving in GS-16,
24 17, or 18, or who was paid at rate of GS-16, 17, or 18, or
25 whose pay was fixed by administrative action at a rate be-

1 tween the first rate of GS-16 and the rate for GS-18, at the
2 election of his employing agency may enter into an initial
3 employment agreement under section 3137 of title 5, United
4 States Code, with, and receive a career appointment in, his
5 employing agency without a review of his qualifications, or
6 the approval of his career appointment by, a Qualifications
7 Board. If an agency does not elect to offer the employee a
8 career appointment, or if the employee declines to accept
9 such an appointment, the agency shall allow the employee to
10 continue to serve under the excepted appointment held im-
11 mediately before the effective date of this Act without change
12 in tenure or the loss of any employment or job-protection
13 benefits.

14 (3) The Civil Service Commission may prescribe regu-
15 lations to carry out the purpose of this subsection. The regu-
16 lations shall provide a right of appeal to the Commission for
17 an employee who believes his employing agency has vio-
18 lated his rights under this subsection. An agency shall take
19 the corrective action that the Commission finally recom-
20 mends in its decision on an appeal under this subsection.

21 (b) (1) This subsection applies to positions that were
22 in, or paid at a rate of, GS-16, 17, or 18, or the pay for
23 which was fixed by administrative action between the first
24 rate of GS-16 and the rate for GS-18, immediately prior to
25 the effective date of this Act, the incumbents of which are
26 neither in the Federal Executive Service nor under an agency

1 program of executive management under section 3143 of title
2 5, United States Code.

3 (2) (A) On and after the effective date of this Act each
4 agency with authority to fix the pay of a position by adminis-
5 trative action between the first rate of GS-16 and the rate for
6 GS-18, immediately prior to the effective date of this Act
7 may continue to fix the pay for such a position between the
8 first rate of GS-16 and the rate for GS-18, of the grade
9 schedule in paragraph (3) of this subsection.

10 (B) On and after the effective date of this Act the Direc-
11 tor of the Federal Bureau of Investigation, without regard to
12 any other provision of this Act or other statute, may fix the
13 pay of not to exceed one hundred and forty positions in the
14 Federal Bureau of Investigation at any rate of annual pay
15 he determines to be appropriate that is not less than the sixth
16 rate of GS-15 nor more than the rate for level V of the
17 Executive Schedule.

18 (3) (A) On and after the effective date of this Act the
19 following grade schedule applies to the positions to which
20 this subsection applies, except as provided under paragraph
21 (2) of this subsection:

Annual rates and steps									
Grade.....	1	2	3	4	5	6	7	8	9
16.....	\$28,129	\$29,067	\$30,005	\$30,943	\$31,881	\$32,819	\$33,757	\$34,695	\$35,633
17.....	32,546	33,631	34,716	35,801	36,886				
18.....	37,624								

¹ The rate of basic pay for employees at these rates is limited by sec. 5308 of title 5 of the United States Code, as added by the Federal Pay Comparability Act of 1970, to the rate for level V of the Executive Schedule (as of the date of this salary adjustment, \$36,000).

1 (B) The Civil Service Commission shall prescribe regu-
2 lations necessary to carry out this subsection which shall in-
3 clude provisions governing the rate on change in position
4 or type of appointment, periodic and additional step in-
5 creases, and pay saving which shall be consistent with sec-
6 tions 5105, 5106, 5334, 5335, 5336, and 5337 of title 5,
7 United States Code.

8 SEC. 3. (a) (1) Each position in or paid at a rate of,
9 GS-16, 17, or 18, or the pay for which was fixed by admin-
10 istrative action between the first rate of GS-16 and the rate
11 for GS-18, immediately before the effective date of this Act
12 is authorized to be continued and to be paid under section
13 2 (b) of this Act until brought into the Federal Executive
14 Service under section 1 or 2 of this Act or into an agency
15 program of executive management under section 3143 of
16 title 5, United States Code. On and after the effective date of
17 this Act, this subsection constitutes the only authority for
18 continuing a position covered by this section and all author-
19 ities for those positions that existed immediately before the
20 effective date of this Act are repealed, including but not
21 limited to section 1581 of title 10, United States Code;
22 section 208 (g) of the Public Health Service Act, as added
23 by the Act of August 15, 1950 (64 Stat. 447), as amended,
24 section 210 (g) of title 42, United States Code, except the
25 reference therein to positions in level II of the Executive

1 Schedule; section 601 of the Supplemental Defense Approp-
2 priation Act, 1958 (72 Stat. 8), as amended; and section
3 302 (f) of the Federal Aviation Act of 1958 (72 Stat. 746),
4 as amended, section 1343 (d) of title 49, United States
5 Code.

6 (2) This subsection does not apply to the Federal Bu-
7 reau of Investigation or the administrative pay-fixing author-
8 ity provided the Director of that Bureau under section 2 (b)
9 (2) (B) of this Act.

10 (b) Each agency in the executive, judicial, or legisla-
11 tive branch shall make a report to the Civil Service Com-
12 mission, at such time and in such form as the Commission
13 prescribes, concerning each position in, or paid at a rate of,
14 GS-16, 17, or 18, or the pay for which is fixed by adminis-
15 trative action between the first rate of GS-16 and GS-18,
16 inclusive, which has not been brought into the Federal Ex-
17 ecutive Service or into an agency program of executive man-
18 agement, including a statement of the authority that existed
19 for each such position immediately before the effective date
20 of this Act.

21 SEC. 4. The enactment of this Act does not decrease
22 the pay, allowances, compensation, or annuity of any person.

23 SEC. 5. If a provision enacted by this Act is held in-
24 valid, all valid provisions that are severable from the invalid
25 provision remain in effect. If a provision of this Act is

1 held invalid in one or more of its applications, the provision
2 remains in effect in all valid applications that are severable
3 from the invalid application or applications.

4 SEC. 6. (a) Except as provided in subsection (b) of
5 this section, this Act shall take effect at the start of the first
6 fiscal year that begins two hundred and seventy days fol-
7 lowing the date of enactment.

8 (b) Section 1 (2) of this Act which requires a steward-
9 ship report to Congress by the Civil Service Commission,
10 and those parts of section 1 (3) of this Act which refer to
11 the stewardship report by the Commission (5 U.S.C. 3141)
12 and require a like report for the government of the District
13 of Columbia and each agency which establishes a regula-
14 tory program of executive management (5 U.S.C. 3143),
15 shall take effect ninety days before the start of the first
16 fiscal year that begins two hundred and seventy days fol-
17 lowing the date of enactment.

